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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1200

[FV–02–709]

Rules of Practice and Procedure Governing Proceedings Under Research, Promotion, and Education Programs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) of the United States Department of Agriculture (USDA) is amending the Rules of Practice and Procedure Governing Proceedings under Research, Promotion, and Education Programs to make the headings for Part 1200 and its subparts more reflective of the programs covered by them; to delete inapplicable statutes from one subpart and to add three statutes to the other subpart; to redesignate subpart headings; to arrange the definitions in each subpart in alphabetical order; and to remove an incorrect citation. This rule also makes several minor and non-substantive changes for clarity and uniformity of style. These changes will make the rules of practice more accurate and easier to follow.

EFFECTIVE DATE: July 3, 2002.

FOR FURTHER INFORMATION CONTACT: Martha Ransom, Chief, Research and Promotion Branch, F&V, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW, Room 2535–S, Washington, DC 20250–0244, telephone (202) 720–9915, fax (202) 205–2800, e-mail *martha.ransom@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12988

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative proceedings which must be exhausted before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*].

Background

Prior to 1995, 7 CFR part 1200 contained generic rules of practice and procedure governing promulgation proceedings under various research, promotion, and information programs. Each individual program contained its own separate subpart containing rules of practice governing petition proceedings. On July 20, 1995 [60 FR 37326], the duplicative, program-specific rules of practice for petition proceedings were consolidated into a subpart of Part 1200, and the subpart was entitled Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted from Research, Promotion, and Education Programs.

Subsequently, on March 11, 2002 [67 FR 10827], the rules of practice on promulgation and petition proceedings were amended by a final rule to make a number of changes to expedite proceedings and save the United States and those who participate in the proceedings time and money.

The rules of practice for promulgation proceedings apply to programs issued under the Cotton Research and Promotion Act, as amended [7 U.S.C. 1201–2118], the Egg Research and Consumer Information Act [7 U.S.C. 2701–2718], the Potato Research and Promotion Act, as amended [7 U.S.C. 2611–2627], and the Pork Promotion, Research, and Consumer Information Act [7 U.S.C. 4801–4819]. However, several other statutes were inadvertently listed in these rules of practice. Therefore, this rule deletes the inapplicable statutes.

The list of applicable statutes in the rules of practice for petition proceedings also needs to be revised to add three statutes that were enacted after 1995. These statutes were inadvertently omitted from the March 2002 final rule. The statutes are the Commodity Promotion, Research, and Information Act of 1996 [7 U.S.C. 7411–7425], the Hass Avocado Promotion, Research, and Information Act of 2000 [7 U.S.C. 7801–7813], and the Popcorn Promotion, Research, and Consumer Information Act [7 U.S.C. 7481–7491]. Therefore, this rule adds these statutes to the list of statutes to which the rules of practice for petition proceedings apply.

In addition, part 1200 and the subpart covering the rules of practice governing petition proceedings have used the term ''research, promotion, and education programs'' whereas a more accurate description of the nature and purpose of the programs is research, promotion, and information. Therefore, this rule changes ''education'' to ''information'' in the titles of Part 1200 and the petition proceedings.

It has been determined that the subparts in part 1200 should be designated Subpart A and Subpart B and that the definitions in each subpart should be arranged in alphabetical order. These changes will make Part 1200 and the rules of practice easier to identify and follow. Therefore, this rule also makes these changes.

Further, this rule removes an incorrect citation in § 1200.51(h) and makes a number of minor and non-substantive changes for clarity and uniformity of style.

The provisions of the Administrative Procedure Act concerning notice and opportunity for comment on agency rulemaking [5 U.S.C. 553] do not apply to the promulgation of agency rules of practice. Accordingly, this action is made effective one day after publication in the **Federal Register**. Furthermore, no substantive rule change is involved.

List of Subjects in 7 CFR Part 1200

Administrative practice and procedure, Advertising, Blueberries, Consumer information, Cotton, Dairy, Eggs, Fluid Milk, Honey, Marketing agreements, Mushrooms, Peanuts, Popcorn, Pork, Potatoes, Promotion, Reporting and recordkeeping requirements, Soybeans, Watermelons.

PART 1200—RULES OF PRACTICE AND PROCEDURE GOVERNING PROCEEDINGS UNDER RESEARCH, PROMOTION, AND EDUCATION PROGRAMS

1. The heading for part 1200 is revised to read as follows:

PART 1200—RULES OF PRACTICE AND PROCEDURE GOVERNING PROCEEDINGS UNDER RESEARCH, PROMOTION, AND INFORMATION PROGRAMS

2. Subpart—Rules of Practice and Procedure Governing Proceedings to Formulate and Amend an Order is redesignated as subpart A:

Subpart A—Rules of Practice and Procedure Governing Proceedings to Formulate and Amend an Order.

3. The authority citation for redesignated Subpart A is added to read as follows:

Authority: 7 U.S.C. 2103, 2614, 2704, and 4804.

4. Section 1200.2 is revised to read as follows:

§ 1200.2 Definitions.

(a) The term *Act* means the Cotton Research and Promotion Act, as amended [7 U.S.C. 2101–2119]; the Egg Research and Consumer Information Act, as amended [7 U.S.C. 2701–2718]; the Pork Promotion, Research, and Consumer Information Act [7 U.S.C. 4801–4819]; and the Potato Research and Promotion Act, as amended [7 U.S.C. 2611–2627].

(b) *Administrator* means the Administrator of the Agricultural Marketing Service or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act for the Administrator.

(b) *Board* means the board or council established by the order to administer the program.

(c) *Department* means the U.S. Department of Agriculture.

(d) **Federal Register** means the publication provided for by the **Federal Register** Act, approved July 26, 1935 [44 U.S.C. 1501–1511], and acts supplementing and amending it.

(e) *Hearing* means that part of the proceeding which involves the submission of evidence.

(f) *Judge* means any administrative law judge appointed pursuant to 5 U.S.C. 3105 and assigned to conduct the hearing.

(g) *Hearing* means that part of the proceeding that involves the submission of evidence.

(h) *Hearing clerk* means the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C.

(i) *Order* means any order or any amendment thereto which may be issued pursuant to the Act. The term *order* shall include plans issued under the Acts listed in paragraph (a) of this section.

(j) *Proceeding* means a proceeding before the Secretary arising under the pertinent section of an Act.

(k) *Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act for the Secretary.

5. Subpart—Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted from Research, Promotion, and Education Programs is redesignated as Subpart B:

Subpart B—Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted from Research, Promotion, and Information Programs

6. The authority citation for redesignated subpart B is added to read as follows:

Authority: 7 U.S.C. 2111, 2620, 2713, 4509, 4609, 4814, 4909, 6008, 6106, 6306, 6410, 6807, 7106, 7418, 7486, and 7806.

7. Section 1200.51 is revised to read as follows:

§ 1200.51 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term *Act* means the Commodity Research, Promotion, and Information Act of 1996 [7 U.S.C. 7401–7425]; the Cotton Research and Promotion Act, as amended [7 U.S.C. 2101–2119]; the Dairy Production Stabilization Act of 1983 [7 U.S.C. 4501–4513]; the Egg Research and Consumer Information Act, as amended [7 U.S.C. 2701–2718]; the Fluid Milk Promotion Act of 1990 [7 U.S.C. 6401–6417]; the Hass Avocado Promotion, Research, and Information Act of 2000 [7 U.S.C. 7801–7813]; the Honey Research, Promotion, and Consumer Information Act, as amended [7 U.S.C. 4601–4612]; the Mushroom Promotion, Research, and Consumer Information Act of 1990 [7 U.S.C. 6101–6112]; the Pecan Promotion and Research Act of 1990 [7 U.S.C. 6001–6013]; the Popcorn Promotion, Research, and Consumer Information Act [7 U.S.C. 7481–7491]; the Pork Promotion, Research, and Consumer Information Act [7 U.S.C. 4801–4819]; the Potato Research and Promotion Act, as amended [7 U.S.C. 2611–2627]; the Sheep Promotion, Research, and Information Act of 1994 [7 U.S.C. 7101–7111]; the Soybean Promotion, Research, and Consumer Information Act [7 U.S.C. 6301–6311]; and the Watermelon Research and Promotion Act, as amended, [7 U.S.C. 4901–4916].

(b) *Administrator* means the Administrator of the Agricultural Marketing Service or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act for the Administrator.

(c) *Decision* means the judge's initial decision and includes the judge's:

(1) Findings of fact and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis thereof;

(2) Order; and

(3) Rulings on findings, conclusions and orders submitted by the parties.

(d) *Department* means the U.S. Department of Agriculture.

(e) Hearing means that part of the proceedings which involves the submission of evidence.

(f) *Hearing clerk* means the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C.

(g) *Judge* means any administrative law judge, appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved.

(h) *Order* means any order or any amendment thereto which may be issued pursuant to the Act. The term order shall include plans issued under the Acts listed in paragraph (a) of this section.

(i) *Party* includes the Department.

(j) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity subject to an order or to whom an order is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under an order.

(k) *Petition* includes an amended petition.

(l) *Proceeding* means a proceeding before the Secretary arising under the pertinent section of an Act.

(m) *Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act for the Secretary.

Dated: June 25, 2002.

A.J. Yates,

Administrator.

[FR Doc. 02–16477 Filed 7–1–02; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Agency Reorganization; Nomenclature Changes

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: On June 30, 2002, the FDIC, through an internal organizational order, merged the Division of Supervision and the Division of Compliance and Consumer Affairs and as a result of the merger, changed the name of the ''Division of Supervision'' and ''Division of Compliance and Consumer Affairs'' to the ''Division of Supervision and Consumer Protection'' (DSC). In addition, the internal reorganizational order merged the Division of Insurance and the Division of Research and Statistics and changed the name of the ''Division of Insurance'' to the ''Division of Insurance and Research.'' Consistent with this action, this rule makes appropriate conforming changes in chapter III of title 12 of the Code of Federal Regulations. The rule also sets forth a Savings Provision in SUPPLEMENTARY INFORMATION that preserves, under the new names, all actions taken under the name of the ''Division of Supervision,'' ''Division of Compliance and Consumer Affairs'' and the ''Division of Insurance'' and provides that any references to the Division of Supervision and Division of Compliance and Consumer Affairs or the Division of Insurance respectively in any document or other communication shall be deemed to be references to the Division of Supervision and Consumer Protection or the Division of Insurance and Research respectively.

DATES: This rule is effective June 30, 2002.

FOR FURTHER INFORMATION CONTACT: Legal Division: Robert E. Feldman, Executive Secretary (202) 898–3811, Susan van den Toorn, Counsel, (202) 898–8707, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background

This rule implements the decision by the FDIC, through an internal reorganization order dated June 30, 2002 to merge certain divisions of the FDIC and, as a result, to change the names of the ''Division of Supervision'' and the ''Division of Compliance and Consumer Affairs'' to the ''Division of Supervision and Consumer Protection (DSC) and the name of the ''Division of Insurance'' to the ''Division of Insurance and Research (DIR)''. These new names more accurately reflect the breadth of the Divisions' activities as a result of the FDIC reorganization. Consistent with these name changes, this rule makes a number of changes in chapter III of title 12 of the Code of Federal Regulations. Specifically, this rule changes all references to ''Division of Supervision'', and ''DOS'', ''Division of Compliance and Consumer Affairs'', and ''DCA'' wherever they appear in chapter III to the ''Division of Supervision and Consumer Protection'' and ''DSC'' respectively. In addition, the rule changes all references to ''Division of Insurance'' and ''DOI'' to the ''Division of Insurance and Research'' and ''DIR'' wherever they appear in chapter III. At a later date, the FDIC intends to make further revisions to 12 CFR chapter III to reflect other changes as a result of the reorganization and recent statutory changes.

Savings Provision

This rule shall constitute notice that all references to the Division of Supervision (DOS), the Division of Compliance and Consumer Affairs (DCA) or the Division of Insurance (DOI) in any documents, statements, or other communications, in any form or media, and whether made before, on or after the effective date of this rule, shall be deemed to be references to the Division of Supervision and Consumer Protection (DSC) or the Division of Insurance and Research (DIR). Any actions undertaken in the name of or on behalf of the Division of Supervision (DOS), the Division of Compliance and Consumer Affairs (DCA) or Division of Insurance (DOI) whether taken before, on, or after the effective date of this rule, shall be deemed to have been taken in the name of or on behalf of the Division of Supervision and Consumer Protection (DSC) or Division of Insurance and Research (DIR) respectively.

Rulemaking Requirements

1. This rule does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995.

2. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this rule involves a rule of agency organization, procedure, or practice. 5 U.S.C. 553(b)(B). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) are not applicable. Accordingly, this rule is issued in final form. Although there is no formal comment period, public comments on this rule are welcome on a continuing basis. Comments should be submitted to Thomas E. Nixon, FDIC Clearance Officer, Legal Division, 550 17th Street, NW, Washington, DC 20429, (202) 898–8766. Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street) on business days between 7 a.m. and 5 p.m. [Fax number (202) 898–3838; Internet address *COMMENTS@FDIC.GOV*].

For the reasons set forth in the preamble, under the authority of 12 U.S.C. 1819(a)(tenth), 12 CFR chapter III is amended as set forth below:

CHAPTER III—[AMENDED]

In 12 CFR chapter III revise all references to ''Division of Supervision'' and ''Division of Compliance and Consumer Affairs'' to read the ''Division of Supervision and Consumer Protection (DSC)'', revise all references to ''DOS'' to read ''DSC'', all references to ''DCA'' to read ''DSC'', all references to ''DOS and DCA'' to read ''DSC'', all references to ''DOS or DCA'' to read ''DSC'', all references to ''Division of Supervision's'' to read ''Division of Supervision and Consumer Protection's'', all references to Division of Compliance and Consumer Affairs''' to read ''Division of Supervision and Consumer Protection's''. Also in 12 CFR chapter III revise all references to the ''Division of Insurance'' to read the ''Division of Insurance and Research'', all references to ''DOI'' to read ''DIR'' and all references to ''Division of Insurance's'' to read ''Division of Insurance and Research's''.

Dated: June 26, 2002.

Federal Deposit Insurance Corporaiton.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–16604 Filed 7–1–02; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice 4057]

Bureau of Political-Military Affairs: Amendment to the List of Proscribed Destinations in the International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends the International Traffic in Arms Regulations (ITAR) by modifying the policy regarding Afghanistan on the list of proscribed destinations for exports and sales. This action is being taken in the interests of foreign policy and national security pursuant to section 38 of the Arms Export Control Act.

EFFECTIVE DATE: July 2, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Sweeney, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2700.

SUPPLEMENTARY INFORMATION: Afghanistan was added to the list of proscribed destinations at § 126.1(a) of the ITAR in the **Federal Register** publication of June 27, 1996 (61 FR 33313). In the **Federal Register** publication of May 8, 2001 (66 FR 23310) a denial policy notice was published regarding the territories of Afghanistan under Taliban control in implementation of UN Security Council Resolution 1333 (2000). UN Security Council Resolution 1390 (2002) replaced Resolution 1333 (2000), which had expired.

The Department of State is amending the ITAR to modify the denial policy regarding Afghanistan. It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in Afghanistan except for the Government of Afghanistan (currently the Afghan Interim Authority or AIA) and the International Security Assistance Force (ISAF). Further, lists of persons subject to an arms embargo due to their affiliation with the Taliban, Usama bin Laden, Al-Qaida and their associates will continue to be published in a separate notice or notices. This action is being taken in the interests of foreign policy and national security pursuant to section 38 of the Arms Export Control Act. Requests for licenses or other approvals for the Government of Afghanistan and ISAF involving items covered by the U.S. Munitions List (22 CFR Part 121) will be reviewed on a case-by-case basis.

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1966. It will not have substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant application of Executive Orders 12372 and 13123. However, interested parties are invited to submit written comments to the Department of State, Office of Defense Trade Controls, ATTN: Regulatory Change, Afghanistan, 2401 E. Street, NW., 12th Floor, H1200, Washington, DC 20522–0112. Such persons must be so registered with the Department's Office of Defense Trade Controls (DTC) pursuant to the registration requirements of section 38 of the Arms Export Control Act.

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M, part 126, is amended as follows:

PART 126—GENERAL POLICIES AND PROVISIONS

1. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2778; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2658; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899.

2. Section 126.1 is amended by revising paragraph (a) and adding paragraph (g) to read as follows:

§ 126.1 Prohibited exports and sales to certain countries.

(a) *General.* It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applies to Belarus, Cuba, Iran, Iraq, Libya, North Korea, Syria, and Vietnam. This policy also applies to countries with respect to which the United States maintains an arms embargo (*e.g.* Burma, China, Haiti, Liberia, Rwanda, Somalia, Sudan and Democratic Republic of the Congo (formerly Zaire)) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. Information regarding certain other embargoes appears elsewhere in this section. Comprehensive arms embargoes are normally the subject of a State Department notice published in the **Federal Register**. The exemptions provided in the regulations in this subchapter, except §§ 123.17 and 125.4(b)(13) of this subchapter, do not apply with respect to articles originating in or for export to any proscribed countries, areas, or persons in this § 126.1.

* * * * *

(g) *Afghanistan.* It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in Afghanistan except for the Government of Afghanistan (currently the Afghan Interim Authority) and the International Security Assistance Force, which will be reviewed on a case-by-case basis. In addition, lists of persons subject to a broad prohibition, including an arms embargo, due to their affiliation with the Taliban, Usama bin Laden, Al-Qaida or those associated with them will continue to be published from time to time.

Dated: June 3, 2002.

John R. Bolton,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 02–16504 Filed 7–1–02; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

RIN 1076–AE33

Law and Order on Indian Reservations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule and request for comments.

SUMMARY: This document adds the Santa Fe Indian School Property (Southwest Region, New Mexico) to the listing of Courts of Indian Offenses to establish a judicial forum for the administration of justice within the property.

DATES: This rule is effective on July 8, 2002. Submit comments by September 3, 2002.

ADDRESSES: Send comments on this rule to Ralph Gonzales, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW., MS Room 4660–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Iris A. Drew, Tribal Government Officer, Southwest Regional Office, Bureau of Indian Affairs, 615 First Street, NW., Albuquerque, New Mexico 87125–6467, at (505) 346–7592; or Ralph Gonzales, Branch of Judicial Services, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW., MS 4660 Washington, DC 20240, at (202) 208–4401.

SUPPLEMENTARY INFORMATION: The authority to issue this rule is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for ''Indian judges.'' *See Tillett* v. *Hodel,* 730 F.Supp. 381 (W.D. Okla. 1990), *aff'd* 931 F.2d 636 (10th Cir. 1991 *United States* v. *Clapox,* 13 Sawy. 349, 35 F. 575 (D.Ore. 1888). This rule is published in exercise of the rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs.

On May 3, 2001, the Bureau of Indian Affairs published a temporary rule (66 FR 22118) amending its regulations contained in 25 CFR part 11 to add the Santa Fe Indian School (SFIS) Property (Southwest Region New Mexico) to the list of Courts of Indian Offenses. This amendment established a Court of Indian Offenses for a period not to exceed one year. The purpose of establishing a Court of Indian Offenses at SFIS was to protect the lives, persons, and property of people residing at and attending or visiting the school and hospital, until the nineteen Pueblos establish a tribal court or otherwise request a CFR Court to exercise criminal jurisdiction. The SFIS property is held in trust by the Federal Government for the benefit of the nineteen Pueblos and a consensus is required to establish a tribal court that will represent all the Pueblos. The nineteen Pueblos could not reach a consensus within this initial time frame even though meetings were held with the Pueblos in an attempt to identify a sponsoring Pueblo to assume the lead in establishing a tribal court at SFIS and develop appropriate criminal codes. It does not appear likely that in the immediate future the nineteen Pueblos will reach this consensus; therefore, it is necessary for the amendment to part 11 that places the SFIS on the list of CFR Courts to become a permanent listing. The jurisdiction of this CFR Court will remain the same as published in the **Federal Register** on May 3, 2001 at 66 FR 22118. The Pueblos, however, will work in conjunction with the Southwest Regional Office to establish a tribal court to exercise jurisdiction at SFIS at which time the Pueblos may request the Secretary to remove the SFIS as a CFR Court.

Determination To Publish a Direct Final Rule Effective Immediately

In accordance with the requirements of the Administrative Procedure Act (5 U.S.C. 553(B)), we have determined that publishing a proposed rule would be impractical because of the potential harm that could result from the lack of a court with jurisdiction over the Santa Fe Indian School and Hospital. We are therefore publishing this change as a final rule with request for comments.

BIA has determined it appropriate to make the rule effective immediately by waiving the requirement of publication 30 days in advance of the effective date found at 5 U.S.C. 553(d). This is because of the critical need to expedite establishment of this court to fill the void in law enforcement at the Santa Fe Indian School and Indian Hospital, and the imminent increase in visitors to the grounds in question. It is in the public interest and in the interest of the Pueblos not to delay implementation of this amendment. Accordingly, this final rule is effective immediately.

We invite comments on any aspect of this rule and we will revise the rule if comments warrant. Send comments on this rule to the address in the **ADDRESSES** section.

Regulatory Planning and Review (Executive Order 12866)

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. OMB makes the final determination under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The establishment of this Court of Indian Offenses is estimated to cost less than $200,000 annually to operate. The cost associated with the operation of this Court will be shared among the Office of Indian Education, the Bureau of Indian Affairs, and the Indian Health Service.

(b) This rule will not create inconsistencies with other agencies' actions. The Department of the Interior through the Bureau of Indian Affairs has the sole responsibility and authority to establish Courts of Indian Offenses on Indian reservations.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The establishment of this Court of Indian Offenses will not affect any program rights of the nineteen Pueblos. Its primary function will be to administer justice for misdemeanor offenses within the Santa Fe Indian School grounds. The court's jurisdiction will be limited to criminal offense provided in 25 CFR part 11.

(d) This rule will not raise novel legal or policy issues. The Solicitor analyzed and upheld the Department of the Interior's authority to establish Courts of Indian Offenses in a memorandum dated February 28, 1935. The Solicitor found that authority to rest principally in the statutes placing supervision of the Indians in the Secretary of the Interior, 25 U.S.C. 2 and 9, and 25 U.S.C. 13, which authorizes appropriations for ''Indian judges.'' The United States Supreme Court recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United States* v. *Clapox,* 35 F. 575 (D.Ore. 1888).

Regulatory Flexibility Act

The Department of the Interior, BIA, certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial Regulatory Flexibility Analysis is not required.

Accordingly, a Small Entity Compliance Guide is not required. The amendment to 25 CFR part 11.100(a) will establish a Court of Indian Offenses with limited criminal jurisdiction over Indians within a limited geographical

area at Santa Fe, New Mexico. Accordingly, there will be no impact on any small entities in New Mexico.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. The establishment of this Court of Indian Offenses is estimated to cost less than $200,000 annually to operate. The cost associated with the operation of this Court will be shared among the Office of Indian Education, the Bureau of Indian Affairs, and the Indian Health Service.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This is a Court established specifically for the administration of misdemeanor justice for Indians located within the boundaries of the Santa Fe Indian School, New Mexico and will not have any cost or price impact on any other entities in the geographical region.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This is a Court established specifically for the administration of misdemeanor justice for Indians located within the boundaries of the Santa Fe Indian School, New Mexico, and will not have an adverse impact on competition, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The establishment of this Court of Indian Offenses will not have jurisdiction to affect any rights of the small governments. Its primary function will be to administer justice for misdemeanor offenses within the Santa Fe Indian School grounds. Its jurisdiction will be limited to criminal offense provided in 25 CFR part 11.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year; *i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings Implication Assessment (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. The amendment to 25 CFR 11.100(a) will establish a Court of Indian Offenses with limited criminal jurisdiction over Indians within a limited geographical area at Santa Fe, New Mexico. Accordingly, there will be no jurisdictional basis for to adversely affect any property interest because the court's jurisdiction is solely personal jurisdiction over Indians.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. The Solicitor found that authority to rest principally in the statutes placing supervision of the Indians in the Secretary of the Interior, 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for ''Indian judges.'' The United States Supreme Court recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United States* v. *Clapox,* 35 F. 575 (D.Ore. 1888).

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The Solicitor analyzed and upheld the Department of the Interior's authority to establish Courts of Indian Offenses in a memorandum dated February 28, 1935. The Solicitor found that authority to rest principally in the statutes placing supervision of the Indians in the Secretary of the Interior, 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for ''Indian judges.'' The United States Supreme Court recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United States* v. *Clapox,* 35 F. 575 (D.Ore. 1888). Part 11 also requires the establishment of an appeals court; hence the judicial system defined in Executive Order 12988 will not normally be involved in this judicial process.

Paperwork Reduction Act

This regulation does not require an information collection under the Paperwork Reduction Act. The information collection is not covered by an existing OMB approval. An OMB form 83–I has not been prepared and has not been approved by the Office of Policy Analysis. No information is being collected as a result of this Court exercising its limited criminal misdemeanor jurisdiction over Indians within the exterior boundaries of the Santa Fe Indian School, New Mexico.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required. The establishment of this Court of Indian Offenses conveys personal jurisdiction over the criminal misdemeanor actions of Indians with the exterior boundaries of the Santa Fe Indian School and does not have any impact of the environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. The amendment to 25 CFR 11.100(a) does not apply to any of the 562 federally recognized tribes, except the nineteen Pueblos in New Mexico that have requested the establishment of the provisional Court of Indian Offenses until such time as they establish a tribal court to provide for a law and order code and judicial system to deal with law and order on the trust land at Santa Fe Indian School. The Department of the Interior, in establishing this provisional court, is fulfilling its trust responsibility and complying with the unique government-to-government relationship that exists between the Federal Government and Indian tribes.

List of Subjects in 25 CFR Part 11

Courts, Indians-Law, Law enforcement, Penalties.

For the reasons stated in the preamble, we are amending part 11, chapter I of title 25 of the Code of Federal Regulations, as set forth below.

PART 11—LAW AND ORDER ON INDIAN RESERVATIONS

1. The authority citation for part 11 continues to read as follows:

Authority: R.S. 463; 25 U.S.C. 2 , 38 Stat. 586; 25 U.S.C. 200, unless otherwise noted.

2. Section 11.100 is amended by adding new paragraph (a)(14) to read as follows:

§ 11.100 Listing of Courts of Indian Offenses.

(a) * * *

(14) Sante Fe Indian School Property, including the Santa Fe Indian Health Hospital (land in trust for the 19 Pueblos of New Mexico).

* * * * *

Dated: June 24, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–16635 Filed 7–1–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 170

RIN 1076–AE28

Distribution of Fiscal Year 2002 Indian Reservation Roads Funds

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: We are issuing a final rule requiring that we distribute the remaining 25 percent of fiscal year 2002 Indian Reservation Roads (IRR) funds to projects on or near Indian reservations using the relative need formula. We are using the Federal Highway Administration (FHWA) Price Trends report for the relative need formula distribution process, with appropriate modifications to address non-reporting states. Up to $35,000 per tribe is available under this distribution until August 15, 2002, for administrative capacity building and other eligible transportation activities upon receipt, review, and approval of self-determination contracts and self-governance agreements, where applicable, and receipt of tribal requests by direct services tribes for BIA regions to perform these functions for them.

EFFECTIVE DATE: July 8, 2002 through September 30, 2002.

FOR FURTHER INFORMATION CONTACT: LeRoy Gishi, Chief, Division of Transportation, Office of Trust Responsibilities, Bureau of Indian Affairs, 1849 C Street, NW., MS–4058–MIB, Washington, DC 20240. Mr. Gishi may also be reached at 202–208–4359 (phone) or 202–208–4696 (fax).

SUPPLEMENTARY INFORMATION:

Background

Where Can I Find General Background Information on the Indian Reservation Roads (IRR) Program, the Relative Need Formula, the Federal Highway Administration (FHWA) Price Trends Report, and the Transportation Equity Act for the 21st Century (TEA–21) Negotiated Rulemaking Process?

The background information on the IRR program, the relative need formula, the FHWA Price Trends Report, and the TEA–21 Negotiated Rulemaking process is detailed in the **Federal Register** notice dated February 15, 2000 (65 FR 7431).

Why Are You Publishing This Final Rule?

We are publishing this final rule only for the distribution of the remaining 25 percent of fiscal year 2002 IRR funds. This rule sets no precedent for the final rule to be published as required by Section 1115 of TEA–21. On January 10, 2002, we published a temporary rule distributing 75 percent of fiscal year 2002 IRR funds (67 FR 1290).

Where Can I Find Information on the Distribution of 75 Percent of Fiscal Year 2002 IRR Funds?

You can find this information in the **Federal Register** notice dated January 10, 2002 (67 FR 1290).

What Comments Did You Receive on the Temporary Rule for Distribution of 25 Percent of Fiscal Year 2002 IRR Program Funds?

In the 30-day comment period after publication of the temporary rule distributing 75 percent of fiscal year 2002 IRR program funds, we received comments from 2 commenters.

Comment: Two commenters disagreed with reserving $19.53 million for administrative capacity building. The commenters stated that providing such funds decreased the amount of IRR Program funds they would receive and that 2 percent planning funds already available were adequate for administrative capacity building.

Response: The tribal caucus recommendation was to reserve funds for administrative capacity building for fiscal year 2002 in the same manner as fiscal year 2001. The Assistant Secretary—Indian Affairs considered this tribal caucus recommendation to allow all tribes to participate in the IRR program, as an acceptable funding method for fiscal year 2001 and again proposed it only for fiscal year 2002 in the temporary rule. This rule sets no precedent for the final rule to be published as required by Section 1115 of TEA–21.

Does This Rule Include the Reserved Funds for Administrative Capacity Building?

Yes. The remaining 25 percent of fiscal year IRR program funds distributed under this rule includes the $19.53 million reserved for administrative capacity building and other eligible transportation activities. These funds will be distributed until August 15, 2002, based on approved self-determination contracts or applicable self-governance agreements or requests by direct services tribes to the appropriate BIA region for BIA to perform administrative capacity building for them. After August 15, 2002, any undistributed funds reserved for administrative capacity building will be distributed to the appropriate BIA regions using the relative need formula.

How Will the Secretary Distribute the Remaining 25 Percent of Fiscal Year 2002 IRR Program Funds?

Upon publication of this rule, the Secretary will distribute the remaining 25 percent (approximately $61.9 million) of fiscal year 2002 IRR program funds based on the current relative need formula used in fiscal years 2000, 2001 and in the first distribution in fiscal year 2002. From this 25 percent the Secretary is reserving $19.53 million to distribute for administrative capacity building by the process described in the January 10, 2002, temporary rule. We are using the latest indices from the FHWA Price Trends Report with appropriate modifications for non-reporting states in the relative need formula distribution process.

Regulatory Planning and Review (Executive Order 12866)

Under the criteria in Executive Order 12866, this rule is not an economically significant regulatory action because it will not have an annual effect of more than $100 million on the economy. The total amount available for distribution of fiscal year 2002 IRR program funds is approximately $226 million and we are distributing approximately $61.9 million under this rule. Congress has already appropriated these funds and FHWA has already allocated them to BIA. The cost to the government of distributing the IRR program funds, especially under the relative need formula with which the tribal governments and tribal organizations and the BIA are already familiar, is negligible. The distribution of fiscal year 2002 IRR program funds does not require tribal governments and tribal

organizations to expend any of their own funds. This rule is consistent with the policies and practices that currently guide our distribution of IRR program funds. This rule continues to adopt the relative need formula that we have used since 1993, adjusting the FHWA Price Trends Report indices for states that do not have current data reports. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency. The FHWA has transferred the IRR program funds to us and fully expects the BIA to distribute the funds according to a funding formula approved by the Secretary. This rule does not alter the budgetary effects on any tribes from any previous or any future distribution of IRR program funds and does not alter entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule does not raise novel legal or policy issues. It is based on the relative need formula in use since 1993. We are changing determination of relative need only by appropriately modifying the FHWA Price Trend Report indices for states that did not report data for the FHWA Price Trends Report, just as we did for the second partial distribution of fiscal years 2000 and 2001 IRR program funds and the first partial distribution of fiscal year 2002 IRR funds.

Approximately 1400 road and bridge construction projects are at various phases that depend on this fiscal year's IRR program funds. Leaving these ongoing projects unfunded will create undue hardship on tribes and tribal members. Lack of funding would also pose safety threats by leaving partially constructed road and bridge projects to jeopardize the health and safety of the traveling public. Thus, the benefits of this rule far outweigh the costs. This rule is consistent with the policies and practices that currently guide our distribution of IRR program funds. This rule continues to adopt the relative need formula that we have used since 1993.

Regulatory Flexibility Act

A Regulatory Flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required for this rule because it applies only to tribal governments, not state and local governments.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, because it does not have an annual effect on the economy of $100 million or more. We are distributing approximately $61.9 million under this rule. Congress has already appropriated these funds and FHWA has already allocated them to BIA. The cost to the government of distributing the IRR program funds, especially under the relative need formula with which tribal governments, tribal organizations, and the BIA are already familiar, is negligible. The distribution of the IRR program funds does not require tribal governments and tribal organizations to expend any of their own funds. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Actions under this rule will distribute Federal funds to Indian tribal governments and tribal organizations for transportation planning, road and bridge construction, and road improvements. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign based enterprises. In fact, actions under this rule will provide a beneficial effect on employment through funding for construction jobs.

Unfunded Mandates Reform Act

Under the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*), this rule will not significantly or uniquely affect small governments, or the private sector. A Small Government Agency Plan is not required. This rule will not produce a federal mandate that may result in an expenditure by State, local, or tribal governments of $100 million or greater in any year. The effect of this rule is to immediately provide the remaining 25 percent of fiscal year 2002 IRR program funds to tribal governments for ongoing IRR activities and construction projects.

Takings Implications (Executive Order 12630)

With respect to Executive Order 12630, the rule does not have significant takings implications since it involves no transfer of title to any property. A takings implication assessment is not required.

Federalism (Executive Order 13132)

With respect to Executive Order 13132, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. This rule should not affect the relationship between state governments and the Federal government because this rule concerns administration of a fund dedicated to IRR projects on or near Indian reservations that has no effect on Federal funding of state roads. Therefore, the rule has no Federalism effects within the meaning of Executive Order 13132.

Civil Justice Reform (Executive Order 12988)

This rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988. This rule contains no drafting errors or ambiguity and is clearly written to minimize litigation, provide clear standards, simplify procedures, and reduce burden. This rule does not preempt any statute. We are still pursuing the TEA–21 mandated negotiated rulemaking process. The rule is not retroactive with respect to any funding from any previous fiscal year (or prospective to funding from any future fiscal year), but applies only to the remaining 25 percent of fiscal year 2002 IRR program funding.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose record keeping or information collection requirements or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.* We already have all of the necessary information to implement this rule.

National Environmental Policy Act

This rule is categorically excluded from the preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, because its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and the road projects funded as a result of this rule will be subject later to the National Environmental Policy Act process, either collectively or case-by-case. Further, no extraordinary circumstances exist to require preparation of an environmental assessment or environmental impact statement.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

Pursuant to the President's Executive Order 13175 of November 6, 2000, ''Consultation and Coordination with Indian Tribal Governments,'' we have consulted with tribal representatives throughout the negotiated rulemaking process and in developing this rule. The TEA–21 Negotiated rulemaking

committee's tribal caucus presented a consensus recommendation to the Assistant Secretary for distribution of fiscal year 2002 IRR program funds. We have evaluated any potential effects on federally recognized Indian tribes and have determined that there are no potential adverse effects and have determined that this rule preserves the integrity and consistency of the relative need formula process we have used since 1993 to distribute IRR funds. We are making a change from previous years (which we also made for fiscal years 2000, 2001, and the first part of fiscal year 2002 IRR program funds (see **Federal Register** notices at 65 FR 37697 and 66 FR 17073)) to modify the FHWA Price Trends Report indices for non-reporting states which do not have current price trends data reports. The yearly FHWA Report is used as part of the process to determine the cost-to-improve portion of the relative need formula. As in fiscal year 2001, this rule will provide for up to $35,000 per tribe for administrative capacity building and other eligible transportation activities by reserving $19.53 million from this distribution. Consultation with tribal governments and tribal organizations is ongoing as part of the TEA–21 negotiated rulemaking process and this distribution uses the TEA–21 Negotiated Rulemaking Committee's tribal caucus recommendation.

List of Subjects in 25 CFR Part 170

Highways and Roads, Indians-lands.

For the reasons set out in the preamble, we are amending Part 170 in Chapter I of Title 25 of the Code of Federal Regulations as follows.

PART 170—ROADS OF THE BUREAU OF INDIAN AFFAIRS

1. The authority citation for part 170 continues to read as follows:

Authority: 36 Stat. 861; 78 Stat. 241, 253, 257; 45 Stat. 750 (25 U.S.C. 47; 42 U.S.C. 2000e(b), 2000e–2(i); 23 U.S.C. 101(a), 202, 204), unless otherwise noted.

2. Revise § 170.4b to read as follows:

§ 170.4b What formula will BIA use to distribute the remaining 25 percent of fiscal year 2002 Indian Reservation Roads program funds?

On July 8, 2002 we will distribute the remaining 25 percent of fiscal year 2002 IRR Program funds authorized under Section 1115 of the Transportation Equity Act for the 21st Century, Public Law 105–178, 112 Stat. 154. We will distribute the funds to Indian Reservation Roads projects on or near Indian reservations using the relative need formula established and approved in January 1993. The formula has been modified to account for non-reporting states by inserting the latest data reported for those states for use in the relative need formula process. Of this remaining 25 percent of fiscal year 2002 IRR program funds, $19.53 million is available for immediate distribution to provide for up to $35,000 for each tribe for administrative capacity building and other eligible transportation activities based on approved contracts, agreements, or requests for such funds by the deadline of August 15, 2002.

Dated: May 9, 2002.

Neal A. McCaleb,

Assistant Secretary, Indian Affairs.

[FR Doc. 02–16636 Filed 7–1–02; 8:45 am]

BILLING CODE 4310–LY–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC92

Oil and Gas and Sulphur Operations on the Outer Continental Shelf—Suspension of Operations for Exploration Under Salt Sheets

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: MMS is modifying regulations that govern suspensions of operations for oil and gas leases on the Outer Continental Shelf (OCS). The amendment covers instances where oil and gas lessees begin timely interpretation of geophysical data early in the lease term, but the analysis proves inconclusive because of problems caused by the existence of salt sheets underlying the seabed and overlying possible hydrocarbon deposits. In such cases, the rule allows lessees to apply for a suspension of operations to complete the necessary geophysical interpretation before drilling a well. To qualify for a suspension of operations, the lessee must show it has made and will continue to make substantial efforts and financial commitment to process and reprocess its geophysical data.

DATES: This rule is effective August 1, 2002.

FOR FURTHER INFORMATION CONTACT: John Mirabella, Engineering and Operations Division, (703) 787–1598.

SUPPLEMENTARY INFORMATION: When a lessee obtains an oil and gas lease on the OCS, MMS regulations allow the lessee flexibility to schedule activities during the primary term. At the end of the primary term, the lease can continue in force only by production, suspension, drilling, or well reworking operations as approved by the Secretary of the Interior. MMS regulations at 30 CFR 250.168–177 authorize suspensions before discovery of oil or gas in paying quantities only in limited circumstances. Generally, when a lease reaches the end of the primary term, the lessee must conduct drilling operations until it has made a discovery of oil or gas and a commitment to proceed to development and production.

Although lessees have made great progress in imaging potential objectives in areas under salt sheets, processing, analyzing, and interpreting geophysical, geological, and other relevant data and information is complex and time-consuming. As a result, lessees have been faced with the end-of-lease-term decisions to either allow the lease to expire or drill a well without sufficient geophysical information.

On December 21, 2000, MMS issued a Notice to Lessees (NTL) 2000–G22, Subsalt Lease Term Extension. That NTL provides for an extension of lease terms for subsalt exploration in cases where the lessee has drilled a well on the lease during the primary term but needs additional time to process geophysical data before drilling another well. The NTL did not provide additional time to process geophysical data in cases where a well had not been drilled. This rule authorizes MMS to grant a suspension for a lease when the operator has conducted timely analysis and interpretation of the geophysical data that may ultimately lead to a drilling objective but, due to the complexity of the salt sheet, needs additional time to complete the geophysical analysis before drilling.

MMS published a proposed rule on January 9, 2002 (67 FR 1171). The public comment period ended on February 8, 2002. Seven interested parties responded with comments and recommendations during the comment period. Commenters agreed with the need to encourage drilling in areas under salt sheets and supported the change, although they made specific recommendations about the rule and its implementation.

Comments: One commenter noted that the effect of the regulation will delay the commencement of drilling on the lease. He asked that MMS closely scrutinize requests made under the rule to ensure that lessees are diligently working toward drilling activities.

Response: We agree with the commenter that this rule should be

applied only to the limited set of circumstances detailed in the rule, with the ultimate goal being development of the lease. It is for this reason that the provision includes specific details with regard to eligibility and diligence.

Comments: One commenter encouraged MMS to establish a 10-year lease term for all leases in the Gulf of Mexico (GOM). The rationale given was that capital commitment and technical complexities warrant a 10-year lease. Another commenter requested consideration of broader changes in leasehold management, lease term extension, and unit formation. The rationale was that the changes are needed to tap the vast potential in the GOM.

Response: The MMS appreciates the concerns expressed by all commenters. However, these comments are outside the scope of this rulemaking and were not adopted.

Comments: Several commenters were uncertain of the definition of the western GOM and others recommended that the rule apply to the entire OCS, not just to the western GOM. Since granting of a suspension of operations is discretionary, the commenter thought that limiting the rule to one geographical area was unnecessary.

Response: To avoid confusion and to provide the discretion needed to avoid premature drilling of wells if these conditions were found to exist in other areas, we have removed the clause limiting the rule to the western GOM.

Comments: One commenter recommended that the suspension not be limited to 3 years. Another commenter recommended that the provision clarify that a lessee can receive more than one suspension on a lease.

Response: Lessees who apply for a suspension will be required to specify the activities leading to the drilling of a subsalt well and, if the suspension is granted, it will be for a length of time warranted to complete specified activities. If in the course of completing the specified work, the lessee encounters further complications and needs additional time, the lessee may apply for additional suspensions under the provision. MMS expects that a suspension of even 3 years will be very unusual. However, since we will only be giving the time necessary to complete the proposed activity, we have eliminated the 3-year maximum and will determine the appropriate length of suspensions on a case-by-case basis. When not otherwise specified, suspensions under MMS regulations are for a maximum of 5 years as specified in 30 CFR 250.170(a) and can be obtained multiple times when warranted.

Comment: One commenter recommended that the rule apply to a variety of salt structures other than salt sheets.

Response: We did not make this change. Companies have historically operated near salt structures, and it is not our intention to provide more time for all companies who find potential discoveries near a salt structure. This provision is intended to specifically address the needs of companies who are exploring in deep areas under or near a salt sheet.

Comments: Several commenters made recommendations concerning the specific wording of the proposed rule. In § 250.175(b)(2), one commenter recommended that ''collected'' be changed to ''acquired'' to recognize that some lessees will be purchasing or licensing rather than collecting data and that ''analyzed'' be changed to ''interpreted'' to be more representative of the work. Another commenter recommended that the rule be modified to clarify that the provision applies to leases already beyond the third year. The commenter read the rule to imply that leases beyond their third year when the rule becomes effective will not be eligible for a suspension under the new provision.

Response: Any lessee will be eligible to apply for a suspension under the new provision. We revised the wording from ''collected'' to '' acquired'' and replaced ''analyzed'' with ''interpreted.'' All lessees who hold leases that meet the requirements of the provision and are active at the time this rule becomes effective, or are issued after that date, will be eligible to apply for the suspension.

Comment: One commenter recommended that the 3-year period in § 250.175(b)(2), during which lessees must complete specified geophysical work, be lengthened by the length of any suspensions of operations received during the 3 years.

Response: In rare cases where a suspension is directed within the first 3 years of a primary term, the suspension would not be expected to require the lessee to delay geophysical work. We therefore have not adopted the commenter's suggestion.

Comments: Several commenters made recommendations concerning the discussion of § 250.175(b)(3) in the preamble to the proposed rule which stated that as a measure of whether the lessee has conducted timely analysis of geophysical information, MMS will require the lessee to have collected and analyzed geophysical information (i.e., full 3-D depth migration beneath the salt sheet and over the entire lease area) before the end of the third lease year. The commenters stated that either (1) 3-D ''time'' migration, rather than depth migration, be acceptable as the seismic activity reasonably expected to have been concluded with the first 3 years of the lease term; or (2) the lessee commit financially (by contract) to perform a depth migration before the end of the third year. The preamble also stated that the lessee must have completed additional data reprocessing before MMS will grant a suspension. The commenters wanted more time to complete the pre-stack depth migration because conducting the interpretations prematurely would limit the information that would be gained from the depth migration.

Response: We did not accept this suggested change. Prior to encountering complications due to the salt sheet, the lessee should be on a schedule to drill in the primary term. The complications being addressed by this rule would not be apparent until after the lessee has completed the depth migration. If the lessee is not on a schedule to complete the depth migration by the end of the third year, then our experience has shown that the schedule would not provide for drilling during a 5-year primary term. In considering whether the interpretation of geophysical information is timely, MMS will require the lessee to have acquired and interpreted geophysical information (i.e., full 3-D depth migration beneath the salt sheet and over the entire lease area) before the end of the third lease year. This is consistent with the criteria included in the preamble to the proposed rule, and this criterion has been included in the final rule at § 250.175(b)(3).

Comment: A commenter recommended that because of the uncertainty of contractor availability, the criteria for timely analysis be that the lessee had issued a contract for depth migration rather than to have completed the depth migration by the end of the third year.

Response: MMS did not make this change. Contractors conduct a significant portion of OCS operations. Whether the work is drilling a well or conducting geophysical exploration, the lessee is ultimately responsible for the timeliness of the contractor's activities.

Comment: In § 250.175(b)(3), commenters recommended that the word ''confirms'' be changed to ''indicates'' to better reflect the geophysical phase of exploration and the term ''beneath the salt sheet'' be modified to recognize that a drillable

objective may not be entirely under the salt sheet.

Response: We revised the final rule to reflect these recommendations, which are found in § 250.175(b)(2).

Comments: In § 250.175(b)(4), commenters recommended changing ''completing'' to ''completing or nearing the completion of'' to not penalize a company who is diligent but has not completed a specific interpretation, and adding ''covering all or a portion of the applicable geophysical area'' to allow the lessee to concentrate on special areas of interest.

Response: We revised the final rule to address these recommendations and to place the emphasis on the information that justifies the application.

Comment: One commenter recommended that § 250.175(b)(5) be changed to allow time to determine the best location to drill and to plan the well.

Response: MMS recognizes that determining the best location to drill and planning the well are necessary steps to be taken prior to drilling. If a lessee meets the conditions necessary to receive a suspension of operations, the lessee, in accordance with § 250.171(b), will submit a request that includes a schedule of activities leading up to commencement or restoration of the suspended activity. In this case, the lessee would include a schedule leading up to the commencement of drilling. If that schedule includes a reasonable length of time for determining a location to drill and planning the well, then the length of the suspension will, if granted, include time for those activities.

In § 250.175(b)(5), the text was revised to reflect changes made in other paragraphs.

Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule as determined by the Office of Management and Budget (OMB) and is not subject to review under Executive Order 12866.

Over the next 5 years, MMS anticipates that companies would make three to five requests each year under the rule. We estimate that in three of the cases each year, this new rule will prevent unnecessary drilling of wells that may not otherwise have been drilled had the geophysical interpretation been sufficient. Depending on the water depth and the well depth, we estimate that drilling each well, on average, would have cost $10 million. Selective suspensions will help reduce potential environmental impact and produce approximately $30 million in private sector savings.

(1) This rule will not have an annual effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Issuance of a suspension for a lease does not interfere with the ability of other agencies to exercise their authority.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effect on the rights of the recipients of entitlements, grants, user fees, or loan programs.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility (RF) Act

The Department of the Interior (DOI) certifies that this rule will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*).

This rule may directly or indirectly affect lessees and operators of leases on the OCS. This includes about 130 different companies. These companies are generally classified under the North American Industry Classification System (NAICS) code 211111, which includes companies that extract crude petroleum and natural gas. For this NAICS code classification, a small company is one with fewer than 500 employees. Based on these criteria, we estimate that about 70 percent of these companies are considered small. We expect few, if any, of the small companies to apply for a suspension under this rule. This is because the wells that will be drilled into the subsalt areas are expected to be drilled to depths sometimes in excess of 30,000 feet. These wells will be substantially more expensive than the average well on the OCS. As stated earlier, the costs of the wells are expected to average $10 million. Some small companies may benefit by being included in partnerships with larger companies that are exploring in the subsalt areas.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). This rule:

(1) Does not have an annual effect on the economy of $100 million or more.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

We do not expect this rule to have a significant effect because, as discussed above, this rule will have a positive effect on the private sector of approximately $30 million per year in avoided costs.

Paperwork Reduction Act (PRA) of 1995

The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information and assigns a control number, you are not required to respond. The revisions to 30 CFR 250, subpart A, refer to, but do not change the information collection requirements in the current regulations. OMB has approved the referenced information collection requirements under OMB control number 1010–0114, current expiration date of September 30, 2002. The rule includes no new reporting or recordkeeping requirements, and an OMB form 83–I submission to OMB under the PRA is not required.

Federalism (Executive Order 13132)

With respect to Executive Order 13132, the rule does not have Federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this rule does not affect that role.

Takings (Executive Order 12630)

With respect to Executive Order 12630, the rule does not have significant Takings implications. A Takings Implication Assessment is not required. The rulemaking is not a governmental action capable of interfering with constitutionally protected property rights.

Energy Supply, Distribution, or Use (Executive Order 13211)

This rule is not a significant rule and is not subject to review by OMB under Executive Order 12866. The rule may have a small positive effect on energy supplies.

Civil Justice Reform (Executive Order 12988)

With respect to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. The DOI has established that ''issuance and/or modification of regulations'' is considered a categorically excluded action, as it results only in administrative effects causing no significant impacts on the environment. Therefore, this action will not require preparation of an environmental assessment or impact statement. MMS has determined that this action does not represent an exception to the categorical exclusion. A detailed statement under NEPA is not required.

Unfunded Mandate Reform Act (UMRA) of 1995 (Executive Order 12866)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands—right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: June 20, 2002.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service amends 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

2. In § 250.175, redesignate the existing text as paragraph (a) and add a new paragraph (b) to read as follows:

§ 250.175 When may the Regional Supervisor grant an SOO?

* * * * *

(b) The Regional Supervisor may grant an SOO when all of the following conditions are met:

(1) The lease was issued with a primary lease term of 5 years, or with a primary term of 8 years with a requirement to drill within 5 years;

(2) Before the end of the third year of the primary term, you or your predecessor in interest must have acquired and interpreted geophysical information that indicates:

(i) The presence of a salt sheet;

(ii) That all or a portion of a potential hydrocarbon-bearing formation may lie beneath or adjacent to the salt sheet; and

(iii) The salt sheet interferes with identification of the potential hydrocarbon-bearing formation.

(3) The geologic information required under paragraph (b)(2) of this section must include full 3-D depth migration beneath the salt sheet and over the entire lease area.

(4) Before requesting the suspension, you have conducted or are conducting additional data processing or interpretation of the geophysical information with the objective of identifying a potential hydrocarbon-bearing formation.

(5) You demonstrate that additional time is necessary to:

(i) complete current processing or interpretation of existing geophysical data or information;

(ii) acquire, process, or interpret new geophysical data or information; or

(iii) drill into the potential hydrocarbon-bearing formation identified as a result of the activities conducted in paragraphs (b)(2), (b)(4), and (b)(5) of this section.

[FR Doc. 02–16633 Filed 7–1–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–036]

RIN 2115–AA97

Safety Zone; Saginaw River, Bay City, MI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Bay City Fireworks Festival in Bay City, MI. This safety zone is necessary to control vessel traffic within the immediate location of the fireworks launch site and to ensure the safety of life and property during the event. This safety zone is intended to restrict vessel traffic from a portion of the Saginaw River.

DATES: This temporary final rule is effective from 10 p.m. on July 4, 2002 until 11 p.m. on July 6, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CGD09–02–036] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott Ave., Detroit, MI 48207, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Brandon Sullivan, U. S. Coast Guard Marine Safety Office Detroit, at (313) 568–9558.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the necessary effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible

loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

A temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with a fireworks display. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Detroit has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the locations of the launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risks.

The safety zone will encompass all waters of the Saginaw River surrounding two fireworks launch platforms bounded by the arc of a circle with a 300-yard radius with each center in approximate positions 43°35′55″ N, 083°53′40″ W (off Veterans Park) and 43°35′55″ N, 083°53′30″ W (off Wenonah Park). The geographic coordinates are based upon North American Datum 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

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 this rule 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 10(e) of the regulatory policies and procedures of DOT is unnecessary. This determination is based on the minimal time that vessels will be restricted from the safety zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant 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 might be small entities: The owners or operators of commercial vessels intending to transit or anchor in the activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone is only in effect from 10 p.m. until 11 p.m. on the days of the event and allows vessel traffic to pass outside of the safety zone. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the Saginaw River by the Ninth Coast Guard District Local Notice to Mariners and Marine Information Broadcasts. Facsimile broadcasts may also be made.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction, and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Detroit (see **ADDRESSES**).

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

The Coast Guard has analyzed this rule under Executive Order 13132, Federalism, 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) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not 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

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to

safety that may disproportionately affect children.

Environment

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

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

The Coast Guard has 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 1.46.

2. From 10 p.m. on July 4, 2002 until 11 p.m. on July 6, 2002, add a new temporary § 165.T09–035 to read as follows:

§ 165.T09–035 Safety Zone; Saginaw River, Bay City, MI.

(a) *Location*. The safety zone will encompass all waters of the Saginaw River surrounding two fireworks launch platforms bounded by the arc of a circle with a 300-yard radius with each center in approximate position 43°35′55″ N, 083°53′40″ W (off Veteran's Park) and 43°35′55″ N, 083°53′30″ W (off Wenonah Park). The geographic coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Enforcement periods*. This section will be enforced from 10 p.m. until 11 p.m. daily on July 4, 5, and 6, 2002.

(c) *Regulations*. In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Detroit, or his designated on-scene representative. The designated on-scene Patrol Commander may be contacted via VHF Channel 16. Section 165.23 also contains other applicable requirements.

Dated: June 24, 2002.

P.G. Gerrity,

Commander, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 02–16628 Filed 7–1–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–02–010]

RIN 2115–AA97

Security Zone; Naval Submarine Base Bangor, Puget Sound

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a security zone on the waters surrounding Naval Submarine Base Bangor. The Commander, Thirteenth Coast Guard District is taking this action to safeguard U.S. Naval Submarine Base Bangor and U.S. Naval submarines from sabotage, other subversive acts, or accidents, and otherwise protect Naval assets vital to national security.

DATES: This rule is effective from 12 p.m. (midnight) PDT on June 21, 2002 to 12 p.m. (midnight) PDT on July 5, 2002.

ADDRESSES: Coast Guard Marine Safety Office Puget Sound maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at U.S. Coast Guard Marine Safety Office Puget Sound, 1519 Alaskan Way South, Building 1, Seattle, Washington 98134. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT A. L. Praskovich, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, at (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule, effective June 21, 2002, to provide for the security of Naval Submarine Base Bangor.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Additionally, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exist for making this rule effective less than 30 days after publication in the **Federal Register**.

On May 30, 2002, we issued a final rule canceling the fixed security zone around U.S. Naval Submarine Base Bangor and moving security zones around U.S. Naval submarines while underway on Puget Sound, and the Strait of Juan De Fuca, WA and adjoining waters. (67 FR 37687). This fixed security zone was canceled because regulations issued by another Federal agency would become effective at that time to provide adequate security to safeguard U.S. Naval Submarine Base Bangor and U.S. Naval submarines from sabotage, other subversive acts, or accidents, and otherwise protect Naval assets vital to national security. It has come to light that the new regulations that were to go into effect on June 20, 2002, to provide for the security of Naval Submarine Base Bangor will not be in effect until some time after 20 June 2002. Because of this, we are establishing a temporary final rule that will provide for the continued security of Naval Submarine Base Bangor. Publishing an NPRM would be contrary to public interest since immediate action is necessary to ensure the security of Naval assets.

Background and Purpose

The Coast Guard will establish a temporary fixed security zone around

Naval Submarine Base Bangor, WA. The Coast Guard determined it was necessary to prevent access to this area in order to safeguard this U.S. Naval base from sabotage, other subversive acts, or accidents, and otherwise protect this U.S. Naval asset vital to national security. Events such as the bombing of the *USS Cole* highlight the fact that there were hostile entities operating with the intent to harm U.S. national security by attacking or sabotaging Naval assets including those in Puget Sound. The events of September 11, 2001, demonstrated that there were real, credible, and immediate threats to U.S. national security.

The Coast Guard, through this temporary final rule, will assist the U.S. Navy in protecting vital national security assets by establishing a security zone to exclude persons and vessels from the immediate vicinity of U.S. Naval Submarine Base Bangor. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designee. This security zone is patrolled and enforced by Coast Guard and Navy personnel.

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). We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that the regulated area established by this temporary final rule is of such a small area as to be of no significant economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we considered whether this rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' include 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 temporary final rule will not affect any small entities. Because the impacts of this temporary final rule are expected to be minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

If you believe that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you believe it qualifies and how and to what degree this temporary final rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the temporary final rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the (**FOR FURTHER INFORMATION CONTACT**) section.

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

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) 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 temporary final rule would not impose an unfunded mandate.

Taking of Private Property

This temporary final rule would not effect a taking of private property or otherwise have taking implications under E.O. 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 temporary final rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.lC, this temporary final rule is categorically excluded from further environmental documentation.

A Categorical Exclusion is provided for security zones. A Categorical Exclusion Determination and an Environmental Analysis Checklist were prepared for the identical, previous security zone issued as regulation [CGD13–01–015]. We have determined that nothing has changed since the preparation of this Categorical Exclusion Determination and Environmental Analysis Checklist. Therefore, both remain in effect and valid for this rule. A Categorical Exclusion Determination and an Environmental Analysis Checklist are available in the docket at the location specified under the **ADDRESSES** portion of this rulemaking.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Effective June 21, 2002 to July 5, 2002, temporary § 165.T13–007 is added to read as follows:

§ 165.T13–007 Security Zone, Naval Submarine Base Bangor, Puget Sound, Washington.

(a) *Naval Submarine Base, Bangor, WA:* The following area is a security zone: All waters of Puget Sound, Washington State, enclosed by the following: A line beginning at 47°46′18″ N, 122°42′18″ W; thence to 47°46′32″ N, 122°42′20″ W; thence to 47°46′38″ N, 122°42′52″ W; thence to 47°44′15″ N, 122°44′50″ W; thence to 47°43′53″ N, 122°44′58″ W; thence to 47°43′17″ N, 122°44′49″ W [Datum: NAD 1983].

(b) *Exemptions.* Vessels that desire access to this zone and are not otherwise exempted as listed below, shall secure permission from the Captain of the Port or his on-scene designated representative(s). Section 165.33 paragraphs (a), (e), and (f) do not apply to the following vessels or individuals on board those vessels:

(i) Public vessels of the United States, including United States Naval vessels.

(ii) Vessels that are performing work pursuant to a contract with the United States Navy that requires their presence in the security zone(s).

(iii) Any other vessels or class of vessels mutually agreed upon in advance by the Captain of the Port and the cognizant Naval Commander. Vessels operating in the security zone(s) under this exemption must have previously obtained a copy of a certificate of exemption permitting their operation in the security zone from the security offices established by the cognizant Naval Base Commander. This written exemption shall state the date(s) on which it is effective and may contain further restrictions on vessel operations within the security zone as have been previously agreed upon by the Captain of the Port and the cognizant Naval Commander. The certificate of exemption shall be maintained on board the exempted vessel so long as such vessel is operating in the security zone.

(c) *Regulations.* In accordance with the general regulations in §§ 165.30 and 165.33 of this part, no person or vessel may enter the above security zone unless authorized by the Captain of the Port or his designated representatives. Vessels and persons granted authorization to enter the security zone shall obey all lawful orders or directions of the Captain of the Port or his designated representatives. The U.S. Navy and other federal, state, or local agencies may assist the Captain of the Port in the patrol and enforcement of this zone.

Dated: June 20, 2002.

Erroll Brown,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. 02–16629 Filed 7–1–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–062]

RIN 2115–AA97

Safety Zones; Port of New York and New Jersey.

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing five temporary safety zones for the Staten Island Yankees, Midland Beach, Museum of Modern Art, and Conference House Park fireworks displays located on the New Jersey Pierhead Channel, Lower New York Bay, the East River, and the Arthur Kill. This action is necessary to provide for the safety of life on navigable waters during the events. This action is intended to restrict vessel traffic in the affected waterways.

DATES: This rule is effective from 8 p.m. on Saturday, June 22, to 10 p.m. on Sunday, July 7, 2002.

ADDRESSES: The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. 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 CGD01–02–062 and are available for inspection or copying at Waterways Oversight Branch, Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander M. Day, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the date the Applications for Approval of Marine Event were received, there was insufficient time to draft and publish an NPRM. The Staten Island Yankees safety zone will have minimal impact on the waterway. Vessels may still transit through the eastern 260 yards of the 600-yard wide New Jersey Pierhead Channel, and the southern 360 yards of the 400-yard wide Kill Van Kull during the events. The zone will only be enforced for 1 and a half hours; vessels can be given permission to transit the zone for all but about 20 minutes during this time. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone.

The Midland Beach safety zone will have minimal impact on Lower New York Bay. Vessels may still transit around the zone during the event. The zone will only be enforced for 1 and a half hours; vessels can be given permission to transit the zone for all but about 20 minutes during this time. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone.

The Museum of Modern Art safety zone will have minimal impact on the East River. Vessels may still transit through the eastern 350 feet, and the 350 feet between the western boundary of these safety zones and the eastern boundary of the United Nations security zone, of the 780-yard wide East River during the event. The zone will only be enforced for 1and a half hours; vessels can be given permission to transit the zone for all but about 20 minutes during this time. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone.

An annual safety zone has been published for the Conference House Park fireworks on the Arthur Kill in 33 CFR 165.161 effective on July 3, 4, and 5. The date for this year's event has been moved to July 6, 2002. The zone will only be enforced for 1 and a half hours; vessels can be given permission to transit the zone for all but about 20 minutes during this time. Further, it is an annual, local event, and recreational vessels may still transit through the

western 45 yards of the 625-yard wide Arthur Kill during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard further finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to close the waterways and protect the maritime public from the hazards associated with fireworks launched from a barge in the area.

Background and Purpose

Staten Island Yankees Fireworks Displays, New Jersey Pierhead Channel, NJ

The Coast Guard has received an application to hold a fireworks program on the waters of the New Jersey Pierhead Channel and Kill Van Kull. This rule establishes a safety zone in all waters of the New Jersey Pierhead Channel and Kill Van Kull within a 180-yard radius of the fireworks barge in approximate position 40°39′13.5″ N 074°04′39.1″ W (NAD 1983), about 125 yards southeast of the New Jersey Pierhead South Entrance Lighted Gong Buoy 1 (LLNR 37010). The safety zone will be enforced from 8 p.m. until 9:30 p.m. on Saturday, June 22, and Thursday, July 4, 2002. The safety zone prevents vessels from transiting a portion of the New Jersey Pierhead Channel and Kill Van Kull and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the eastern 260 yards of the 600-yard wide New Jersey Pierhead Channel and through the southern 360 yards of the 400-yard wide Kill Van Kull during these events. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone. Public notifications will be made prior to the event via the Local Notice to Mariners and Marine Information Broadcasts.

The size of this safety zone was determined using National Fire Protection Association and New York City Fire Department standards for six inch mortars fired from a barge, combined with the Coast Guard's knowledge of tide and current conditions in the area.

Midland Beach Fireworks Display, Lower New York Bay

The Coast Guard has received an application to hold a fireworks program on the waters of Lower New York Bay. This rule establishes a safety zone in all waters of Lower New York Bay within a 300-yard radius of the fireworks barge in approximate position 40°34′12.0″ N 074°04′29.6″ W (NAD 1983), about 800 yards southeast of Midland Beach. The safety zone will be enforced from 8:30 p.m. until 10 p.m. on Saturday, June 29, 2002. If the event is cancelled due to inclement weather, then this safety zone will be enforced from 8:30 p.m. until 10 p.m. on Sunday, June 30, 2002. The safety zone prevents vessels from transiting a portion of Lower New York Bay and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit around the zone during this event. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone. Public notifications will be made prior to the event via the Local Notice to Mariners.

The size of this safety zone was determined using National Fire Protection Association and New York City Fire Department standards for 10 inch mortars fired from a barge, combined with the Coast Guard's knowledge of tide and current conditions in the area.

Museum of Modern Art Fireworks Display, East River, NY

The Coast Guard has received an application to hold a fireworks program on the waters of the East River. This rule establishes two safety zones in all waters of the East River within a 180-yard radius of the fireworks barge in approximate position 40°44′51.4″ N 073°57′42.9″ W (NAD 1983), about 215 yards southeast of Roosevelt Island and all waters bound by the following points: 40°44′53.7″ N 073°57′49.3″ W; thence to 40°45′06.8″ N 073°57′39.1″ W; thence to 40°45′00.7″ N 073°57′27.0″ W; thence to 40°44′48.1″ N 073°57′37.3″ W; (NAD 1983), thence to the point of origin, between the fireworks barge and the southern 295 yards of Roosevelt Island. These safety zones will be enforced from 8 p.m. until 10 p.m. on Saturday, June 29. The safety zones prevent vessels from transiting a portion of the East River and are needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the eastern 350 feet, and the 350 feet between the western boundary of these safety zones and the eastern boundary of the United Nations security zone, of the 780-yard wide East River during the event. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zones. Public notifications will be made prior to the event via the Local Notice to Mariners and Marine Information Broadcasts.

The size of these safety zones was determined using National Fire Protection Association and New York City Fire Department standards for 6 inch mortars fired from a barge, combined with the Coast Guard's knowledge of tide and current conditions in the area.

Conference House Fireworks Display, Arthur Kill, NJ/NY

The Coast Guard has received an application to hold a fireworks program on the waters of the Arthur Kill. This rule establishes a safety zone in all waters of the Arthur Kill within a 300-yard radius of the fireworks barge in approximate position 40°30′18″ N 074°15′30″ W (NAD 1983), about 300 yards west of Conference House Park, Staten Island. The safety zone will be enforced from 8:30 p.m. until 10 p.m. on Saturday, July 6, 2002. If the event is cancelled due to inclement weather, then this safety zone will be enforced from 8:30 p.m. until 10 p.m. on Sunday, July 7, 2002. The safety zone prevents vessels from transiting a portion of the Arthur Kill and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Recreational vessels will still be able to transit through the western 45 yards of the 625-yard wide Arthur Kill during this event. Additionally, recreational vessels would not be precluded from mooring at or getting underway from piers in the vicinity of the zone. Public notifications will be made prior to the event via the Local Notice to Mariners and Marine Information Broadcasts.

The size of this safety zone was determined using National Fire Protection Association and New York City Fire Department standards for 10 inch mortars fired from a barge, combined with the Coast Guard's knowledge of tide and current conditions in the area.

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).

We expect 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.

This finding is based on: The minimal time that vessels will be restricted from the zones; the Conference House Fireworks is an annual, local event; recreational vessels may still transit around the zones during the events; the zones are only in effect for 1 and a half hours; and vessels can be given permission to transit the zone for all but about 20 minutes during this time. Advance notifications will be made to the local maritime community by the Local Notice to Mariners and marine information broadcasts.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed 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 might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the New Jersey Pierhead Channel, Lower New York Bay, East River, and the Arthur Kill during the times these zones are activated.

These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The Conference House Fireworks is an annual, local event; recreational vessels may still transit around the zones during these events; commercial vessels may still transit around all the zones except in the Arthur Kill; the zones are only in effect for 1 and half hours; and vessels can be given permission to transit the zone for all but about 20 minutes during this time. We will ensure wide dissemination of maritime advisories to users of the New Jersey Pierhead Channel, Lower New York Bay, East River, and the Arthur Kill via Local Notice to Mariners and marine information broadcasts.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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.

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

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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 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

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 might disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes five safety zones. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects 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 proposes to amend 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 1.46.

2. From 8 p.m. June 22, 2002, to 10 p.m. July 7, 2002, add temporary § 165.T01–062 to read as follows:

§ 165.T01–062 Safety Zones; Port of New York and New Jersey.

(a) The following areas are established as safety zones:

(1) *New Jersey Pierhead Channel Safety Zone.* (i) *Location.* All waters of the New Jersey Pierhead Channel and Kill Van Kull within a 180-yard radius of the fireworks barge in approximate position 40°39′13.5″ N 074°04′39.1″ W, (NAD 1983) about 125 yards southeast of the New Jersey Pierhead South Entrance Lighted Gong Buoy 1 (LLNR 37010).

(ii) *Enforcement period.* Paragraph (a)(1)(i) will be enforced from 8 p.m. to 9:30 p.m. on Saturday, June 22, and Thursday, July 4, 2002.

(2) *Lower New York Bay Safety Zone.* (i) *Location.* All waters of Lower New York Bay within a 300-yard radius of the fireworks barge in approximate position 40°34′12.0″ N 074°04′29.6″ W, (NAD 1983) about 800 yards southeast of Midland Beach.

(ii) *Enforcement period.* Paragraph (a)(2)(i) will be enforced from 8:30 p.m. to 10 p.m. on Saturday, June 29, and Sunday, June 30, 2002.

(3) *East River Safety Zone*—(i) *Location.* All waters of the East River within a 180-yard radius of the fireworks barge in approximate position 40°44′51.4″ N 073°57′42.9″ W (NAD 1983), about 215 yards southeast of Roosevelt Island and all waters bound by the following points: 40°44′53.7″ N 073°57′49.3″ W; thence to 40°45′06.8″ N 073°57′39.1″ W; thence to 40°45′00.7″ N 073°57′27.0″ W; thence to 40°44′48.1″ N 073°57′37.3″ W; (NAD 1983), thence to the point of origin, between the fireworks barge and the southern 295 yards of Roosevelt Island.

(ii) *Enforcement period.* Paragraph (a)(3)(i) will be enforced from 8 p.m. to 10 p.m. on Saturday, June 29, 2002.

(4) *Arthur Kill Safety Zone*—(i) Location. All waters of the Arthur Kill within a 300-yard radius of the fireworks barge in approximate position 40°30′18.0″ N 074°15′30″ W, (NAD 1983) about 300 yards west of Conference House Park, Staten Island.

(ii) *Enforcement period.* Paragraph (a)(4)(i) will be enforced from 8:30 p.m. to 10 p.m. on Saturday, July 6, and Sunday, July 7, 2002.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 24, 2002.

C.E. Bone,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 02–16630 Filed 7–1–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

CGD09–02–037

RIN 2115–AA97

Safety Zone; Detroit River, Grosse Ile, MI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the 4th of July Celebration fireworks on July 6, 2002. This safety zone is necessary to control vessel traffic within the immediate location of the fireworks launch site and to ensure the safety of life and property during the event. This safety zone is intended to restrict vessel traffic from a portion of the Detroit River.

DATES: This temporary final rule is effective from 9 p.m. until 10:30 p.m. on July 6, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CGD09–02–037] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott Ave., Detroit, MI 48207, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Brandon Sullivan, U.S. Coast Guard Marine Safety Office Detroit, at (313) 568–9558.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the necessary effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

A temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with a fireworks display. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Detroit has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risk.

The safety zone will encompass all waters of the Detroit River surrounding the fireworks launch platform bounded by the arc of a circle with a 300-yard radius with its center in approximate position 42°10′4″ N, 083°09′3″ W. The geographic coordinates are based upon North American Datum 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol representative. Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

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 this rule 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 10(e) of the regulatory policies and procedures of DOT is unnecessary. This determination is based on the minimal time that vessels will be restricted from the safety zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant 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 might be small entities: The owners or operators of commercial vessels intending to transit or anchor in the activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone is only in effect from 9 p.m. until 10:30 p.m. the day of the event and allows vessel traffic to pass outside of the safety zone. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the Detroit River by the Ninth Coast Guard District Local Notice to Mariners, and Marine Information Broadcasts. Facsimile broadcasts may also be made.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction, and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Detroit (*see* **ADDRESSES**).

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 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 has analyzed this rule under Executive Order 13132, Federalism, 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) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not 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

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

Environment

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

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

The Coast Guard has analyzed this proposed 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 1.46.

2. A new temporary § 165.T09–036 is added to read as follows:

§ 165.T09–036 Safety Zone; Detroit River, Grosse Ile, MI.

(a) *Location.* The safety zone will encompass all waters of the Detroit River surrounding the fireworks launch platform bounded by the arc of a circle with a 300-yard radius with its center in approximate position 42°(10′4″ N, 083°(09′3″ W. The geographic coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Effective time and date.* This section is effective from 9 p.m. until 10:30 p.m. on July 6, 2002.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Detroit, or his designated on-scene representative. The designated on-scene Patrol Commander may be contacted via VHF Channel 16. Section 165.23 also contains other applicable requirements.

Dated: June 24, 2002.

P.G. Gerrity,

Commander, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 02–16631 Filed 7–1–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ–076–SIP; FRL–7238–8]

Finding of State Implementation Plan Inadequacy; Arizona—Salt River Monitoring Site; Metropolitan Phoenix PM–10 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA finds that the state implementation plan (SIP) for the Metropolitan Phoenix (Maricopa County), Arizona PM–10 nonattainment area is substantially inadequate to attain the 24-hour particulate (PM–10) air quality standard at the Salt River monitoring site, a small subarea of the nonattainment area. As required by the Clean Air Act upon a finding of SIP inadequacy, EPA is requiring that the State of Arizona submit a SIP revision to correct the inadequacy.

EFFECTIVE DATE: August 1, 2002.

ADDRESSES: You can inspect a copy of the administrative record for this action at EPA's Region IX office during normal business hours. See address below.

This document, the proposal for this final rule, and information on the PM–10 plans for the metropolitan Phoenix area are also available as electronic files on EPA's Region 9 Web Page at *http://www.epa.gov/region09/air.*

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105. (415) 947–4155. Email: *wicher.frances@epa.gov.*

SUPPLEMENTARY INFORMATION:

Note: In this document, ''we'', ''us'' and ''our'' refer to EPA. ''CAA or the Act'' refers to the Clean Air Act as amended in 1990 and subsequently. ''PM–10'' refers to particulate matter with a diameter of 10 microns or less. ''24-hour standard'' refers to the 24-hour National Ambient Air Quality Standard for PM–10 established at 40 CFR 50.6(a). ''SIP'' or ''plan'' refers to a state implementation plan. ''ADEQ'' is the Arizona Department of Environmental Quality. ''BACM'' and ''RFP'' are acronyms, respectively, for best available control measure and reasonable further progress.

I. Background to Today's Action

The Phoenix area is classified as a ''serious'' PM–10 nonattainment area and violates both the annual PM–10 standard of 50 μg/m^3 and the 24-hour standard of 150 μg/m^3. 40 CFR 50.6. Between 1997 and 2001, Arizona has made several SIP submittals that collectively address the CAA's planning requirements for serious PM–10 nonattainment areas for both PM–10 standards. We have acted on these submittals in several rulemakings. For more background on the Phoenix PM–10 SIP and our actions on it, please see 65 FR 19964, 19965 (April 13, 2000) and 66 FR 50252, 50253 (October 2, 2001) and the Technical Support Documents for those actions.

In today's action, we are concerned with the Phoenix PM–10 SIP's provisions for attaining the 24-hour standard. In May, 1997, ADEQ submitted the *Plan for Attainment of the 24-hour PM–10 Standard—Maricopa County PM–10 Nonattainment Area,* as a SIP revision. This plan, known as the microscale plan, included attainment and RFP demonstrations for the 24-hour PM–10 standard at the Salt River air quality monitoring site as well as three other ''microscale'' monitoring sites in the Phoenix area (Maryvale, Gilbert, and West Chandler). The demonstration for the Salt River site showed that, with additional controls adopted by the local air quality agency, the Maricopa County Environmental Services Department, attainment at the site would occur by May 1998. We approved the attainment and RFP demonstrations for the Salt River site and Maricopa County's controls on August 4, 1997. See 62 FR 41856. Since the microscale plan, Arizona has made no other submittals that address the 24-hour exceedances at the Salt River site.

According to its approved attainment demonstration, the Salt River site should not have violated the 24-hour PM–10 standard after May, 1998. *See* 62 FR 31026, 31035. The site, however, continues to violate the standard.[1] Based on data recorded in EPA's Aerometric Information Retrieval System (AIRS), the Salt River monitor had 51 expected exceedances in 1999, 43 expected exceedances in 2000, and 19 expected exceedances through 3 quarters in 2001 or an average of at least 37 expected exceedances per year over the past three years. The 24-hour PM–10 standard is violated when the expected number of exceedances averages more than 1 per year over a three year period. See 40 CFR 50.6(a). Thus the continuing violations at the Salt River monitor clearly show that the existing attainment demonstration for the site is faulty.

To assure that SIPs provide for timely attainment, section 110(k)(5) authorizes EPA to find that a SIP is substantially inadequate to meet an CAA requirement, and to require (''call for'') the State to submit, within a specified period not to exceed 18 months, a SIP revision to correct the inadequacy. This requirement for a SIP revision is known as a ''SIP call.''

On April 18, 2002 at 67 FR 19148, we published our proposed finding that the Arizona SIP is inadequate to assure attainment of the 24-hour PM–10 standard at the Salt River Site. Based on this proposed finding, we also proposed a SIP call that would require Arizona to revise its SIP to correct the deficiency and submit the corrections no later than 18 months after the publication of the final rule. We requested comments on our proposals and provided a 30-day comment period, which closed on May 20, 2002. We received no comments.

II. The Inadequacy Finding and Call for a SIP Revision

A. Inadequacy Finding and SIP Call

Because the attainment demonstration approved into the Phoenix area PM–10 SIP in 1997 is faulty and there has been no substitute attainment demonstration submitted to date, we find that the

[1] The Salt River site, approximately 32 square miles in area or about 1 percent of the 2880 square mile Phoenix nonattainment area, is located in an industrial area and its 24-hour violations are most likely due in large part to the industrial sources that surround it. This is in marked contrast to other monitoring sites in the rest of the Phoenix nonattainment area where 24-hour exceedances are almost exclusively due to windblown fugitive dust.

Phoenix area PM–10 SIP is substantially inadequate to attain the 24-hour PM–10 standard at the Salt River site. Therefore, pursuant to CAA section 110(k)(5), we require the State of Arizona to submit a revision to the Phoenix area SIP that corrects this deficiency and complies with all other applicable CAA requirements as described below.

B. Submittal Schedule

We set the date for submitting the revisions to the Salt River attainment demonstration and related provisions described below as 18 months after the effective date of the final rule, or February 2, 2004.

C. SIP Requirements

To fully respond to this SIP call for the Salt River attainment demonstration, Arizona will need to submit the following:

(a) A demonstration based on air quality modeling that the plan will provide for attainment no later than December 31, 2006 at the Salt River site. CAA sections 189(b)(1)(A) and 188(e).

(b) Provisions for implementing BACM as expeditiously as practicable for all sources or source categories that contribute significantly to exceedances of the 24-hour PM–10 standard in the Salt River area. CAA section 189(b)(1)(B).[2] In the SIP revision, Arizona need only provide for the implementation of BACM for those significant sources or source categories for which we have not already approved BACM.

(c) A demonstration that the revised SIP includes, and provides for expeditious implementation of, the most stringent measures (MSM) found in the implementation plan or achieved in practice that are feasible for the Phoenix nonattainment area for each significant source or source category for which we have not already approved a MSM showing.

(d) A demonstration that the revised SIP provides for reasonable further progress in the Salt River area. The SIP revision must also provide for quantitative milestones for the Salt River area which are to be achieved every 3 years and which are consistent with the RFP demonstration. To be consistent with the serious area plan, the milestone dates should be December 31, 2003 and December 31, 2006.

The SIP revision must also meet the general requirements applicable to all SIPs including reasonable notice and public hearing under section 110(l), necessary assurances that the implementing agencies have adequate personnel, funding and authority under section 110(a)(2)(E)(i) and 40 CFR 51.280 to carry out the SIP; and the description of enforcement methods for the adopted controls as required by 40 CFR 51.111.

Finally, any controls adopted to demonstrate attainment at the Salt River site or to meet the BACM or MSM requirements must be applied to all similar sources in the Phoenix nonattainment area.

If Arizona fails to submit the required SIP revisions in response to a final SIP call, we are required to issue a finding that the State failed to make a required SIP submittal under section 179(a), a finding which starts an 18 month clock for the implementation of sanctions under the CAA and a two year clock for a federal implementation plan. See 40 CFR 52.31.

VI. Administrative Requirements

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

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 12866.

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. This rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action under Executive Order 12866.

Executive Order 13132, ''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 to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs on the States, 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. This SIP call is required by the Clean Air Act because the current SIP is substantially inadequate to attain the 24-hour PM–10 standard. Arizona's direct compliance costs will not be substantial because the SIP call requires Arizona to submit only those revisions necessary to address the SIP deficiency and applicable Clean Air Act requirements. Finally, EPA has consulted with the State and local agencies prior to making this SIP call.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it is in keeping with the relationship and the distribution of power and responsibilities between EPA and the States as established by the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' Executive Order 13175 does not apply to this rule because this rule will not effect any tribal government or any tribal lands and thus will have no tribal implications.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any proposed rule subject to notice and

[2] Under CAA section 189(b)(1)(B), BACM is to be implemented no more than 4 years after an area is reclassified from moderate to serious for PM–10, or June 10, 2000 for the Phoenix area. Because this deadline has now passed, the applicable deadline is ''as expeditiously as practicable'' under *Delaney* v. *EPA,* 898 F.2d 687 (1990).

comment rulemaking requirements unless the agency certifies that the rule, if finalized, will not have a significant economic impact on a substantial number of small entities. For the reasons described in the proposal, EPA certified that this action does not have a significant impact on a substantial number of small entities. See 67 FR 19148, 19151.

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more in any one year. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements for any rule requiring a budgetary impact statement. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more in any one year to either State, local, or tribal governments in the aggregate, or to the private sector and has therefore not prepared a budgetary impact statement. This proposed rule, if finalized, will not significantly or uniquely impact any small governments.

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

In making a finding of SIP deficiency, EPA's role is to review existing information against previously established standards (in this case, what constitutes a violation of the 24-hour PM–10 standard). In this context, there is no opportunity to use VCS. Thus, the requirements of NTTAA section 12(d) (15 U.S.C. 272 note) do not apply to this rule.

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 September 3, 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, Intergovernmental relations, particulate matter.

Dated: June 19, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–16271 Filed 7–1–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7240–4]

RIN 2060–AJ57

National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: On April 5, 2002, the EPA promulgated amendments to the national emission standards for the portland cement manufacturing industry as a direct final rule with a parallel proposal if we received any adverse comments on the direct final amendments. Because adverse comments were received on some of the provisions in the direct final rule, we are withdrawing the corresponding parts of that direct final rule. We will address the adverse comments in a subsequent final rule based on the parallel proposal published on April 5, 2002.

DATES: As of July 2, 2002, EPA withdraws amendments to §§ 63.1340(c), 63.1344(a)(3), 63.1349(e)(3), and 63.1350(a)(4), (c)(2)(i), (d)(2)(i), and (e) published at 67 FR 16614 on April 5, 2002. The remaining provisions published on April 5, 2002, will be effective July 5, 2002.

ADDRESSES: Docket number A–92–53, containing supporting information used in the development of this notice is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: U.S. EPA, Air and Radiation Docket and Information Center (6102), 401 M Street, SW., Washington, DC 20460, or by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Wood, P.E., Minerals and Inorganic Chemicals Group, Emission Standards Division (C504–05), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5446, facsimile number (919) 541–5600, electronic mail address: *wood.joe@epa.gov.*

SUPPLEMENTARY INFORMATION: On April 5, 2002, we published a direct final rule (67 FR 16614) and a parallel proposal (67 FR 16625) amending the national emission standards for the portland cement manufacturing industry (40 CFR part 63, subpart LLL). The amendments made improvements for implementation of the standards, primarily in the areas of applicability, testing, and monitoring, to resolve issues and questions raised since promulgation of the rule on June 14, 1999.

We stated in the preamble to the direct final rule and parallel proposal that if we received significant material adverse comment by May 6, 2002, on one or more distinct provisions of the direct final rule, we would publish a timely withdrawal of those distinct provisions in the **Federal Register**. We subsequently received adverse comments on seven of the amendments:

- § 63.1340(c), related to applicability of the rule to crushers at portland cement plants with on-site nonmetallic mineral processing facilities;

- § 63.1344(a)(3), related to the temperature operating limit for an in-line kiln/raw mill equipped with an alkali bypass;
- § 63.1349(e)(3), related to requirements associated with preparation for, and conduct of, a new performance test if a source anticipates making an operational change that may adversely affect compliance with an applicable dioxin/furan (D/F) emission standard;
- § 63.1350(a)(4)(v) through (vii), related to visible emission monitoring of a totally enclosed conveying system transfer point; and
- § 63.1350(c)(2)(i), (d)(2)(i), and (e), related to operating conditions during daily visual opacity observations by Method 9 (40 CFR part 60, appendix A) and daily visual emissions observations by Method 22 (40 CFR part 60, appendix A).

Accordingly, these seven amendments are withdrawn as of July 2, 2002. We will take final action on the proposed rule after considering the comments received. We will not institute a second comment period on this action. The seventeen provisions for which we did not receive adverse comment will become effective on July 5, 2002, as provided in the preamble to the direct final rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: June 26, 2002.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 02–16642 Filed 7–1–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF86

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Ambrosia pumila* (San Diego Ambrosia) From Southern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status for *Ambrosia pumila* (San Diego ambrosia) pursuant to the Endangered Species Act of 1973, as amended (Act). This plant species is restricted to 15 known occurrences in San Diego and Riverside Counties, CA, and also occurs in Estado de Baja California, Mexico. *Ambrosia pumila* primarily occurs on upper terraces of rivers and drainages as well as in open grasslands, openings in coastal sage scrub habitat, and occasionally in areas adjacent to vernal pools. This species is threatened by the following: present or threatened destruction, fragmentation, and degradation of habitat primarily by construction and maintenance of highways, maintenance of utility easements, development of recreational facilities, and residential and commercial development; inadequate regulatory mechanisms; potential competition, encroachment, and other negative impacts from non-native plants; mowing and discing for fuel modification; and trampling, as well as soil compaction by horses, humans, and vehicles. This rule implements the Federal protection and recovery provisions of the Act for *Ambrosia pumila.*

DATES: This rule is effective August 1, 2002.

ADDRESSES: The supporting record for this rule is available for inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, CA 92008.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, at the above address; telephone 760/431–9440; facsimile 760/918–0638.

SUPPLEMENTARY INFORMATION:

Background

Ambrosia is a genus comprising 35 to 50 wind-pollinated annual and perennial plant species in the Asteraceae (sunflower) family. The perennial taxa range from woody shrubs to herbaceous plants with rhizome-like roots. Rhizomes are underground stems that produce leafy shoots. Self-pollination and self-fertility contribute to strong inbreeding among species of *Ambrosia* (Payne 1976). Members of the genus occur predominantly in the Western Hemisphere, especially North America. Species are generally found in arid or semiarid areas and some are weeds of cultivated fields or strand species of Pacific and Caribbean beaches.

Ambrosia pumila (San Diego ambrosia) was originally described as Franseria pumila by Thomas Nuttall (Nuttall 1840) based on a specimen he collected near San Diego, California, in 1836. Asa Gray (Gray 1882), after seeing specimens of the plant with fruits, decided it was closely related to members of the genus *Ambrosia* and published the currently accepted combination, *Ambrosia pumila* (Nutt.) A. Gray. This classification has been recognized by current systematic and floristic treatments (Payne 1964, Munz 1935, Keck 1959, Ferris 1960, Munz 1974, Beauchamp 1986, and Payne 1993).

Ambrosia pumila is an herbaceous perennial plant species that spreads vegetatively by means of slender, branched, underground rhizome-like roots from which the aerial (above-ground) stems arise. Plants that spread in this way are referred to as clonal species. This clonal growth pattern results in groupings of aerial stems interconnected by their underground rhizome-like roots that represent genetically identical individuals. When these underground interconnections disintegrate, aerial stems that are genetically identical are physically separate. The aerial stems sprout in early spring after the winter rains. Dead aerial stems may persist or deteriorate after their growing season. Therefore, the plant may not be in evidence at some times of the year. The aerial stems sprout in early spring after the winter rains and deteriorate in late summer. Therefore, the plant may not be in evidence from late summer to early spring. The aerial stems are 5 to 30 centimeters (cm) (2 to 12 inches (in)) tall, but may grow to 50 cm (20 in), and are densely covered with short hairs. The leaves are two to four times pinnately divided into many small segments and are covered with short, soft, gray-white, appressed (lying flat on surface) hairs. This wind-pollinated species flowers from May through October with separate male and female flower clusters (heads) on the same plant. The male flowers are yellow to translucent and are borne in clusters on terminal racemes (flower stalks). The female flowers have no petals and are yellowish-white. Female flowers are in clusters in the axils of the leaves below the male flower clusters.

Although some species of *Ambrosia* have breeding systems that contribute to strong inbreeding (Payne 1976), the breeding system of *A. pumila* has not been studied. The fruiting heads are enclosed by involucres (composed of modified leaf-like structures fused together) to form cup-like structures that have no spines, although some reports note a few vestigial (remnant) spines. Few preserved museum specimens have fertile fruits, and field collections have

not provided evidence of production of significant numbers of viable seeds. None of the 22 seeds collected from three sites at Mission Trails Regional Park germinated in a test performed by Ransom Seed Laboratory (City of San Diego 2000). Although plants may flower, the annual reproductive output of fruits may be low. The lifespan of an individual plant, as well as the number and distribution of seedlings, are unknown. *A. pumila* may be distinguished from other species of *Ambrosia* in the area by its herbaceous perennial growth form, leaves which are two to four times pinnately divided, cup-like involucres lacking hooked spines, and lack of longer, stiff hairs on the stems and leaves.

Because *Ambrosia pumila* is a clonal species, it is difficult to determine the extent of an individual plant. Individual plants persist as a herbaceous rhizome-like root systems. These underground systems are likely intermingled at any given site. Each year a plant produces a variable number of aerial stems along its rhizome-like root system. The underground interconnections may deteriorate over time leaving genetically identical separate plants that represent clones. Thus, survey reports that record the number of ''plants'' at a site are in fact reporting the numbers of aerial stems that represent an unknown number of genetically distinct plants. Because this species is a clonal plant, the number of genetically different individuals in any given occurrence, especially small occurrences, may be very low. Small occurrences of *A. pumila* may be more susceptible to harmful effects from inbreeding, especially if only a portion of the population flowers in any given year (Barrett and Kohn 1991). Seven of the 15 extant occurrences that support 1,000 or fewer aerial stems may potentially be susceptible to extirpation (localized extinction) because of low number of aerial stems or low genetic diversity within the occurrences. There are, as yet, no data to determine a correlation between the genetic diversity and extirpations of occurrences of this species in the past that were not attributed to habitat loss. Preliminary results comparing greenhouse-grown specimens from two native populations of *A. pumila* indicated that there were fixed differences between specimens from the two populations represented in this study (H. Truesdale, San Diego State University Biology Department (SDSU), *in litt.* 2000). While the clonal structure of the populations is not known, these preliminary results indicate the importance of maintaining each of the separate occurrences to preserve the genetic variability represented in each of the occurrences.

Ambrosia pumila primarily occurs on upper terraces of rivers and drainages as well as in open grasslands, openings in coastal sage scrub, and occasionally in areas adjacent to vernal pools. The species may also be found in disturbed sites such as fire fuel breaks and edges of dirt roadways. Associated native plants include *Distichlis spicata* (saltgrass), *Baccharis salicifolia* (mule-fat), *Baccharis sarathroides* (broom baccharis), *Eriogonum fasciculatum* (California buckwheat), and *Eremocarpus setigerus* (turkey-mullein). In the United States, populations of *A. pumila* occur on Federal, State, local jurisdictional, and private lands in western San Diego and Riverside Counties.

This species has been previously reported from 49 occurrences in the United States (California Natural Diversity Database (CNDDB) 1999). The California Department of Fish and Game (CDFG) defines the term occurrence for plants as single plants, a population, or group of nearby populations found within 0.25 miles (mi) (0.4 kilometer (km)) of each other (R. Bittman, CDFG, *in litt.* 2002). Since publication of the proposed rule, additional information concerning an additional historical occurrence in the Arlington area of the City of Riverside in Riverside County, has become available (Provance *et al.* 2001). Also, an extant occurrence that supports six concentrations of aerial stems was found in the Alberhill area of Riverside County (Hewitt and McGuire 2000). Two occurrences, one northwest of Sweetwater Dam and another near Gillespie Field, were combined with other adjacent occurrences because of their close proximity. Six occurrences were based on misidentified specimens. Three occurrences consist of plants transplanted from other locations that were subsequently partially or totally eliminated (CNDDB 1999).

Based on the analysis of this current information, we believe that there are 40 verifiable native reported occurrences of this species. However, 21 of these 40 occurrences have been extirpated, most since the 1930s and nearly all by urban development and highway construction. One of these 21 occurrences, an occurrence near Graves Avenue in the City of El Cajon, San Diego County, that was included as extant in the listing proposal, has been extirpated by commercial and housing development (C. Burrascano, *in litt.* 2001). Of the remaining 19 extant occurrences, 2 were based on old collections where the species has not been documented since 1936 (CNDDB 1999), including the recently reported historical occurrence in the City of Riverside (Provance *et al.* 2001) which no longer exists. One occurrence, near a city sidewalk, reduced to a single stem in 1996 (CNDDB 1999), is considered non-viable and therefore is not considered as an extant occurrence. Subtracting these 4 occurrences, we now believe that there are 15 extant native occurrences of this species, 12 are in San Diego County and 3 are in western Riverside County. Knowledge of the full extent of the historical range of any organism is limited by the surviving records. In the case of *Ambrosia pumila* in San Diego County, the pattern of extirpated occurrences reflects a significant loss of occurrences from each of the watersheds in which the species occurs rather than a complete loss from those watersheds. The pattern in Riverside County is different in that the recently discovered record of a historical occurrence reflects a significant loss to the geographical extent of the range in that county.

San Diego County

Five of the 12 remaining occurrences of *Ambrosia pumila* in San Diego County are within the Sweetwater River watershed; a sixth near El Cajon was apparently extirpated in 1999 or 2000. Two of the five occurrences are in the San Diego National Wildlife Refuge (SDNWR). The largest occurrence, in the northern portion of the SDNWR, was reported to cover 5.6 hectares (ha) (13.8 acres (ac)) and supported tens of thousands of aerial stems in 1998 (CNDDB 1999). Recent surveys by Service biologists reported this occurrence to be 1.4 ha (3.5 ac) in 1999 and 1.3 ha (3.2 ac) in 2000 (GIS database Carlsbad Fish and Wildlife Office). Differences in the acreage may be due to different survey methods or the scope of the surveys. Numbers of aerial stems present were not recorded. The second occurrence on the SDNWR was reported to support aerial stems in 1996. A survey of the second occurrence in 1998 (J. Vanderwier, USFWS, *in litt.* 1998) reported that this site covered less than 0.1 ha (less than 0.1 ac) and supported hundreds of aerial stems (CNDDB 1999). Another occurrence on private land near the junction of Jamul Road and Steele Canyon Road was reported to be 0.1 ha (0.3 ac) in size in 1996, and less than 0.1 ha (less than 0.1 ac) in 1998 (CNDDB 1999; J. Vanderwier, *in litt.* 1998). Numbers of aerial stems have not been reported in the various surveys of this site. The 1998 survey indicated an unknown number of stems at this site and the extension of this occurrence to accommodate a few plants nearby to the

northeast. This extension was recognized as a separate occurrence that supported about 100 stems in 1998 (CNDDB 1999). The remaining occurrence in the Sweetwater River watershed in El Cajon is on adjacent vacant lots totaling less than 0.1 ha (0.1 ac) owned by California Department of Transportation (Caltrans) and supported an estimated 10,000 stems in 1997 (J. Vanderwier, *in litt.* 1997). *A. pumila* is still present on these Caltrans owned lots (B. April, Caltrans, pers. comm., 2002). Caltrans purchased these lots in the 1960s as right-of-way for the proposed connector between I–5 and I–8. This proposal, although still part of the Regional Transportation Plan, is not funded and at some point in the future Caltrans may auction off the parcels (B. April, pers. comm., 2002). In the proposed listing rule we included an additional occurrence in El Cajon on a group of vacant lots 1.9 ha (4.8 ac) in size that supported 6,500 plants (aerial stems) in 1998 (CNDDB 1999). This occurrence was apparently extirpated by development (C. Burrascano, *in litt.* 2001).

Three of the 12 occurrences in San Diego County are within the San Diego River watershed. The largest of these occurrences is in Mission Trails Regional Park (MTRP), managed by the City of San Diego, and extends to adjacent private land. The portion of the occurrence on MTRP occupied 13.6 ha (34 ac) and supported 1,500 stems in 1994 (CNDDB 1999). One of the areas in MTRP identified as Patch C encompasses 1.0 ha (2.5 ac) (City of San Diego 2000). A portion of that patch, identified as C6 and calculated to be 0.7 ha (1.7 ac), supported approximately 178,624 aerial stems in 2001 (City of San Diego 2001). The adjacent privately owned portion of this occurrence is afforded protections under the City of San Diego's Subarea Plan of the Multiple Species Conservation Program (MSCP) (City of San Diego 1997). The second occurrence within the San Diego River watershed and also in MTRP supports an unknown number of individuals (CNDDB 1999). Both occurrences in MTRP are afforded protection under provisions of City of San Diego's Subarea Plan (City of San Diego 1997). The third occurrence within the San Diego River watershed occurs at Gillespie Field, a small general aviation airport, where there are small remnants of the native occurrence scattered near the south side of the airfield. The current status of these remnants is unknown.

One of the 12 occurrences in San Diego County is within the San Dieguito River watershed in the County of San Diego's Subarea Plan area of the MSCP on a privately owned site. In 1997, 2,000 stems were reportedly found in a less than 0.1 ha (0.1 ac) area (CNDDB 1999). During a site visit in 1999 fewer than 100 stems were found in an area estimated to be less than 0.1 ha (less than 0.1 ac) (G. Wallace, USFWS, *in litt.* 1999). The uphill slope immediately adjacent to the site was graded in conjunction with a residential development (G. Wallace, *in litt.* 1999).

The three remaining occurrences in San Diego County are within the San Luis Rey River watershed near Bonsall. Two occur within the planning boundary of the North County MSCP Subarea Plan. These may receive protection if this plan is approved. At one occurrence, some plants are presumed extant in a fenced area on Caltrans lands adjacent to State Route 76, and some are on private land. However, the current number of aerial stems or the areal extent of this occurrence is not known. The second occurrence in the area is estimated to be 2.6 ha (6.6 ac) in size and reportedly supported about 700 aerial stems in 1996. The third occurrence is within the planning area for the Multiple Habitat Conservation Plan (MHCP) on private and Caltrans lands near Bonsall and reportedly supported 2,000 to 3,000 aerial stems in 1997 (CNDDB 1999). The areal coverage of the eight patches at this occurrence was calculated to be less than 0.1 ha (0.2 ac) in 2000 (American Realty Trust, Inc. 2002).

Riverside County

The three extant occurrences known from Riverside County are on privately owned lands. One occurrence, along Nichols Road in the City of Lake Elsinore, supported an estimated 3,400 stems in 1997; a westward extension of the Nichols Road occurrence was documented by a specimen collected in 2001 and deposited in the Herbarium at Rancho Santa Ana Botanic Garden (RSA), Claremont, CA. Another occurrence at a biological preserve at Skunk Hollow supported about 100 to 300 stems in 1998 (B. McMillan, USFWS, in *litt.* 1999). Since publication of the proposed rule to list *Ambrosia pumila,* an additional occurrence has been located near Alberhill (Hewitt and McGuire 2000). This occurrence is about 3.5 km (2.1 mi) to the northwest of the Nichols Road site and reportedly consists of about 12,800 aerial stems in six concentrations, with most of the stems in a single concentration (Hewitt and McGuire 2000). Also, since the listing proposal, a specimen documenting a historical occurrence in the Arlington area of the City of Riverside, Riverside County has been reported (Provance *et al.* 2001).

Estado de Baja California, Mexico

The current documented range of *Ambrosia pumila* in Mexico extends from Colonet south to Lake Chapala in north-central Baja California. Two of the three documented sites were confirmed by D. Hogan, Southwest Center for Biological Diversity (now Center for Biological Diversity) and C. Burrascano, San Diego Chapter, California Native Plant Society (CNPS) (1996). Although additional occurrences may exist in Baja California Mexico, the species is not considered to be widespread because of the lack of appropriate habitat and impacts from agriculture and urban development, especially near the coast.

Previous Federal Action

Federal Government action on this species began pursuant to section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be threatened, endangered, or extinct in the United States. This report, designated House Document No. 94–51, was presented to Congress on January 9, 1975. *Ambrosia pumila* was not included in this document. A revision of the Smithsonian report (Ayensu and DeFilipps 1978) provided new lists based on additional data on taxonomy, geographic range, and endangered status of taxa, as well as suggestions of taxa to be included or deleted from the earlier listing. *A. pumila,* not included in the first Smithsonian report, was recommended for threatened status in the Ayensu and DeFilipps (1978) report. We published an updated Notice of Review (NOR), on December 15, 1980 (45 FR 82479). This notice included *A. pumila* as a category 1 candidate species. Category 1 candidate species were taxa for which we had sufficient information on biological vulnerability and threats to support preparation of listing proposals.

The 1978 Smithsonian report (Ayensu and DeFilipps 1978), which included *Ambrosia pumila*, was accepted as a petition. Section 2(b)(1) of the 1982 amendments to the Act required that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. Section 4(b)(3)(B) of the Act further requires the Secretary to make findings on petitions within 12 months of their receipt. Consequently, on October 13, 1983, we found that the petitioned listing of this species was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Notification of this finding was

published in the **Federal Register** on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled annually, pursuant to section 4(b)(3)(C)(i) of the Act. On November 28, 1983, we published a supplement (48 FR 53639) to the December 15, 1980, NOR of plant taxa for listing. In this NOR, the status of *A. pumila* was changed to a category 2 candidate species. Category 2 candidate species were taxa for which information then in our possession indicated that proposing to list the taxa as endangered or threatened was possibly appropriate, but for which substantial data on biological vulnerability and threats were not currently known or on file to support proposed rules. The status of *A. pumila* remained unchanged through, and including, the September 30, 1993 NOR (58 FR 51143). On February 28, 1996, we published an NOR (61 FR 7595). In that notice we announced changes to the way we identify species that are candidates for listing under the Act that included our discontinuance of the maintenance of a list of species that were previously identified as category 2 candidates. Thus, as a category 2 candidate, *A. pumila* was not included in the February 28, 1996, NOR.

On January 9, 1997, we received a petition dated November 12, 1996, from the Southwest Center for Biological Diversity and the San Diego Chapter of the California Native Plant Society, requesting that *Ambrosia pumila* be listed as endangered pursuant to section 4 of the Act. Additionally, the petition appealed for emergency listing pursuant to section 4(b)(7) of the Act. The petitioners further requested that critical habitat be designated for *A. pumila* concurrent with the listing pursuant to 50 CFR 424.12 and the Administrative Procedure Act (5 U.S.C. 553). On January 23, 1997, we notified the petitioners that we received their petition and that it would be processed based on the listing priority guidance then in effect.

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition presents substantial information indicating that the action may be warranted. To the maximum extent practicable, this finding should be made within 90 days of the receipt of the petition and it should be published promptly in the **Federal Register**. If we determine that listing the species may be warranted, section 4(b)(3)(B) of the Act requires us to make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. However, because of budgetary restraints, we processed petitions in accordance with the 1997 listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). This guidance identified four tiers of listing activities to be conducted by us with appropriate funds. Tier 1, the highest priority, covered emergency listings of species facing an imminent risk of extinction as defined under the emergency listing provisions of section (4)(b)(7) of the Act. Tier 2, the second priority, included processing of final determinations for species currently proposed for listing. Tier 3, the third priority, addressed efforts under the Act to resolve the conservation status of candidate species and process administrative findings on petitions to add species to the lists or reclassify threatened species to endangered status. Tier 4, the lowest priority, covered the processing of critical habitat determinations, delisting actions, and reclassification of endangered species to threatened status. Under the priority system and because of the backlog of species proposed for listing and awaiting final listing determinations at that time, we deferred action on listing petitions except where an emergency existed and where the immediacy of the threat was so great to a significant portion of the population that the routine listing process would not be sufficient to prevent large losses that might result in extinction.

We reviewed the petition and supporting documentation to determine whether *Ambrosia pumila* warranted emergency listing pursuant to section 4(b)(7) of the Act. On July 15, 1997, we concluded that emergency listing and the designation of critical habitat were not warranted, and that the petition should be processed as a Tier 3 priority task pursuant to the listing priority guidance for fiscal year 1997 (61 FR 64475). On October 23, 1997, a notice published in the **Federal Register** (62 FR 55268), announced the extension of the fiscal year 1997 listing priority guidance until such time as the fiscal year 1998 appropriation bill for the Department of the Interior became law and new final guidance was published in the **Federal Register**. In this notice there were no changes made in the tier system.

On October 1, 1998, Southwest Center for Biological Diversity and the California Native Plant Society filed a lawsuit in the United States District Court for the Southern District of California, challenging our failure to produce timely administrative 90-day and 12-month findings for *Ambrosia pumila.*

On May 8, 1998, new listing priority guidance for Fiscal Years 1998 and 1999 was published in the **Federal Register** (63 FR 25502). This new guidance changed the four-tier priority system to a three-tier priority system. Highest priority, Tier 1, was assigned to processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being. Second priority, Tier 2, was processing final decisions on proposed listings; resolving the conservation status of candidate species; the processing of administrative findings on petitions to add species to the lists, and petitions to delist species, or reclassify species; and delisting and reclassifying actions. Lowest priority, Tier 3, was the processing of proposed or final critical habitat designations. Under that guidance, the administrative review process for this petition fell under Tier 2. We published a 90-day finding on the petition to list *Ambrosia pumila* as endangered in the **Federal Register** (64 FR 19108) on April 19, 1999. We found that substantial information existed indicating listing may be warranted and solicited comments and information regarding the finding. However, we did not receive any comments by May 19, 1999, the close of the comment period. On October 28, 1999, the District Court (Case No. 98–CV–1785 J(RBB)) ordered us to complete a 12-month finding for *A. pumila* on or before December 10, 1999.

On December 9, 1999, we sent the proposed rule to list *Ambrosia pumila* as endangered to the **Federal Register**. On December 29, 1999, it was published (64 FR 72993). This proposed rule constituted the 12-month finding on the petition. In the proposed rule we indicated that designation of critical habitat was prudent for *A. pumila,* but we did not propose critical habitat at that time because of budgetary constraints and our current listing priority guidance. Due to limited resources and the need to undertake other, higher-priority listing actions, the Service was unable to make a final determination for this species within the 12-month statutory timeframe provided pursuant to the Act. In August 2001, the Department of the Interior reached an agreement in principle with the Center for Biological Diversity, Southern Appalachian Biodiversity Project, and the California Native Plant Society on a timeframe to make final listing determinations for 14 species, including *A. pumila.* The agreement was formalized in October 2001 (*Center for Biological Diversity, et al.* v. *Norton,*

Civ. No. 01–2063 (JR) (D.D.C.). The publication of the final rule to list *A. pumila* complies with the terms of that court-approved settlement agreement.

Summary of Comments and Recommendations

In our December 29, 1999, proposal to list *Ambrosia pumila* as endangered (64 FR 72993), we requested that all interested parties provide information concerning the status and distribution of the species and threats to the species and its habitat. During the 60-day comment period that closed on February 28, 2000, we contacted appropriate Federal and State agencies, county and city governments, scientific organizations, and other interested parties and requested comments on the proposal. In addition, legal notices announcing the publication of the proposed rule and opening of the public comment period were published in the North County Times and The San Diego Union-Tribune on January 6, 2000, and in the Riverside Press Enterprise, on January 7, 2000. We received no requests for a public hearing during the public comment period. We received two letters during the comment period, one from the petitioner and one from a peer reviewer. The comments provided information regarding the condition of several of the occurrences of the species and are incorporated in this final rule. On March 30, 2000, in response to a request, we reopened the comment period (65 FR 16869) for this proposed action for an additional 60 days, until May 30, 2000. No further comments were received during the reopened comment period.

Peer Review

In accordance with interagency policy published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of three independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomic, biological, and ecological information for *Ambrosia pumila* presented in the proposed rule. The purpose of such a review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including the input of appropriate experts. We received peer review comments from one of the persons contacted. The peer reviewer stated that the proposed action to list *A. pumila* as endangered was clear and complete. The peer reviewer also included some statements about translocations carried out for the species. Those comments are incorporated in this final rule where appropriate. There were no other responses to our requests for peer review of this listing action.

Where applicable, we have incorporated factual information provided by the commenters in this final rule. Other statements or comments are addressed below.

Comment 1: The commenter stated that two additional populations have been reported for Riverside County, bringing the total to four known occurrences in Riverside County.

Our Response: Two new occurrences have been reported since the publication of the proposed rule in December 1999. A new historical occurrence of the species is based on a voucher specimen from the Herbarium of Riverside Community College. The specimen, which was verified by Andrew Sanders, Curator of the Herbarium at UCR, was collected in 1940 in the Arlington area of the City of Riverside (Provance *et al.* 2001). The other occurrence is near Alberhill where a series of six subpopulations supporting over 12,000 aerial stems was reported in 2000 (Hewitt and McGuire 2000). Currently, we are aware of three extant occurrences in Riverside County.

Comment 2: The commenter did not think transplantation of *Ambrosia pumila* plants from a Caltrans site in the Sweetwater River drainage to a site in Penasquitos Canyon, a different watershed, or to multiple sites, was an appropriate use of those plants.

Our Response: Transplantation has been used to salvage plants where the occurrence was to be totally or partially extirpated. The above-mentioned activities were carried out by Caltrans in the summer of 1996, as a mitigation measure for the unavoidable extirpation of *Ambrosia pumila* associated with construction of State Route 125/54. This was done prior to publication of the proposed rule to list the species. As part of the recovery planning process, protocols for the collection and use of salvaged materials will be developed, taking into account the reproductive biology and clonal structure of *A. pumila.* In collecting material for propagation, consideration must be given to maximize genetic variation and equal numbers of progeny should be obtained from each line (Given 1994). Caution will be used in employing translocation, relocation, and reintroduction as mitigation for project impacts (CDFG 1991).

Summary of Factors Affecting the Species

Section 4 of the Act and implementing regulations (50 CFR Part 424) set forth the procedures for adding species to the Federal list of endangered and threatened species. We may determine that a species is endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *Ambrosia pumila* are as follows.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Twenty-one of the 40 documented native occurrences of this species are believed to have been extirpated by human activities, including, but not limited to, urban development as well as highway and utility corridor construction and maintenance (CNDDB 1999). Of the remaining 19 occurrences, the occurrence adjacent to a sidewalk in National City (CNDDB 1999) was not considered viable because of the small size of the population, and three additional occurrences have not been verified in many years. Five of the remaining 15 extant native occurrences, including 3 of the larger occurrences, are threatened with habitat destruction associated with highway expansion or highway rights-of-way maintenance activities including mowing (CNDDB 1999). Three known extant occurrences are within the San Luis Rey River watershed and are potentially threatened by highway maintenance and expansion of State Route 76 (CNDDB, 1999). Since issuance of a Notice of Preparation (NOP) in 1999 regarding widening of State Route 76, the scope of the project has been reduced and Caltrans has recently had internal scoping meetings to discuss alternatives (J. D'Elia, USFWS, *in litt.* 2002). One of these occurrences is west of the Bonsall Bridge and reportedly supported 2,000 to 3,000 stems in 1997 (CNDDB). While this occurrence is within the boundary of a proposed project on Jeffries Ranch, (along the south side of State Route 76), current project design avoids all of this occurrence (American Realty Trust, Inc. 2002). However, the occurrence is still threatened by highway expansion along the northern boundary of the property. A portion of this same occurrence was inadvertently impacted in 1996 by a San Diego Gas and Electric (SDG&E) utility project. The species was found on the site during the latter stages of planning for the project. Some of the aerial stems were salvaged by Pacific Southwest Biological Services, Inc. and have been maintained for future translocation. *Ambrosia pumila* still occurs at this locality. We have recently received a request from SDG&E for assistance in replanting the *A. pumila* at this site (Sempra Energy *in litt.* 2001). One of the five remaining occurrences within the

Sweetwater River watershed, near El Cajon, reportedly supports more that 1,000 stems, and is potentially threatened by highway construction (CNDDB 1999) although no project is currently funded for the site (B. April, pers. comm., 2002). In Riverside County, highway expansion or highway and utility rights-of-way maintenance threaten a large occurrence (500 to 1,000 stems reported in 1998) along Nichols Road near Lake Elsinore (CNDDB 1999).

Development of recreational facilities has also affected *Ambrosia pumila* (CNDDB 1999). One occurrence that reportedly supported 2,000 aerial stems in 1997 was apparently significantly degraded by the construction of a golf course near Del Dios Highway in the San Dieguito River watershed, San Diego County (G. Wallace, *in litt.* 1999). Fewer than 100 aerial stems were found on the site which was less than 0.1 ha (less than 0.1 ac) in size (G. Wallace, *in litt.* 1999). Construction of a campground facility in MTRP by the City of San Diego resulted in the loss of less than 0.1 ha (0.1 ac) or 10 percent of this major population. This impact was the anticipated loss allowable under provisions of the City of San Diego's MSCP Subarea Plan (City of San Diego 1997). Biological monitoring, a requirement of MSCP, is in place and biologists periodically evaluate the status of this species and make management recommendations.

Urban development continues to threaten this species. A large occurrence in the City of El Cajon that reportedly supported 6,500 stems of *Ambrosia pumila* in 1998 (CNDDB 1999) was apparently extirpated by commercial and residential development (C. Burrascano, *in litt.* 2001). In Riverside County, the recently reported occurrence near Alberhill (reportedly supporting about 13,000 aerial stems in 2000) is threatened by development associated with the Alberhill Sports and Entertainment project (Hewitt & McGuire 2000).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not known to be a factor affecting *Ambrosia pumila* at this time. The potential threat to this species from over-collection may increase upon publication of this rule, although we are not aware of any incidents of collection of this species resulting from the proposal to list *A. pumila* as an endangered species. This species has been offered for sale locally, however, the source of the material is unknown (J. Bartel and B. McMillan, USFWS, pers. comm., 1999; CNPS, *in litt.* 2000).

C. *Disease or predation.* Disease and predation are not known to be factors affecting this plant species.

D. *The inadequacy of existing regulatory mechanisms.* Existing regulatory mechanisms that could currently provide some protection for this species include (1) Federal laws and regulations including the National Environmental Policy Act (NEPA), the Endangered Species Act in those cases where this species occurs in habitat occupied by other listed species, the Fish and Wildlife Coordination Act, and section 404 of the Federal Clean Water Act; (2) State laws, including the Native Plant Protection Act (NPPA), California Endangered Species Act (CESA), California Environmental Quality Act (CEQA), and section 1603 of the California Fish and Game Code; (3) local land use processes and ordinances; and (4) protection under Mexican laws.

Federal Laws and Regulations

NEPA (42 U.S.C. 4321 to 4347) requires disclosure of the environmental effects of projects within Federal jurisdiction. NEPA requires that the project alternatives include recommendations for protecting, restoring, and enhancing the environment. NEPA does not, however, require that the lead agency select an alternative with the least significant impact to the environment, nor does it prohibit implementing a proposed action in an environmentally sensitive area (40 CFR 1500 *et seq.*).

The Endangered Species Act (Act) may afford protection to *Ambrosia pumila* if it co-occurs with species already listed as threatened or endangered. A number of federally listed species are known to or are likely to co-occur within the range of A. *pumila.* Protection afforded by these species through sections 7 and 10 of the Act, however, is minimal due to the lack of significantly overlapping habitat requirements. These species include the endangered least Bell's vireo (*Vireo bellii pusillus*) and the threatened coastal California gnatcatcher (*Polioptila californica californica*). These species are not known to consistently co-occur in the same vegetation communities with *A. pumila* although they may occur in nearby associated communities.

The Fish and Wildlife Coordination Act and section 404 of the Clean Water Act may afford some protection to *Ambrosia pumila* where it occurs in waters of the United States that require a permit from the U.S. Army Corps of Engineers (Corps). Under section 404 of the Clean Water Act, the Corps regulates the discharge of fill material into waters of the United States, which may include terraces of streams where *A. pumila* is found. Through the Fish and Wildlife Coordination Act, we may recommend discretionary conservation measures to avoid, minimize, and offset impacts to fish and wildlife resources resulting from a water development project authorized by the Corps. Section 404 regulations require that applicants obtain a nationwide, regional, or individual permit for projects that discharge fill material into waters of the United States. However, because the distribution of this species occurs mainly in non-wetland habitats and may not co-occur with other listed species, the Fish and Wildlife Coordination Act and section 404 of the Clean Water Act provide only limited opportunities to protect *A. pumila.*

State Laws and Regulation

Although State laws, including CEQA, CESA, and NPPA at times may provide a measure of protection to species, these laws are not adequate to protect species in all cases or may not be applicable to a particular species.

Ambrosia pumila is not listed under the CESA although it may be eligible for State listing under section 1901, chapter 10 of the California Department of Fish and Game Code. Its inclusion in List 1B of the California Native Plant Society Inventory (CNPS 2001) may satisfy the threat requirement of that section. The State was petitioned to list this species as endangered, under CESA, in June 1997. This petition was rejected by the State because it was not accurate. The same petitioner submitted another petition in February 1998 to list the species as threatened but subsequently withdrew the petition in March 1998. The State did not comment on our proposal to list this species.

CEQA (Public Resources Code, section 21000 *et seq.*) pertains to projects on non-Federal lands or activities and requires that a project proponent publicly disclose the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency. The lead agency is responsible for conducting a review of the project and consulting with other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to ''reduce the number or restrict the range of a rare or endangered plant or animal'' including those that are eligible for listing under the NPPA or CESA. However, under CEQA, where overriding social and economic considerations can be demonstrated, a

project may go forward even where adverse impacts to a species are significant.

Mexican Law

We are not aware of any existing regulatory mechanisms in Mexico that would protect *Ambrosia pumila* or its habitat. If *A. pumila* was specifically protected in Mexico, the portion of the range in Mexico alone would not be adequate to ensure long-term conservation of this species.

E. *Other natural or manmade factors affecting their continued existence.* Non-native plants are considered a threat to virtually all of the extant occurrences of *Ambrosia pumila* (CNDDB 1999; J. Vanderwier, *in litt.* 1998). Non-native species of grasses and forbs have invaded many of southern California's plant communities. Their presence and abundance are often an indirect result of persistent and repeated habitat disturbance from development, discing, mowing, alteration of local hydrology, and the presence and maintenance of highways and trails. Overgrowth and competition by non-native plants likely affect the reproductive potential of this low growing, wind-pollinated species (CNDDB 1999). Non-native plants found with *A. pumila* include *Brassica* spp. (mustard), *Vulpia* spp. (annual fescue), *Erodium* spp. (crane's-bill), *Bromus* spp. (brome grass), and *Foeniculum vulgare* (sweet fennel). While scientific studies on the effects of non-native plants on *A. pumila* have not been undertaken, the presence of these and other non-native plants is likely to affect (1) pollen and fruit dispersal by impeding flow of wind-blown pollen and local dispersal of seeds; (2) fire patterns by increasing the fuel loads due to the influx of non-native plants; (3) hydrological conditions by decreasing the amount of water available for *A. pumila;* and (4) the cumulative effects by reducing the vegetative productivity and the apparently low seed production for this species.

Several occurrences of *Ambrosia pumila* are threatened by periodic mowing or discing which can reduce the vegetative vigor of the plants and may greatly reduce or eliminate the chances of reproductive output for the year. If the plants were mowed in mid summer to early fall, it is likely that the flowering portions of the aerial stems would be removed. Vegetation in a fuel modification zone in a portion of one of the occurrences in the SDNWR is periodically mowed or disced (J. Vanderwier, *in litt.* 1998; A. Davenport, *in litt.* 2002). In the future, populations on the SDNWR will be flagged prior to discing for fire breaks to avoid this species (A. Davenport, *in litt.* 2002). The extant occurrence in El Cajon, owned by Caltrans, is also impacted by periodic mowing by an adjacent landowner (CNDDB 1999; B. April, pers. comm., 2002).

In one documented instance in 1999, the occurrence of *Ambrosia pumila* at a fenced biological preserve at Skunk Hollow in Riverside County, was grazed by sheep (C. Moen, USFWS, *in litt.* 1999). Grazing would likely eliminate or severely reduce the annual reproductive output of *A. pumila* and could also reduce the vegetative portions of the plants to a degree that would threaten their capacity to persist. Grazing was not a covered activity in the Rancho Bella Vista Habitat Conservation Plan that encompasses this area (USFWS 2000).

Trampling by hikers, horses, and vehicles is likely a threat to any of the occurrences that are found along trails, access roads, rights-of-way, and utility easements. At least four of the larger occurrences of *Ambrosia pumila* are known to be threatened by trampling, including the occurrences at the SDNWR (J. Vanderwier, *in litt.* 1998; T. Roster, SDNWR, pers. comm., 1999; A. Davenport, *in litt.* 2002). While the effects on the rhizome-like roots by soil compaction from vehicle traffic has not been quantified, no aerial stems occur in a wide trail used by hikers and horseback riders that traverses an occurrence in the SDNWR (A. Davenport, *in litt.* 2002). As an avoidance measure, some of the trails that cross and fragment occurrences of the species at the SDNWR will be abandoned, while those that remain will have increased signage to direct hikers and equestrian users away from the *A. pumila* populations (T. Roster, pers. comm., 1999). In addition, SDNWR will consult under section 7 of the Act for any proposed actions that may affect *A. pumila.*

The occurrence at Skunk Hollow in Riverside County is reportedly threatened by indirect impacts from urbanization, including a park, surrounding the occurrence (CNDDB 1999). These activities could include increased impacts from trail use by mountain bikes, horses, or hikers.

Two occurrences are in MTRP. Coincident with their subarea plan (City of San Diego 1997), the San Diego Ambrosia Management Plan (City of San Diego 2000) includes several conservation measures already in place at MTRP. These include fencing at area C which supports the highest concentration of stems of San Diego ambrosia (City of San Diego 2000). Social trails that disperse foot traffic from main trails have been closed by fencing or signage noting sensitive habitat and an interpretive sign is posted in the area (P. Kilburg, Senior Ranger, MTRP, pers. comm., 2002). The management plan (City of San Diego 2000) states that 26 percent of all mapped patches and 24 percent of the total area supporting this species are impacted by trails. The document also notes that *Ambrosia pumila* cannot withstand trampling from routine foot traffic and that trampling compacts the soil. Compacted soil may reduce the percolation of water into the soil and small patches may be in greater jeopardy than larger patches from this type of altered hydrological condition (City of San Diego 2000). Therefore, the plan recommends enhancement of the population of *A. pumila.* The plan cautions that strategies should be carefully tested prior to large-scale implementation or acceptance as a reliable enhancement method (City of San Diego 2000). Two strategies were proposed, one to increase the areal extent and absolute numbers of rhizome-like roots in a given patch. The other strategy involves increasing the range of the species in MTRP. Removal of exotic non-native species and planting of native grassland species should be included as funding permits (City of San Diego 2000). Enhancement protocols would likely require inclusion of sampling methodologies to identify specific genetic composition of occurrences and obtain material of the desired genotypes. Success criteria will be determined based in part on genetic composition and dynamics of natural populations.

Two extant occurrences (CNDDB 1999) are within the Metro/Lakeside/Jamul segment of the San Diego County Subarea Plan of the MSCP (County of San Diego 1997). At least one of these occurrences is threatened by the parking of cars on the site and discing of the site (CNDDB 1999). This same occurrence is affected by trampling during maintenance activities on SDG&E utility towers (J. Vanderwier, *in litt.* 1998) and trampling associated with children using the area as a playground for walking and riding bicycles (A. Davenport, *in litt.* 2002). The area where the plants occur appears to be mowed periodically (A. Davenport, *in litt.* 2002).

As described above in the background section, small occurrences composed of a low number of aerial stems or those consisting of few genetically distinct genotypes are likely at a greater risk of negative impacts from random events. This could include fire, which could

eliminate the reproductive output at an occurrence, kill all of the plants, or severely reduce the vegetative capacity of the plants to sustain reproductive structures for some period of time.

We have carefully assessed the best scientific and commercial information available regarding the threats faced by this species in developing this rule. Based on this evaluation, listing *Ambrosia pumila* as endangered is warranted. The species is threatened with extinction due to present or threatened destruction, fragmentation, and degradation of habitat primarily by construction and maintenance of highways, maintenance of utility easements, development of recreational facilities, and residential and commercial development; inadequate regulatory mechanisms; potential competition, encroachment, and other negative impacts from non-native plants; mowing and discing for fuel modification; and trampling as well as soil compaction by horses, humans, and vehicles. These threats are compounded by the fact that this species is a clonal perennial plant that has wind-pollinated flowers and may rarely produce viable seeds. The number of genetically different plants at any given site is unknown, but there are likely multiple aerial stems per plant. This means that some of the smaller occurrences could represent a single plant. Seven of the 15 occurrences are on private lands, some of these with rights-of-way access where regular maintenance activities may impact the plants. Conservation measures, provided by MSCP, are in place for 5 of the 15 occurrences. Even with full protection, this represents only one-third of the known occurrences and will likely not protect sufficient numbers of genetically different plants. Other occurrences may be conserved in future habitat conservation plans. Also, there are no known examples of transplanted or reintroduced occurrences of this species in which sexual reproduction has occurred to sustain either a viable population or exhibit the genetic diversity found in a naturally occurring population.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as-(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

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 designates critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the 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.

Ambrosia pumila is potentially vulnerable to unrestricted over-collection or vandalism. We are concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, at this time we do not have specific evidence of over-collection or vandalism of *A. pumila.* This species has been offered for sale locally, but the origin of the material is unknown. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species from over-collection or vandalism.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of this species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 of the Act requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we determine that designation of critical habitat for *Ambrosia pumila* is prudent.

However, the deferral of the critical habitat designation for *Ambrosia pumila* will allow us to concentrate our limited resources on higher priority listing actions, while allowing us to put in place protections needed for the conservation of *A. pumila* without delay. This is consistent with section 4(b)(6)(C)(i) of the Act, which states that final listing decisions may be issued without concurrent designation of critical habitat if it is essential to the conservation of the species that such determinations be promptly published. We will prepare a critical habitat designation for this species in the future at such time when our available resources allow it.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States, local agencies, private groups, and organizations and requires that recovery actions be carried out for all listed species. We discuss the protection required by Federal agencies and the prohibitions against taking and harm, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. 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 informally

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. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal agency action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us.

Several Federal agencies are expected to potentially have involvement with section 7 of the Act regarding this species. The association of *Ambrosia pumila* with terraces of streams may result in the Corps becoming involved through its permitting authority under section 404 of the Clean Water Act and the issuance of permits related to the discharge of fill material into waters of the United States. The Federal Highway Administration may be affected through potential funding of future highway construction affecting this species. The Federal Energy Regulatory Commission may be involved through its permitting authority for utility projects that may potentially affect this species. The two occurrences of *A. pumila* on the SDNWR receive the protection afforded biological resources on the refuge. In addition, SDNWR is managed in accordance with San Diego MSCP. In the long-term, the SDNWR will develop a comprehensive conservation plan that addresses this species and other biological resources.

In 1991, the State of California established the Natural Community Conservation Planning (NCCP) program to address conservation needs of natural ecosystems throughout the State. The initial focus of the NCCP program is the coastal sage scrub community in southern California. Regional habitat conservation plans have been approved, are in development, or are being planned in San Diego, Orange, Riverside, San Bernardino, and Los Angeles Counties pursuant to the State of California Natural Community Conservation Planning Act of 1991 and section 10(a)(1)(B) of the Act.

The San Diego MSCP establishes a 68,800-ha (172,000-ac) preserve and provides for monitoring and management for the 85 covered species addressed in the permit, including *Ambrosia pumila.* Additionally, *A. pumila* is defined in the MSCP as a narrow endemic species. The Service approved subarea plans under the MSCP for the City of Poway in July 1996, the City of San Diego in July 1997, the County of San Diego in March 1998 and the City of La Mesa in January 2000.

All of the 12 extant occurrences in San Diego County are in approved or proposed regional habitat conservation planning areas. Eleven of the 12 extant occurrences in San Diego County are in the MSCP planning area. Two of these occurrences are in the SDNWR. Five of the nine known occurrences in the MSCP planning area are provided protection within approved permitted Subarea Plans. Two of the occurrences, both at MTRP, are addressed under the approved City of San Diego's Subarea Plan (City of San Diego 1997) and in the San Diego Ambrosia Management Plan (City of San Diego 2000). Several conservation measures are in place at MTRP. These include fencing of the largest concentration of *Ambrosia pumila,* closure of several trails that impact the species, and interpretive signage in the area (City of San Diego 2000, P. Kilburg pers. comm., 2002). According to the City of San Diego's Subarea Plan (City of San Diego 1997), 90 percent of the only major population will be conserved and 100 percent of the adjacent portion of the occurrence on private lands near the radio tower will be preserved. The site-specific monitoring plan, with management plan and directives, include measures to protect against detrimental edge effects (City of San Diego 1997). This Subarea Plan also treats this plant as a narrow endemic species requiring impacts within the preserve to be avoided. Outside the preserve, narrow endemic species will be protected through one of the following measures: (1) Avoidance; (2) management; (3) enhancement; and (4) transplantation to areas identified for preservation. Unavoidable impacts associated with reasonable use or essential public facilities would need to be minimized and mitigated (City of San Diego 1997).

Under the County of San Diego's Subarea Plan, *Ambrosia pumila* is a narrow endemic species requiring avoidance to the maximum extent possible. Where avoidance is infeasible, a maximum encroachment may be authorized of up to 20 percent of the population on site. Where impacts are allowed, in-kind preservation shall be required at a 1:1 to 3:1 ratio depending upon the sensitivity of the species and population size, as determined in a biological analysis approved by the Service and the CDFG. The occurrences near Del Dios Highway in the San Dieguito River watershed, as well as two occurrences near Steele Canyon Road are within the approved County of San Diego's Subarea Plan (County of San Diego 1997).

Two existing occurrences remain within the City of El Cajon. The City of El Cajon submitted a draft MSCP Subarea Plan dated January 2, 1997 (City of El Cajon 1997). Neither of the two occurrences is included within the 100 percent habitat preserve areas. The draft plan notes that the plant is considered a narrow endemic species by MSCP and the intention of the City of El Cajon to address species and habitat protection through the CEQA process. The City of El Cajon has not yet completed their MSCP subarea plan. The last time this plan was an agenda item at a meeting with the City of El Cajon was on May 20, 1999.

The draft Environmental Impact Statement/Environmental Impact Report for the MHCP in northwestern San Diego County was released for review by the San Diego Association of Governments (SANDAG) and the Service in December 2001. The only known occurrence of this species within the planning area is proposed to be conserved. Under the draft MHCP, the plant would be treated as a narrow endemic species requiring surveys of suitable habitat and onsite conservation of 80–100 percent of each occurrence discovered in the area. Two occurrences of *Ambrosia pumila* in San Diego County are within the North County MSCP Subarea Plan, which is also in the planning phase. This plan is projected to be completed in 2004.

The County of Riverside anticipates completion of the Western Riverside Multiple Species Habitat Conservation Plan (MSHCP) by December 2002. *Ambrosia pumila* has been proposed for coverage under this plan and will be treated as a narrow endemic species. The three known extant occurrences of this species in Riverside County are within the planning boundaries of the MSHCP. One of these is within an area already managed for conservation. The other two occurrences are within the criteria area where conservation is proposed. The narrow endemic species policy will require pre-project surveys and onsite conservation of a portion of any new populations identified (County of Riverside 2002).

SDG&E prepared a subregional Natural Communities Conservation Plan. The Service, CDFG, and SDG&E signed an implementation agreement and memorandum of understanding in December 1995. Under the provisions of this plan, *Ambrosia pumila* is a covered species and a narrow endemic species. The plan prohibits impacts to occupied habitat except in emergency situations.

While four of the 12 extant occurrences of *Ambrosia pumila* in San Diego County are in areas where regional habitat conservation planning is ongoing, the plans have not yet been approved. These regional planning efforts include MHCP, the North County MSCP Subarea Plan, and the City of El Cajon Subarea Plan. The details of protections for each of the occurrences of *Ambrosia pumila* under each of these plans are being developed and thus are not currently in place. Protections for the eight remaining occurrences in San Diego County are discussed above. All three of the only known extant occurrences in Riverside County are in the planning area for the Western Riverside Multiple Species Habitat Conservation Plan. Because this plan is not yet approved, two of these occurrences, including one of the largest, are not currently afforded any protections under the MSHCP.

Listing *Ambrosia pumila* provides for the development and implementation of a recovery plan for the species. This plan will bring together Federal, State, and local agency efforts for conservation of the species. A recovery plan will establish a framework for agencies to coordinate their recovery efforts. The plan will set recovery priorities and estimate the costs of the tasks necessary to accomplish the priorities. It will also describe the site-specific management actions necessary to achieve conservation and recovery of the species. Based on the biology of this species and preliminary data regarding the clonal structure of the species, attention should be given to preservation of as many genotypes as possible. This is most easily accomplished by preserving as many different occurrences as possible, determining their clonal structure, and protecting the occurrences from direct effects of habitat destruction or degradation and the indirect effects of encroachment by invasive non-native species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce to possession from areas under Federal jurisdiction any endangered plant species. In addition, for plants listed as endangered, the Act prohibits malicious damage or destruction on areas under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that few trade permits would ever be sought or issued because this species is not common in cultivation or common in the wild. Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE. 11th Avenue, Portland, OR 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

It is our policy, published in the **Federal Register** (59 FR 34272) on July 1, 1994, to identify to the maximum extent practicable those activities that would or would not be likely to constitute a violation of section 9 of the Act if a species is listed. The intent of this policy is to increase public awareness of the effect of the species' listing on proposed and ongoing activities within its range. Collection of listed plants or activities that would damage or destroy listed plants on Federal lands are prohibited without a Federal endangered species permit. Such activities on non-Federal lands would constitute a violation of section 9 of the Act if they were conducted in knowing violation of California State law or regulation, or in the course of violation of California criminal trespass law. Otherwise, such activities would not constitute a violation of the Act on non-Federal lands.

Questions on whether specific activities would likely constitute a violation of section 9 should be directed to the Field Supervisor of the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Any information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned control number 1018–0094, which expires on July 31, 2004. For additional information concerning these permits and associated requirements, see 50 CFR § 17.62.

References Cited

A complete list of all references cited herein is available, upon request, from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this final rule is Gary D. Wallace, Ph.D., U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as follows:

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. Section 17.12(h) is amended by adding the following entry in alphabetical order under FLOWERING PLANTS to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Ambrosia pumila	San Diego ambrosia	U.S.A. (CA) Mexico	Asteraceae	E	727	NA	NA
*	*	*	*	*	*	*	

Dated: June 14, 2002.

Marshall P. Jones, Jr.,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 02–16370 Filed 7–1–02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF83

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Southern California Distinct Vertebrate Population Segment of the Mountain Yellow-Legged Frog (*Rana muscosa*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), determine endangered status for the southern California distinct vertebrate population segment (DPS) of the mountain yellow-legged frog (*Rana muscosa*) pursuant to the Endangered Species Act of 1973, as amended (Act). This rule implements the Federal protection and recovery provisions afforded by the Act for this DPS.

DATES: This rule is effective August 1, 2002.

ADDRESSES: Supporting documentation for this rulemaking is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, CA 92008.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, at the above address (telephone 760/431–9440 and facsimile 760/431–9618).

SUPPLEMENTARY INFORMATION:

Background

The mountain yellow-legged frog is in the family of true frogs, Ranidae, which consists of frogs that are more closely tied to water bodies for breeding and foraging than other frog or toad species. Mountain yellow-legged frogs were originally described by Camp (1917) as a subspecies of *Rana boylii.* Zweifel (1955) demonstrated that frogs from the high Sierra Nevada and the mountains of southern California were somewhat similar to each other, yet were distinct from the rest of the *R. boylii* (= *boylei*) group. Since that time, most authors have treated the mountain yellow-legged frog as a full species, *Rana muscosa,* following Zweifel's treatment.

Mountain yellow-legged frogs are moderately sized, about 40 to 80 millimeters (mm) (1.5 to 3 inches (in)) from snout to urostyle (the pointed bone at the base of the backbone) (Zweifel 1955, Jennings and Hayes 1994). The skin pattern of the mountain yellow-legged frog is variable, ranging from discrete dark spots that can be few and large, to smaller and more numerous with a mixture of sizes and shapes, to irregular patches or a poorly defined network (Zweifel 1955). The body color is also variable, usually a mix of brown and yellow, but often with gray, red, or green-brown. Some individuals may be dark brown with little pattern (Jennings and Hayes 1994). Folds are present on each side of the back (dorsolateral folds), but usually are not prominent (Stebbins 1985). The throat is white or yellow, sometimes mottled with dark pigment (Zweifel 1955). The belly and undersurface of the hind limbs are yellow, which ranges in hue from pale lemon yellow to an intense sun yellow. Eye coloration consists of a gold-colored iris with a horizontal, black counter shading stripe (Jennings and Hayes 1994).

The mountain yellow-legged frog is a near-endemic species to California (primarily restricted to California and a small area of Nevada), historically ranging in distribution from southern Plumas County in northern California to northern San Diego County in southern California. Within the range of the species, there are two major clades (a group of organisms that includes all descendants of one common ancestor) separated by a biogeographic break between the central and southern portions of the Sierra Nevada. These two clades can be further divided into four subgroups, the northern Sierra Nevada, central Sierra Nevada, southern Sierra Nevada, and southern California (Macey *et al.* 2001). In the Sierra Nevada of California, the mountain yellow-legged frog ranges from northern Plumas County (G. Fellers *in litt.* 2000) to southern Tulare County (Jennings and Hayes 1994), at elevations mostly above 1,820 meters (m) (6,000 feet (ft)). The frogs of the southern Sierra Nevada are isolated from the frogs in the mountains of southern California by the Tehachapi Mountains and a distance of about 225 kilometers (km) (140 miles (mi)).

Mountain yellow-legged frogs were historically documented from approximately 166 localities in creeks and drainages in the mountains of southern California (Jennings and Hayes 1994). Of these, an estimated 164 localities were from creeks and drainages in the San Gabriel, Big Bear, and San Jacinto Mountains of Los Angeles, San Bernardino, and Riverside Counties. The two remaining occurrences were documented on Palomar Mountain in San Diego County and were considered to represent an isolated population (Zweifel 1955). Currently the mountain yellow-legged frog is known from only seven locations in southern California in portions of the San Gabriel, San Bernardino, and San Jacinto Mountains (Backlin *et al.* 2002).

Localities of extant populations of mountain yellow-legged frogs in southern California are reported to range in elevation from approximately 370 m (1,200 ft) to 2,290 m (7,500 ft) (Stebbins 1985). Historical localities demonstrating the wide elevation range that mountain yellow-legged frogs inhabited in southern California include Eaton Canyon, Los Angeles County (370 m (1,220 ft)), and Bluff Lake, San Bernardino County (2,290 m (7,560 ft)).

Southern California mountain yellow-legged frogs are diurnal (active during the daylight hours), highly aquatic frogs, occupying rocky and shaded streams with cool waters originating from springs and snowmelt. Water depth, persistence, and configuration (*i.e.,* gently sloping shorelines and margins) appear to be important for mountain

yellow-legged frogs, allowing for shelter from predators along shores or in deeper waters, and habitat for breeding, foraging, egg-laying, thermoregulation (to regulate the body temperature through behavior), and overwintering (Jennings and Hayes 1994).

Juvenile and adult mountain yellow-legged frogs feed primarily on small, streamside insects such as beetles, flies, ants, bees, and similar small insects (Jennings and Hayes 1994). The coldest winter months are spent in hibernation, probably underwater or in crevices in the streambanks. Mountain yellow-legged frogs emerge from overwintering sites in early spring and breeding soon follows. Breeding activity typically begins in April at lower elevations, to June or July at upper elevations and continues for approximately a month (Zweifel 1955). Egg masses vary in size from as few as 15 eggs to 350 eggs per mass (Vredenburg *et al.,* in press), which is considered low, relative to a range of several hundred to several thousand for other true frogs such as the California red-legged frog (*Rana aurora draytonii*) (61 FR 25813, 66 FR 14626). Egg masses are normally deposited in shallow waters where they may be attached to rocks, gravel, vegetation, or similar substrates (U. S. Forest Service (USFS) 2002). As larvae develop, they tend to gravitate towards warmer waters to elevate body temperatures (Bradford 1984) which may facilitate larval and metamorphic development by allowing for a higher metabolic rate. Even with this behavior, ''larvae apparently must overwinter at least two times for 6 to 9 month intervals before attaining metamorphosis because the active season is short and the aquatic habitat maintains warm temperatures for only brief intervals'' (USFS 2002). Time to develop from fertilization to metamorphosis appears to be variable, ranging up to 3.5 years (Vredenburg *et al.,* in press; Zweifel 1955), with reproductive maturity reached from 3 to 4 years following metamorphosis (Zweifel 1955). Little is known about adult longevity, but the species is presumed to be long-lived due to adult survivorship (*i.e.,* observed survival of adults from year to year) (Mathews and Pope 1999, Pope 1999a in USFS 2002). Further, Pope (1999a in USFS 2002) suggests that mountain yellow-legged frogs may have strong site fidelity for wintering and summer habitats.

The decline of mountain yellow-legged frogs from more than 99 percent of their previously documented range in southern California (Jennings and Hayes 1994) may be part of a well-known larger pattern of native ranid frog extirpations in the western United States (Hayes and Jennings 1986, Drost and Fellers 1996). Some of the western ranid frog species experiencing noticeable declines are the threatened California red-legged frog (61 FR 25813), the spotted frog (*R. pretiosa* and *R. luteventris*), the Cascades frog (*R. cascadae*), and the threatened Chiricahua leopard frog (*R. chiricauhensis*) (67 FR 40789). Nowhere have the declines been more pronounced than in southern California, where, in addition to declines in mountain yellow-legged frogs, the California red-legged frog has been reduced to a few small remnant populations (61 FR 25813, 66 FR 14626) and the foothill yellow-legged frog (*R. boylii*) may be extirpated (Jennings and Hayes 1994).

The mechanisms causing the declines of western ranid frogs are not well understood and are certain to vary somewhat among species. The two most common and well-supported hypotheses for widespread extirpation of western ranid frogs are: (1) Past habitat destruction related to activities such as logging, mining, and habitat conversions for water development, irrigated agriculture, and commercial development (Hayes and Jennings 1986, 61 FR 25813); and (2) non-native predators and competitors such as introduced trout and bullfrogs (Hayes and Jennings 1986, Bradford 1989, Knapp 1996, Kupferberg 1997). However, in the case of the southern populations of mountain yellow-legged frogs, habitat destruction related to activities such as logging and commercial development does not appear to have been a significant factor in their precipitous decline because these activities are not prominent within mountain yellow-legged frog habitat in southern California. Overall, all of these factors, operating alone or in combination, may result in the direct extirpation of local populations of mountain yellow-legged frogs. Further, these factors may disrupt the natural cyclical population dynamics on the local and regional levels such that it may be difficult for populations to recover from localized impacts or extirpations.

Other environmental factors that may adversely affect mountain yellow-legged frogs and other amphibian populations over a wide geographic range include pesticides (Sparling *et al.* 2001), certain pathogens (Blaustein *et al.* 1994, Fellers *et al.* 2001), ultraviolet-B (beyond the visible spectrum) radiation (Blaustein *et al.* 2001, Belden and Blaustein 2002), or a combination of the above factors (Kiesecker and Blaustein 1995, Blaustein *et al.* 2001, Kiesecker *et al.* 2001). However, these factors, their interactions, and their effects on the decline of amphibian populations are not well understood (Wake 1998, Fellers *et al.* 2001). We believe that these environmental factors are still operating, and unless moderated or reversed, a high probability exists that mountain yellow-legged frogs may become extirpated in southern California in the foreseeable future. Consequently, additional research on the effects of the factors on amphibian populations is necessary. To that end, the Department of the Interior (DOI) has supported an initiative to fund research on the causes of amphibian declines (USFWS 2000).

Mountain yellow-legged frogs in southern California are found primarily on public land within the Angeles and San Bernardino National Forests. Therefore, the majority of mountain yellow-legged frog habitat is now protected or managed through management plans established for the Forests and sensitive species and habitat contained therein (refer to the Available Conservation Measures section for a further discussion of these measures). However, prior to the development of these management plans, dams or diversions were placed in many of the major streams flowing through the southern California mountains historically inhabited by mountain yellow-legged frogs. These dams and diversions alter natural hydrologic flow and may negatively impact mountain yellow-legged frog breeding and foraging habitat and further exacerbate the decline of populations in southern California.

Current Range and Status

Surveys in 2000 and 2001 by the U.S. Geological Survey (USGS) found mountain yellow-legged frogs in five small streams in the San Gabriel Mountains, one stream, City Creek, a tributary of the Santa Ana River, in the San Bernardino Mountains, and one stream in the upper reaches of the San Jacinto River system in the San Jacinto Mountains (Backlin *et al.* 2002, USFS 2002). The results from the USGS surveys differ somewhat from the distribution of mountain yellow-legged frogs described in the proposed listing rule (64 FR 71714). Areas where mountain yellow-legged frogs were found during the surveys and adult population estimates for each area are described below. Areas where frog populations were reported in the proposed rule, but were not found during recent surveys, are also noted.

San Gabriel Mountains, Angeles National Forest, San Bernardino County: Mountain yellow-legged frogs

were detected at 5 of 17 San Gabriel Mountains sites surveyed in 2001: Bear Gulch, Devil's Canyon, Little Rock Creek, South Fork of Big Rock Creek, and Vincent Gulch. No frogs were detected at Alder Gulch during a summer 2001 survey, but they were reported at this site in 1995 (Jennings 1995). Adult population estimates and 95 percent confidence intervals (CI) for the five sites were: 47 (95 percent CI = 22–108) for Bear Gulch, five (95 percent CI = 2–20) for Little Rock Creek, seven (95 percent CI = 1–7) for South Fork of Big Rock Creek, and 7 (95 percent CI = 1–7) for Vincent Gulch (Backlin *et al.* 2002). No population estimate was made for Devil's Canyon, but four adults were found (Backlin *et al.* 2002).

San Jacinto Mountains, San Bernardino National Forest, Riverside County: Only one site out of five surveyed in the San Jacinto Mountains in 2000 and 2001 was reported to be occupied (Backlin *et al.* 2002). One adult was found on Fuller Mill Creek during the five surveys conducted. No frogs were detected on the North Fork of the San Jacinto River from four surveys conducted in 2001, or in Dark Canyon during three surveys conducted in 2000 (Backlin *et al.* 2001). Mountain yellow-legged frogs were documented in Dark Canyon as recently as 1998 (Jennings 1999). Hall Canyon was not surveyed in 2000 and 2001. While frogs were not documented in this canyon during surveys in 1998 (Jennings 1999), eight adult mountain yellow-legged frogs and larvae were documented in 1995 (Jennings 1995).

San Bernardino Mountains, San Bernardino National Forest, Riverside County: Only one of 21 San Bernardino Mountains locations surveyed in 2001 had mountain yellow-legged frogs (Backlin *et al.* 2002). This site, the East Fork of City Creek, has an estimated adult population size of 13 (95 percent CI = 5–74) (Backlin *et al.* 2002). Similarly, the East Fork of City Creek was the only creek of the 15 locations surveyed in 2000 that was documented as supporting mountain yellow-legged frogs (Backlin *et al.* 2002).

Based on available recent information, it appears that mountain yellow-legged frogs have only been currently documented in seven creeks and drainages in the San Gabriel, San Jacinto, and San Bernardino Mountains of southern California, in contrast to the 166 documented historic localities. In 1994, Jennings and Hayes (1994) suggested that mountain yellow-legged frogs in the San Gabriel and San Jacinto Mountains (an estimated eight isolated localities) numbered fewer than 100 adult frogs. Their estimate was based on a compilation of the results of visual surveys generally conducted on a single day, not on standard abundance estimation techniques. The current estimate of mountain yellow-legged frogs in southern California based on extrapolation from a mathematical formula is estimated to be approximately 79 adult frogs, not including direct observations in Devil's Canyon (4 adults in 2001) and Fuller Mill Creek (1 adult in 2001), in which estimates were not calculated (Backlin *et al.* 2002). We acknowledge, however, that some creeks may have small populations that were not detected by recent 2000 and 2001 surveys efforts by Backlin *et al.* (2001; 2002).

Distinct Vertebrate Population Segment

We evaluated populations of mountain yellow-legged frog according to the February 7, 1996, joint Service and National Marine Fisheries Service Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722). Three elements are considered in a decision regarding the status of a possible DPS as endangered or threatened under the Act. These are applied similarly for addition to the lists of endangered and threatened wildlife and plants, reclassification, and removal from the lists and include: (1) Discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing.

Discreteness refers to the isolation of a population from other members of the species and is based on two criteria: (1) Marked separation from other populations of the same taxon resulting from physical, physiological, ecological, or behavioral factors, including genetic discontinuity; or (2) populations delimited by international boundaries.

We determine significance either by the importance or contribution, or both, of a discrete population to the species throughout its range. Our policy lists four examples of factors that may be used to determine significance: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence that the discrete population segment differs markedly from other populations of the taxon in its genetic characteristics.

If we determine that a population segment is discrete and significant, we evaluate it for endangered or threatened status based on the Act's standards. Endangered means the species is in danger of extinction throughout all or a significant portion of its range. Threatened means the species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

Discreteness: The range of the mountain yellow-legged frog is divided by a natural geographic barrier, the Tehachapi Mountains, which geographically isolates frogs in the southern Sierra Nevada from those in the mountains of southern California. The distance of the geographic separation is about 225 km (140 mi). The geographic separation of the Sierra Nevada and southern California frogs was recognized in the earliest description of the species by Camp (1917), who treated frogs from the two localities as separate subspecies within the *R. boylii* group. He designated the Sierra Nevada frogs *R. b. sierrae* and the southern California frogs *R. b. muscosa,* based on geography and subtle morphological (outward appearance; structure and form) differences. Zweifel (1955) reevaluated the morphological evidence used by Camp and found it insufficient to warrant recognition of two subspecies.

Using a limited sample size, Ziesmer (1997) analyzed the calls of Sierra Nevada (Alpine and Mariposa Counties) (n = 86 utterances) and southern California (San Jacinto Mountains, Riverside County) mountain yellow-legged frogs (n = 23 utterances). The calls of Sierra Nevada frogs differed from southern California frogs in pulse rate, harmonic structure, and dominant frequency (Ziesmer 1997). Ziesmer (1997) concluded that the differences in calls supported the hypothesis that mountain yellow-legged frogs from the Sierra Nevada and southern California are separate species.

In addition, two different genetic analyses have been conducted that support the concept that mountain yellow-legged frog populations in southern California are different from those in the Sierra Nevada. As noted in the proposed listing rule (64 FR 71714), a previously unpublished allozyme study was used to compare mountain yellow-legged frogs for the central Sierra Nevada and southern California (Green in litt., 1993). He found a fairly significant genetic difference between the two populations, but without frogs

from the southern Sierra Nevada for comparison, it was not clear whether the difference reflected two ends of a cline (a character gradient), or distinct populations. Thus, due to the small sample sizes, the results were interpreted cautiously. More recently, a phylogenetic analysis of mitochondrial DNA sequences was performed on *Rana muscosa* throughout its distribution (Macey *et al.* 2001). Mitochondrial DNA sequences provide a more robust analysis of relationships than the allozymic data (Macey *et al.* 2001). Macey *et al.* (2001) found that eight populations of mountain yellow-legged frogs form two major clades separated by a biogeographic break in the Sierra Nevada. The break occurs between Kings Canyon National Park and a region slightly north of Yosemite National Park (Macey *et al.* 2001). The northern clade consists of populations from the northern and central Sierra Nevada, while the southern clade contains populations from the southern Sierra Nevada and the San Gabriel, San Jacinto, and San Bernardino Mountains in southern California. The two major clades, or groups, within *R. muscosa* are estimated to have diverged about 2.2 million years ago (Macey *et al.* 2001).

The two major clades each contained two subgroups, suggesting at least four evolutionarily distinct units within this taxon (Macey *et al.* 2001). Macey *et al.* (2001) found statistical support for evolutionarily distinct populations from the northern Sierra Nevada, central Sierra Nevada, southern Sierra Nevada, and southern California mountains (San Bernardino, Los Angeles, and Riverside counties). The southern Sierra Nevada and southern California subgroups are estimated to have diverged about 1.4 million years ago (Macey *et al.* 2001).

The vocalization differences found by Ziesmer (1997) support the discreteness of southern California mountain yellow-legged frogs from the Sierra Nevada populations. The genetic study conducted by Macey *et al.* (2001) also strongly supports the conclusion that the population of mountain yellow-legged frogs in southern California is discrete. The results from these studies together with the geographic separation of the southern population from the rest of the populations in the Sierra Nevada satisfy the criterion of ''marked separation from other populations of the same taxon'' and qualify as discrete according to the Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722).

Significance: One of the most striking differences between Sierran and southern California mountain yellow-legged frogs is the ecological setting they each occupy. Zweifel (1955) observed that the frogs in southern California are typically found in steep gradient streams in the chaparral belt, even though they may range into small meadow streams at higher elevations. In contrast, Sierran frogs are most abundant in high elevation lakes and slow-moving portions of streams. Bradford's (1989) southern Sierra Nevada Mountain study site, for example, was in Sequoia and Kings Canyon National Parks, at high elevations between 2,910 to 3,430 m (9,600 to 11,319 ft). The rugged canyons of the arid mountain ranges of southern California bear little resemblance to the alpine lakes and streams of the Sierra Nevada. The different ecological settings between mountain yellow-legged frogs in southern California and those in the Sierra Nevada distinguish these populations from each other.

The extinction of this southern group would be significant because it would substantially reduce the overall range to only the Sierra Nevada. The mountain yellow-legged frogs of southern California comprise the southern limit of the species' range, and the loss of the southern California frogs on the periphery of the species' range could have significant conservation implications. Peripheral populations may be genetically and morphologically divergent from central populations. As such, distinct traits found in peripheral populations may be crucial to the species, allowing adaptation to environmental change. Peripheral populations often are important for the survival and evolution of species and will often have high value for conservation (Lesica and Allendorf 1995).

Based on the differences between the ecological settings for the mountain yellow-legged frog in southern California (steep gradient streams) and the Sierra Nevada (high elevation lakes and slow moving portions of streams), elevation, and the importance of the southern California population to the entire range of this species, the mountain yellow-legged frogs inhabiting the mountains of southern California meet the significance criteria under our Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722).

Conservation Status

Based on our determination that the southern California population of mountain yellow-legged frogs meets the first two criteria for a distinct vertebrate population segment per our policy, discreteness and significance, we must evaluate its conservation status and make a determination relative to the Act's standards for listing as endangered or threatened. Please refer to the Summary of Factors Affecting the Species for our discussion of the status of the species.

Previous Federal Action

On July 13, 1995, we received a petition dated July 10, 1995, from D.C. Jasper Carlton of the Biodiversity Legal Foundation, Bonnie M. Dombrowski, and Michael C. Long to list as threatened or endangered the southern California population of the mountain yellow-legged frog pursuant to the Act. Accompanying the petition was supporting information related to the taxonomy, ecology, and past and present distribution of the species. We reviewed the petition, supporting documentation, and other information to determine if substantial information was available to indicate that the requested action may be warranted. On July 8, 1997, we published a 90-day administrative finding on the petition to list the southern California population of the mountain yellow-legged frog (62 FR 36481). In our finding, we discussed our determination that the petition presented substantial information indicating that listing of the species may be warranted and that we believed the southern California population to be a distinct vertebrate population segment.

Once we determined that the petition presented substantial information, we commenced a status review pursuant to section 4(b)(3)(A) of the Act. However, consistent with the applicable Listing Priority Guidances (62 FR 55268, 63 FR 25502), we worked on higher priority listing actions before completing the 12-month administrative finding and proposed listing rule on December 22, 1999, to list this DPS of the mountain yellow-legged frog as endangered (64 FR 71714). The processing of the 12-month administrative finding and the proposed listing rule conformed with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114).

On May 19, 2000, we published a notice of reopening of the comment period in response to a request from the California Department of Fish and Game (CDFG) for additional time to obtain biological information regarding the mountain yellow-legged frog and to comment on the proposed rule (65 FR 31870). Due to limited resources and the need to undertake other, higher-priority listing actions, the Service was unable to make a final determination for this species within the 12-month statutory timeframe provided by the Act. In August 2001, the Department of the

Interior reached an agreement in principal with the Center for Biological Diversity, Southern Appalachian Biodiversity Project, and the California Native Plant Society on a timeframe to make final listing determinations for 14 species, including the mountain yellow-legged frog (southern California DPS). The agreement was formalized in October 2001 (*Center for Biological Diversity, et al.* v. *Norton,* Civ. No. 01–2063 (JR) (D.D.C.)). The publication of the final rule to list the southern California distinct vertebrate population segment of the mountain yellow-legged frog complies with the terms of that court-approved settlement agreement.

Additionally, on February 10, 2000, we received a petition dated February 8, 2000, to list as endangered the Sierra Nevada population of the mountain yellow-legged frog as a distinct vertebrate population. The petition addresses the remainder of the entire species' range, in the Sierra Nevada from Tulare County, CA, in the south to Plumas County, CA, in the north. On October 12, 2000, we published an administrative 90-day finding indicating that the petition presented substantial information and that the petitioned action may be warranted (65 FR 60603), and we initiated a status review for the mountain yellow-legged frog. The results of this review will be addressed in our 12-month administrative finding on the petitioned action.

Summary of Comments and Recommendations

In the December 22, 1999, proposed rule (64 FR 71714), we requested all interested parties to submit factual reports or information that might contribute to development of this final rule during the 60-day public comment period which closed on February 22, 2000. We requested comments from appropriate Federal agencies, State agencies, county and city governments, scientific organizations, and other interested parties. We published public notices of the proposed rule in the Los Angeles Times in Los Angeles County on December 27, 1999, The Press-Enterprise in Riverside County on December 29, 1999, and The Sun in San Bernardino County on December 30, 1999, inviting the general public to comment. On February 7, 2000, we received a request for a public hearing; however, at a later date the same individual provided comments on the proposed rule and retracted the request for a public hearing. On May 19, 2000, we reopened the public comment period for an additional 30 days (65 FR 31870) to obtain biological information and to receive further comments on the proposed rule.

During the two public comment periods, we received written comments from a total of 18 individuals or agencies. All commenters supported the listing of the mountain yellow-legged frog DPS in southern California, but several expressed concern over our discussion and analysis of the potential factors affecting the species.

Peer Review

In accordance with our July 1, 1994, Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (59 FR 34270), we solicited the expert opinions of six independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population status, and supporting biological and ecological information for the taxon under consideration for listing. The purpose of such review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists. All six peer reviewers responded and supported the listing of this taxon. Information and suggestions provided by the reviewers were incorporated or addressed as applicable.

Comments on the proposed listing rule and our responses are either summarized below or directly incorporated into this final rule:

Comment 1: A peer reviewer requested additional discussion of the potential effects of water projects in drainages where mountain yellow-legged frogs occur.

Our Response: Currently, we lack specific information to address adequately the effects of water projects in drainages on the mountain yellow-legged frog in this final rule. However, we recognize that these projects may affect the mountain yellow-legged frog and its habitat. We will continue to gather information and attempt to address this issue in the future.

Comment 2: One peer reviewer noted our statement that all nine known populations of southern California mountain yellow-legged frog occur on USFS lands may not be true because Fuller Mill Creek flows through private property in the community of Pinewood.

Our Response: We have made that correction in this final rule. As one of the conservation measures for the mountain yellow-legged frog, the USFS identified a portion of the private land along Fuller Mill Creek (approximately 24 hectares (ha) (60 acres (ac)) for acquisition (USFWS 2001). In January 2001, the USFS acquired 97 ha (240 ac) of private land along Fuller Mill Creek in Pinewood (Regelbrugge *in litt.* 2002). While this land acquisition included the original 24 ha (60 ac) targeted, along with additional mountain yellow-legged frog habitat, portions of the creek that contain suitable, occupied habitat remain under private ownership.

Comment 3: One commenter requested that future proposals of critical habitat undergo a public comment period similar to the proposed listing.

Our Response: Pursuant to the Act and implementing regulations, we are required to solicit public comments on proposed rulemakings, including proposed critical habitat designations.

Comment 4: One commenter responded that there is relatively little information on the life history of stream-dwelling mountain yellow-legged frog populations, and our conclusion in the proposed listing rule that wherever rainbow trout (*Oncorhynchus mykiss*) and mountain yellow-legged frogs co-occur, trout are likely to eliminate mountain yellow-legged frogs was unsubstantiated, because the data was collected from high elevation lakes in the Sierra Nevada.

Our Response: In our proposed listing rule, we stated that trout may keep populations of mountain yellow-legged frogs low and limit dispersal. Although all studies that have concluded trout negatively affect the distribution of mountain yellow-legged frogs were conducted on lakes and ponds in the Sierra Nevada (Bradford 1989, Knapp 1996, Knapp and Matthews 2000), the inference that trout in southern California streams would have the same or similar adverse effects on mountain yellow-legged frog populations is strong and should not be overlooked. In these studies, it was documented that nonnative trout may be the most severe threat affecting mountain yellow-legged frogs (Backlin *et al.* 2001) by predating larvae and metamorphs (Hays and Jennings 1986, Bradford 1989). Furthermore, research has shown adverse effects of trout on frog tadpoles in a stream-setting (Rattlesnake Creek) within the Santa Ynez Mountains (Cooper *et al.* 1986). Cooper *et al.* (1986) stated that their experiments showed that trout eliminated treefrog (*Hyla* spp.) tadpoles.

We are currently funding a study through section 6 of the Act, to examine the natural history of the southern California DPS and interactions with trout.

Comment 5: One commenter stated the proposed rule unnecessarily focused

on potential public impacts, and was worried that as a result, the USFS would respond to the final listing with forest closures that are not warranted. The commenter noted human activities such as day use, hiking and camping were being singled out in the proposed rule.

Our Response: Although we did not specifically identify recreational activities as a significant factor in the precipitous decline of the southern California DPS of mountain yellow-legged frog, the few remaining occurrences of this species in southern California are now at risk of extinction. Any activity that results in disturbance to the species or which may harm eggs, tadpoles or adult frogs could negatively affect the continued survival of this DPS. We have conferred with the USFS on their activities which may affect the mountain yellow-legged frog and have identified actions to prevent impacts to the species (USFWS 2001). The small number of mountain yellow-legged frogs in southern California occur in a few stream reaches within the Angeles National Forest (ANF) and San Bernardino National Forest (SBNF). We believe that actions undertaken by the USFS to reduce impacts to this species on USFS lands in southern California will have a limited effect on current recreational activities within the Angeles and San Bernardino National Forests.

Comment 6: One peer reviewer indicated that the recent genetic research conducted by Macey *et al.* (2001) suggested that the southern DPS of the mountain yellow-legged frog is in fact a separate species instead of a DPS, and that he had submitted a paper for review concerning this proposed taxonomic change.

Our Response: In this final rule, we rely on the results of the recent genetic study by Macey *et al.* (2001) as further evidence that the southern populations of the mountain yellow-legged frog meet the policy definition of a distinct vertebrate population segment. While the results of this study provide substantial information concerning the taxonomy and evolutionary history of the mountain yellow-legged frog, Macey *et al.* (2001) do not suggest the four subgroups constitute separate species. We appreciate the information concerning the proposed taxonomic changes; and look forward to reviewing this new information following publication in a peer-reviewed journal.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and the regulations (50 CFR part 424) that implement the listing provisions of the Act set forth the procedures for adding species to the Federal list of endangered and threatened species. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the southern California DPS of mountain yellow-legged frogs are discussed below:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The seven remaining occurrences of the southern California DPS of mountain yellow-legged frog occur within three drainages; five are within a drainage in the San Gabriel Mountains, one population inhabits a drainage in the San Bernardino Mountains, and one is in the San Jacinto Mountains. Most of the known locations of this DPS occur on lands administered by the USFS. The extremely limited number and small size of the remaining populations makes this DPS of mountain yellow-legged frog particularly vulnerable to extirpation resulting from localized habitat alteration or degradation, and stochastic (random, naturally occurring) events such as fire or drought (Backlin *et al.* 2002).

Alteration or degradation of habitat for this DPS within ANF and SBNF could result from recreational activities including hiking, mountain climbing, camping, swimming, stocking of trout for fishing, and suction dredge mining for gold; or other human-related impacts including release of toxic or hazardous materials into stream reaches inhabited by the DPS (Jennings 1995, Backlin *et al.* 2002, USFS 2002). In areas occupied by this DPS, human use in and along streams can disrupt the development, survivorship, and recruitment of eggs, larvae, and adult frogs (Jennings 1995; Stewart *in litt.* 1995), and can change the character of a stream and its bank and associated vegetation in ways that make whole sections of a stream less suitable for the species.

The following table identifies known recreational activities or other factors that may affect one or more of the remaining populations of the southern California DPS of mountain yellow-legged frog.

National Forest	Location of population	Activity
ANF	South Fork, Big Rock Creek—Mojave	Trout stocking.
ANF	Little Rock Creek—Mojave	Trail use; mountain climbing; vehicle travel on Highway 2.
ANF	Bear Gulch—East Fork, San Gabriel	Suction dredge mining for gold; recreation (*e.g.*, hiking).
ANF	Devil's Canyon—West Fork, San Gabriel	Recreation; trout stocking.
ANF	Vincent Gulch—East Fork, San Gabriel	None.
SBNF	East Fork City Creek—City Creek	Vehicle travel on highway 330; wildfire due to buildup of fuels; introduction of non-resident trout.
SBNF	Fuller Mill Creek—Mill Creek	Picnicking; trout stocking; wildfire concern.

Suction dredge mining for gold has occurred in a portion of the East Fork, San Gabriel River within the Sheep Mountain Wilderness Area. The dumping of trash and toxic materials (soap, motor oil, mercury) has also occurred in this area. (Jennings 1995). Some of the habitat effects of suction dredging on streams are described by Harvey (1986), who found that dredging may locally alter substrates and change habitat for fish and invertebrates. Consequently, disturbance to streambed substrates and water quality resulting from extensive suction dredging activity at or near a mountain yellow-legged frog breeding site could have harmful effects on eggs and developing larvae. Dumping of trash and toxic materials can degrade water quality, also with adverse effects on eggs and developing larvae.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Numerous museum specimens from many localities document that mountain yellow-legged frogs from the southern DPS have been collected for scientific

purposes for decades (Jennings and Hayes 1994). Because the DPS has declined precipitously, resulting in a limited number of small populations, little scientific collecting of the southern DPS would likely be authorized. Collecting for scientific or recreational purposes, if it did occur, could seriously increase the probability of extirpation of any of the remaining populations, potentially reducing the ability of the DPS to survive and recover.

C. Disease or Predation

Predation by introduced fish, primarily rainbow trout, is one of the best-documented causes of the decline of Sierran mountain yellow-legged frogs. Careful study of the distributions of introduced trout and mountain yellow-legged frogs over several years has shown conclusively that introduced trout have had negative impacts on mountain yellow-legged frogs over much of the Sierra Nevada due to predation of tadpoles and other life stages (Bradford 1989, Knapp 1996, Knapp and Matthews 2000). Bradford (1989) and Bradford *et al.* (1993) concluded that introduced trout eliminate many populations of mountain yellow-legged frogs and the presence of trout in intervening streams sufficiently isolates other frog populations so that recolonization after stochastic local extirpations is essentially impossible. This mechanism is sufficient to explain the extirpation of Sierra Nevada mountain yellow-legged frogs from the majority of sites they once inhabited. Alone or in combination with other factors, introduced trout may have contributed to the widespread decline of the southern DPS as well.

Virtually all streams in the mountains of southern California contain populations of introduced rainbow trout, and until recently, trout were routinely released by California Department of Fish and Game in Dark Canyon and Fuller Mill Creek in the San Jacinto Mountains, and City Creek in the San Bernardino Mountains. Most of the other streams still occupied by mountain yellow-legged frogs have histories of trout introductions. However, the remaining frog occurrences in these streams are almost all in the small headwater sections where barriers restrict upstream movement of trout. While there have been no studies that specifically looked at the interaction between trout and stream-dwelling mountain yellow-legged frogs in southern California, Cooper *et al.* (1986) found trout eliminated stream-dwelling treefrog (*Hyla* spp.) tadpoles in Rattlesnake Creek within the Santa Ynez Mountains. Wherever the two species co-occur, trout are likely to heavily impact mountain yellow-legged frog populations by eliminating or keeping populations low and limiting dispersal (Bradford 1989, Bradford *et al.* 1993). Knapp and Matthews (2000) suggested that mountain yellow-legged frog populations co-occurring with trout generally represent ''sink'' populations (a population in which the mortality rate exceeds the birth rate). Consequently, co-occurrence of mountain yellow-legged frogs and trout is insufficient evidence that trout have had relatively minor effects on frogs, because the persistence of these frog occurrences is likely dependent on immigration from source populations (Knapp and Matthews 2000). The widespread occurrence of introduced trout and continued releases in the mountains of southern California may make it very difficult to recover the DPS.

Another introduced predator that could have effects on the DPS similar to those of the trout, but on a more limited scale, is the bullfrog (*Rana catesbeiana*). Bullfrogs have been listed among the threats to other western frogs (61 FR 25813, Kiesecker and Blaustein 1998) and arroyo toads (59 FR 64859). Bullfrogs are now widespread in southern California and occur in many drainages formerly occupied by mountain yellow-legged frogs. The negative effects of bullfrogs on mountain yellow-legged frogs in the mountains of southern California are probably less widespread than those of introduced trout because there is less overlap in their occurrence. Any habitat alterations that are favorable to bullfrogs, however, will likely cause them to become locally abundant. In areas where mountain yellow-legged frogs occur, an increase of bullfrogs could further isolate the remaining populations; thereby potentially reducing the ability of the DPS to survive and recover.

Bradford (1991) documented the loss of a Sierra Nevada population of mountain yellow-legged frogs due to the combined effect of ''red-leg'' disease (caused by the freshwater bacterium *Aeromonas hydrophila*) and predation by Brewer's blackbirds (*Euphagus cyanocephalus*). Another pathogen that is generating concern among those who study amphibian declines is the chytrid fungus *Batrachochytrium dendrobatidis.* Chytrid fungus may be seriously affecting amphibians by attacking the mouthparts of tadpoles affecting their ability to feed. Chytrid fungus occurs in many places around the world, and has recently been discovered on larval and recently metamorphosed mountain yellow-legged frogs in the Sierra Nevada (Fellers *et al.* 2001). Because of the small and isolated nature of the remaining occurrences in southern California, disease could be significantly detrimental.

D. The Inadequacy of Existing Regulatory Mechanisms

Existing regulatory mechanisms have not stopped the decline of mountain yellow-legged frogs in southern California. Existing regulatory mechanisms that could provide some protection for the mountain yellow-legged frog include: (1) State laws, including the California Endangered Species Act (CESA), California Environmental Quality Act (CEQA), and section 1603 of the California Fish and Game Code; (2) Federal laws and regulations including the National Environmental Policy Act (NEPA), the Endangered Species Act in those cases where this species occurs in habitat occupied by other listed species, Fish and Wildlife Coordination Act, and section 404 of the Federal Clean Water Act; and (3) local land use processes and ordinances.

The State of California considers the mountain yellow-legged frog a species of special concern, but it is not listed as a threatened or endangered species under the CESA. Consequently, the species receives no protection under CESA. California Sport Fishing Regulations include the mountain yellow-legged frog as a protected species that may not be taken or possessed at any time except under special permit from the CDFG, however, the protection afforded by this regulation does not address the significant threats to the DPS presented by such factors as habitat alteration or predation by nonnative species.

CEQA requires a full public disclosure of the potential environmental impact of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with other agencies concerned with resources affected by the project. Section 15065 of CEQA guidelines require a finding of significance if a project has the potential to ''reduce the number or restrict the range of a rare or endangered plant or animal.'' Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State. Once significant impacts are

identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as elimination of endangered species or their habitats. Protection of listed species through CEQA is, therefore, at the discretion of the lead agency involved. CEQA provides that, when overriding social and economic considerations can be demonstrated, project proposals may go forward, even in cases where the continued existence of the species may be threatened, or where adverse impacts are not mitigated to the point of insignificance.

The arroyo toad (*Bufo californicus*), a federally listed endangered species, is present in the San Gabriel Mountains. Because the two species occupy different areas and habitats in the San Gabriel Mountains and the arroyo toads are not known to occur elsewhere in the limited range of the mountain yellow-legged frog, we believe there is limited benefit to the mountain yellow-legged frog from the presence of the arroyo toad.

The Fish and Wildlife Coordination Act and section 404 of the Clean Water Act will afford some protection to mountain yellow-legged frogs where they occur in waters of the United States that require a permit from the U.S. Army Corps of Engineers (Corps). Under section 404 of the Clean Water Act, the Corps regulates the discharge of fill material into waters of the United States. Through the Fish and Wildlife Coordination Act, we may recommend discretionary conservation measures to avoid, minimize, and offset impacts to fish and wildlife resources resulting from a water development project authorized by the Corps. Section 404 regulations require that applicants obtain a nationwide, regional, or individual permit for projects that discharge fill material into waters of the United States.

The U.S. Forest Service's Angeles and San Bernardino National Forests manage lands containing all known locations of mountain yellow-legged frogs in southern California. The USFS has included mountain yellow-legged frogs on its Region 5 list of sensitive species as of June 8, 1998. The USFS has been formulating a conservation assessment and strategy for the mountain yellow-legged frog in southern California in a cooperative effort with other agencies, but this effort is still in progress (USFS 2002). As noted in the discussion of the factors above, the presence of introduced trout on USFS lands is believed to be a serious threat to the mountain yellow-legged frog. Additionally, because the DPS has been reduced to small isolated remnant populations, recreational activities (*e.g.,* bathing, camping, hiking, *etc.*) occurring on USFS lands may threaten the remaining frogs. The perilous status of the mountain yellow-legged frog reflects the overall inability of existing CEQA, National Environmental Policy Act, and other Federal, State, and local ordinances and statutes to protect and provide for the conservation of this DPS.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The southern California DPS of mountain yellow-legged frog is considered at high risk of extirpation because very few locations remain, the locations are isolated from one another, and each location likely contains only a small number of frogs. Few populations and restricted habitat make the southern California DPS of mountain yellow-legged frog susceptible to extinction or extirpation from all or a portion of its range due to random events such as fire, flood or drought. In addition, small population size may increase the susceptibility of the remaining mountain yellow-legged frog populations in southern California to extirpation from random demographic, environmental and/or genetic events (Shaffer 1981, 1987; Lande 1988; Noss and Cooperrider 1994; Meffe and Carroll 1997, Primack 1998). Finally, disruption of source population and dispersal dynamics (*e.g.,* source populations that provide individuals that can disperse to other populations or colonize new areas which assists in the stability and recovery of the species) may increase the risk of extinction of the southern California populations of the frog (Noss and Cooperrider 1994). These effects are discussed briefly below.

Unpredictable events such as fire could potentially eliminate entire populations of this DPS (Stewart *in litt.* 1995, Jennings 1995). Several of the remaining populations of mountain yellow-legged frog in southern California occur within areas where vegetation and fuel levels have increased. The increased fuel levels could lead to fires that burn more intensely, removing most of the vegetation which would affect the amount of available stream shade and could increase sedimentation within a stream channel due to exposed soils (USFS 2002).

Mountain yellow-legged frog populations in the southern California DPS are also at risk from floods and drought. Unlike the lake environments utilized by the Sierra Nevada populations of the species, the streams inhabited by the southern California DPS flow through narrow canyons that provide little opportunity for off-channel refuge for the species during flood events (USFS 2002). Stewart (*in litt.* 1995) believed that flooding during the winter of 1969 was a major factor in the disappearance of mountain yellow-legged frogs from Evey Canyon in the San Gabriel Mountains.

Mountain yellow-legged frogs are almost always found in or immediately adjacent to water (USFS 2002). Periods of prolonged drought could have a significant effect on one or more of the remaining populations of this DPS as a result of reduced reproduction and reproductive success (i.e., mortality of eggs and tadpoles) (USFS 2002).

Demographic events that may put small populations at risk involve chance variation in age, sex ratios, and other population characteristics, which can change birth and death rates (Shaffer 1981, 1987; Lande 1988; Noss and Cooperrider 1994; Meffe and Carroll 1997). A limited survey conducted by Jennings (1995) found skewed sex ratios in the populations of mountain yellow-legged frogs in the San Gabriel Mountains.

Small, isolated populations are also vulnerable to genetic drift (random changes in gene frequencies) and inbreeding (mating among close relatives). Genetic drift and inbreeding may lead to reductions in the ability of individuals to survive and reproduce (*i.e.,* reductions in fitness) in small populations. In addition, reduced genetic variation in small populations may make any species less able to successfully adapt to future environmental changes (Shaffer 1981, 1987; Noss and Cooperrider 1994, Primack 1998).

Finally, we believe that the connectivity of populations within this DPS has been substantially reduced compared to the recent past. Loss of one or more of the remaining populations within the southern California DPS would cause the remaining populations to become even more isolated from one another, thereby reducing the likelihood of its long-term survival and recovery.

We have evaluated the best available scientific and commercial information regarding the status of, and threats to, the southern California DPS of mountain yellow-legged frog in determining its eligibility for listing pursuant to the Act. Based on our evaluation, we determine that listing of the southern California DPS of

mountain yellow-legged frog as endangered, under the Act, is warranted and appropriate.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the provisions of section 4 of 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 geographical area occupied by a species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species (16 U.S.C. 1532(5)). ''Conservation'' means the use of all methods and procedures needed to bring an endangered or threatened species to the point at which protection under the Act is no longer necessary.

Critical habitat designation directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the 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.

Due to the small number and sizes of populations, the mountain yellow-legged frog is vulnerable to unrestricted collection, vandalism, or other disturbance. We are concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of location information. However, we have examined the evidence available for the mountain yellow-legged frog and have not found significant specific evidence of taking, vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then designating critical habitat is prudent. In the case of the southern California DPS of mountain yellow-legged frog, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we find that critical habitat is prudent for the southern California DPS of the mountain yellow-legged frog.

However, the deferral of the critical habitat designation for this DPS of the mountain yellow-legged frog will allow us to concentrate our limited resources on higher priority critical habitat designations and other listing actions, while allowing us to put in place protections needed for the conservation of the southern California DPS of mountain yellow-legged frog without further delay. This is consistent with section 4(b)(6)(C)(i) of the Act, which states that final listing decisions may be issued without concurrent designation of critical habitat if it is essential to the conservation of the species that such determinations be promptly published. We will prepare a critical habitat designation for this species in the future at such time when our available resources allow it.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include requirements for Federal protection, prohibitions against certain practices, and recovery actions. The Act provides for possible land acquisition/exchange and cooperation with the States. The protection required of Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below. Listing of the southern California DPS of the mountain yellow-legged frog as endangered will provide for recovery planning including the development of a recovery plan if it will promote the conservation of the DPS. Such a plan will bring together both State and Federal efforts for the mountain yellow-legged frog's conservation. The plan will establish a framework for cooperation and coordination among agencies in conservation efforts. The plan will set recovery priorities and estimate costs of various tasks necessary to accomplish them. It will also describe site-specific management actions necessary to achieve conservation and survival of the southern California DPS of the mountain yellow-legged frog.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of its proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, permit, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its designated critical habitat. If a Federal action may affect a listed species or its designated critical habitat, the responsible Federal agency must enter into consultation with us.

Federal agencies expected to have involvement with consultations under section 7 of the Act regarding the southern California DPS of mountain yellow-legged frog include the USFS through its management activities and the Corps through its permit authority under section 404 of the Clean Water Act. These agencies either manage lands containing the DPS or authorize, fund, or otherwise conduct activities that may affect the DPS.

In 2001, the Service issued its biological and conference opinions on the Land and Resource Management Plans (LRMP) for the four southern California National Forests (USFWS 2001) addressing activities on the

Angeles and San Bernardino National Forests. The southern California DPS of mountain yellow-legged frog, proposed for listing as endangered, was included in a conference opinion. Measures contained in a conference opinion are advisory in nature.

Conservation recommendations for the southern California DPS of mountain yellow-legged frog included: (1) Installation of signage along trails adjacent to areas occupied by the DPS to encourage the public to remain on designated trails; (2) removal of picnic equipment or campsites (barbeque pits, picnic tables) adjacent to areas occupied by the DPS; (3) organization of workshops to educate campground permittees about this DPS of mountain yellow-legged frog; (4) acquisition of habitat for the DPS within private inholdings; (5) assignment of additional patrols to prevent illegal suction dredge mining within the Sheep Mountain Wilderness Area of Angeles National Forest; and (6) relocation of a trail adjacent to an area occupied by the DPS within Little Rock Canyon.

The conference opinion addressing the southern DPS of mountain yellow-legged frog may be adopted as a biological opinion following the listing of this DPS under the Act, if we review the proposed action and determine there have been no significant changes in the action as planned or in the information used during the conference. If we determine the conference opinion may be adopted as the biological opinion, no further consultation pursuant to section 7 will be necessary, unless: (1) The amount of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect the species or critical habitat in a manner and to an extent not considered in the conference opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the species or critical habitat that was not considered in the conference opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions under section 9 of the Act, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practical at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of listing a species pursuant to the Act on proposed and ongoing activities within the species' range. We believe the following actions would not likely result in a violation of section 9:

Possession, delivery, or movement, including interstate transport and import into or export from the United States, involving no commercial activity, of dead specimens of this taxon that were collected prior to the date of publication in the **Federal Register** of the final regulation adding this taxon to the list of endangered species.

Activities we believe will result in a violation of section 9 of the Act include, but are not limited to:

(1) Take of southern California mountain yellow-legged frogs without a permit, which includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions;

(2) Possessing, selling, delivering, carrying, transporting, or shipping illegally taken mountain yellow-legged frogs;

(3) Interstate and foreign commerce (commerce across State and international boundaries) and import/export (as discussed earlier in this section);

(4) Introduction of non-native species that compete or hybridize with, or prey on, mountain yellow-legged frogs;

(5) Destruction or alteration of mountain yellow-legged frog habitat by suction dredging, channelization, diversion, in-stream vehicle operation or rock removal, or other activities that result in the destruction or significant degradation of cover, channel stability, substrate composition, temperature, and habitat used by the species for foraging, cover, migration, and breeding; and

(6) Discharging or dumping toxic chemicals, silt, or other pollutants into waters supporting mountain yellow-legged frogs by mining, or other developmental or land management activities that result in destruction or significant degradation of cover, channel stability, substrate composition, temperature, and habitat used by the species for foraging, cover, migration, and breeding.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor, Carlsbad Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations and inquiries regarding them may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 NE. 11th Avenue, Portland, OR 97232–4181 (Telephone 503/231–6241; FAX 503/231–6243).

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing these permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, for incidental take in connection with otherwise lawful activities, and/or for economic hardship.

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any collections of information that require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned control number 1018–0094, which expires July 31, 2004. This rule does not alter that information collection requirement. 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.

References Cited

A complete list of all references cited herein are available upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

Authors

The primary author of this final rule is the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under AMPHIBIANS, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
AMPHIBIANS							
*	*	*	*	*	*		*
Frog, mountain yellow-legged (southern California DPS).	*Rana muscosa*	U.S.A. (California, Nevada).	U.S.A., southern California.	E	728	NA	NA
*	*	*	*	*	*		*

Dated: June 20, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–16371 Filed 7–1–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020508113–2151–02; I.D. 090501D]

RIN 0648–AP12

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid and Butterfish Fisheries; Framework Adjustment 2

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 2 (Framework 2) to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP). This action extends the limited entry program for the *Illex* squid fishery for an additional year; allows for the roll-over of the annual specifications for these fisheries (with the exception of total allowable landings of foreign fishing (TALFF)) in the event annual specifications are not published prior to the start of the fishing year; and allows *Loligo* squid specifications to be set for up to 3 years, subject to annual review. NMFS has disapproved the proposed framework measures to modify the *Loligo* squid overfishing definition and control rule; and to allow *Illex* squid vessels an exemption from the *Loligo* squid trip limit during an August or September closure of the directed *Loligo* squid fishery. This action is necessary and is intended to further the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective August 1, 2002, except that the amendment to § 648.4 is effective on June 27, 2002.

ADDRESSES: Copies of Framework 2, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Final Regulatory Flexibility Analysis (FRFA), are available on request from Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Dover, DE 19904–6790. The EA/RIR/IRFA is accessible via the Internet at *http://www.nero.gov/ro/doc/nr.htm*.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail *Paul.H.Jones@noaa.gov*.

SUPPLEMENTARY INFORMATION: In 1997, Amendment 5 to the FMP established a limited entry program for the *Illex* squid fishery in response to a concern that fishing capacity could otherwise expand to overexploit the stock. At the time the program was established, there were concerns that the capacity of the limited entry vessels might prove, over time, to be insufficient to fully exploit the annual quota. In response to this concern, a 5–year sunset provision was placed on the *Illex* squid limited entry program, and it was scheduled to end July 1, 2002. However, in recent years the limited entry fleet has demonstrated that it has sufficient capacity to harvest the long-term potential yield from this fishery. The Mid-Atlantic Fishery Management Council (Council) must prepare an amendment to the FMP to evaluate whether or not the limited entry program should be extended permanently. In the meantime, this action extends the *Illex* squid moratorium through July 1, 2003, to prevent overcapitalization while the amendment is being prepared and considered by the Council. This extension complies with the criteria in section 303(b)(6) of the Magnuson-Stevens Fishery Conservation and Management Act. The extension will allow the Council additional time to consider long-term management for the *Illex* squid fishery, including the limited entry program. Vessels that took small quantities of *Illex* squid in the past may continue to do so under the incidental catch provision of the FMP.

This action also authorizes the roll-over of the annual specifications for the Atlantic mackerel, squid, and butterfish fisheries. In recent years, publication of the annual specifications for those fisheries has occurred after the start of the fishing year on January 1, resulting in inefficient management and industry uncertainty. This action allows the annual Atlantic mackerel, squid, and butterfish specifications from the previous fishing year to roll-over into the next fishing year (excluding TALFF), in the event that annual specifications for that year have not been published. The rolled-over specifications will be superceded by the publication of the current year's annual specifications.

This action also allows maximum optimum yield (Max OY), allowable biological catch (ABC), optimum yield (OY) and domestic annual harvest (DAH) for *Loligo* squid to be specified for up to 3 years. If the annual review conducted by the Council through its Monitoring Committee indicates that it is necessary, such a multi-year specification will be revised in the annual specification process.

This action also outlines a timeframe to be followed for in-season adjustments to the annual specifications for *Loligo* squid. The Council's Monitoring Committee will meet in late spring each year to review available Northeast Fisheries Science Center (NEFSC) survey data and to develop recommendations for the annual harvest for the following year. In addition, at that meeting, the Monitoring Committee will make recommendations regarding inseason adjustments to the annual *Loligo* squid specifications for consideration by the Atlantic Mackerel, Squid, and Butterfish Committee and the Council. Upon review of the recommendations from the Council, the Administrator, Northeast Region, NMFS (Regional Administrator) may make inseason adjustments through the process specified in the regulations.

Disapproved Measures

While the primary components of the overfishing definition for *Loligo* squid (the maximum fishing mortality rate threshold and the minimum biomass threshold) remained unchanged, Framework 2 proposed to modify the control rules that guide the Council in making harvest recommendations based upon those definitions. However, in December 2001, subsequent to the Council's adoption of Framework 2, *Loligo* squid was reassessed by the 34th Stock Assessment Workshop (SAW 34). Based on the results of that stock assessment, NEFSC found that the proposed overfishing definition did not comply with the 50 CFR part 600 guidelines because it has insufficient scientific merit and is not likely to result in effective management. Therefore, NMFS has disapproved the proposed modification to the control rules because they are not consistent with the best scientific information available and do not comply with National Standard 2 of the Magnuson-Stevens Conservation and Management Act.

SAW 34 noted that the apparent resilience of the stock of the last two decades suggested reexamination of the fundamental approach to determining Fishing Mortality (F) reference points. SAW 34 suggested that a threshold F could be set at the 75th percentile of the observed F over the time series and that a reasonable target F might be the mean value of the series. Amending the reference points along the lines suggested by SAW 34 will require further Council action.

NMFS noted in the proposed rule that it had disapproved the proposed measure to allow *Illex* squid vessels an exemption from the *Loligo* squid trip limit during an August or September closure of the directed *Loligo* squid fishery. The reasons for the disapproval of the measure were discussed fully in the preamble to the proposed rule and are not repeated here.

Changes From the Proposed Rule

As a result of the disapproval of the proposed change to the control rule for *Loligo* squid, the regulatory text at § 648.4 is not modified as was indicated in the proposed rule.

Comments and Responses

The Council developed Framework 2 under the framework abbreviated rulemaking procedure codified at 50 CFR part 648, subpart B. This procedure provided the public with the opportunity to comment on the proposed actions at Council meetings held February, March, and May 2001. In addition, the proposed rule provided an opportunity for public comment. No comments were received in response to the proposed rule, but two written comments were received during the Council process and are responded to here.

Comment 1: One commenter opposed allowing an increase of the *Loligo* squid target F from 75 percent of F_{msy} up to 90 percent of F_{msy} until the Council has had an opportunity to evaluate the ecological relationships between squid and its major predators, and how these relationships might change as rebuilding plans are implemented. The commenter advocated that the Council maintain the target F of 75 percent of F_{msy}, pending the results of such an analysis.

Response: NMFS agrees and has disapproved the proposed framework measure to modify the *Loligo* squid overfishing definition and control rule.

Comment 2: One commenter opposed the provision to allow *Illex* squid vessels an exemption from the *Loligo* squid trip limit during an August or September closure of the directed *Loligo* squid fishery. The commenter believed that the Council's analysis underestimated the total amount of *Loligo* squid bycatch that may be landed under this exemption.

Response: NMFS agrees and has disapproved the provision that would have allowed vessels fishing in the directed *Illex* squid fishery during a closure of the *Loligo* fishery to land *Loligo* squid taken seaward of the 50–fathom (91–m) curve in an amount not to exceed 10 percent of the total weight of *Illex* squid on board the vessel.

Classification

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

The need to implement these measures in a timely manner in order to have management measures for the *Illex* squid moratorium in place and to reduce overfishing at the start of the 2002 mackerel, squid, butterfish fishing year, beginning July 1, 2002, constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to waive the 30–day delay in effective date. This action extends the current *Illex* squid moratorium through July 1, 2003, to prevent overcapitalization while the Council prepares an amendment to the FMP to extend the moratorium indefinitely.

The current fleet has the capacity to harvest the long term yield from this fishery. If the moratorium lapses for 30 days as the result of delayed effectiveness, it will create confusion among industry participants about their current and future eligibility to fish for *Illex* squid. Those fishermen with incidental catch permits may view the lapse of the moratorium as a dissolution of the distinction between a moratorium and incidental catch permit and begin harvesting amounts of *Illex* above the incidental catch permit. This would put additional pressure on the stock and could result in overfishing.

Similarly, those without either a moratorium or incidental catch permit may view a lapse of the moratorium as the absence of any permit requirement and begin fishing for *Illex* in order to

qualify for a moratorium permit under Amendment 9 to the FMP. It is critical for the moratorium to continue without lapse so that the Council can consider whether or not to extend the limited entry program permanently through the amendment process without jeopardizing the *Illex* stock. Furthermore, this final rule will result in a continuation of the status quo, and imposes no new obligations on persons already fishing for *Illex* squid, or upon those who may wish to fish for *Illex* squid in the future. Therefore, the Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30–day delayed effectiveness period for the *Illex* moratorium.

This final rule does not contain policies with federalism implications, as that term is defined in Executive Order 13132.

The Council and NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this action. No comments were submitted that pertain to the IRFA, so none of the comments and responses in this final rule are considered to be part of the FRFA. The FRFA consists of the IRFA and a summary of the analyses done in support of this action. A copy of the analyses is available from the Council (see **ADDRESSES**). The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here. A summary of the FRFA follows:

The reasons why action by the agency is being taken and the objectives of this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here. This action does not contain any collection-of-information, reporting, or recordkeeping requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

Public Comments

Two comments were received on the measures contained in Framework 2. The comments were unrelated to the IRFA.

Number of Small Entities

As of January 2001, there were 2,700 distinct vessels with a Federal vessel permit for Atlantic mackerel, *Illex* squid, *Loligo* squid, and/or butterfish. Of these vessels, 2,007 were issued commercial Atlantic mackerel permits, 400 were issued *Loligo*/butterfish moratorium permits, 77 were issued *Illex* moratorium permits, 1,598 were issued incidental catch permits for *Illex*, *Loligo* and butterfish, and 522 were issued party/charter permits. There were also 352 Federal dealer permits allowing the purchase of these species. All of these entities are potentially affected by this action.

Not all vessels issued permits participate in the fishery, so 1999 landings data was used to estimate the number of vessels that actively participate in the fishery. These vessels will likely be more directly impacted by this action. Atlantic mackerel was landed by a total of 559 vessels, *Loligo* was landed by a total of 523 vessels, *Illex* was landed by a total of 86 vessels, and butterfish was landed by 522 vessels. Many vessels landed more than one of the four species, so are reflected in more than one of the categories.

Minimizing Significant Economic Impact on Small Entities

The IRFA analyzed a range of alternatives for each of the management measures considered in Framework 2. The preamble to the proposed rule described the impacts associated with the proposed change to the *Loligo* overfishing definition control rules. That proposed measure was disapproved in this final rule and is not discussed in the FRFA. The IRFA analysis demonstrates that the economic impacts of the measures being enacted by this final rule are being minimized to the extent practicable. The three measures enacted by this rule (the extension of the *Illex* moratorium for one year, the roll-over of annual specifications, and the provision to allow *Loligo* squid specifications to be set for up to 3 years) the measures are expected to have no direct impact on participants in and of themselves as theyare primarily administrative in nature. Any direct impacts, such as those associated with setting annual harvest levels, will be evaluated in the annual specifications submissions themselves.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the Atlantic mackerel, squid and butterfish fisheries. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following web site: *http://www.nmfs.gov/ro/doc/nero.html*.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 26, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries,National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended to read as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.4, paragraph (a)(5)(i), the heading is revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(5) * * *

(i) *Loligo squid/butterfish and Illex squid moratorium permits (Illex squid moratorium is applicable from July 1, 1997, until July 1, 2003).* * * *

* * * * *

3. In § 648.21, paragraphs (a)(1) and (d)(1) are revised and paragraphs (a)(4) and (a)(5) are added to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

(a) * * *

(1) Initial OY (IOY), including research quota (RQ), domestic annual harvest (DAH), and domestic annual processing (DAP) for *Illex* squid;

* * * * *

(4) Initial OY (IOY), including research quota (RQ), domestic annual harvest (DAH), and domestic annual processing (DAP) for *Loligo* squid, which, subject to annual review, may be specified for a period of up to 3 years;

(5) Inseason adjustment, upward or downward, to the specifications for *Loligo* squid as specified in paragraph (e) of this section.

* * * * *

(d) * * *

(1) The Squid, Mackerel, and Butterfish Committee will review the recommendations of the Monitoring Committee. Based on these recommendations and any public comment received thereon, the Squid, Mackerel, and Butterfish Committee must recommend to the MAFMC appropriate specifications and any measures necessary to assure that the

specifications will not be exceeded. The MAFMC will review these recommendations and, based on the recommendations and any public comment received thereon, must recommend to the Regional Administrator appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator will review the recommendations and, on or about November 1 of each year, will publish notification in the **Federal Register** proposing specifications and any measures necessary to assure that the specifications will not be exceeded and providing a 30–day public comment period. If the proposed specifications differ from those recommended by the MAFMC, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section. The MAFMC's recommendations will be available for inspection at the office of the Regional Administrator during the public comment period. If the annual specifications for squid, mackerel, and butterfish are not published in the **Federal Register** prior to the start of the fishing year, the previous year's annual specifications, excluding specifications of TALFF, will remain in effect. The previous year's specifications will be superceded as of the effective date of the final rule implementing the current year's annual specifications.

* * * * *

[FR Doc. 02–16584 Filed 6–27–02; 11:10 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 127
Tuesday, July 2, 2002

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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1724, 1726, and 1755

RIN 0572–AB67

Revision of Electric Program Standard Contract Forms

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend its regulations to revise its standard forms of contracts that borrowers are required to use when contracting for construction and procurement, that are or will be financed by loans made or guaranteed by RUS, in accordance with applicable RUS regulations. RUS proposes to update, consolidate, and streamline these standard forms of contracts. These changes are needed to improve the usefulness of the standard forms of contract and to make it easier for RUS borrowers to utilize these standard forms of contract.

DATES: Written comments must be received by RUS, or bear a postmark or equivalent, no later than October 30, 2002. Please note that comments concerning the information collection and recordkeeping requirements must be received by September 3, 2002.

ADDRESSES: Written comments should be addressed to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Avenue, SW., Washington, DC 20250–1522. Telephone: (202) 720–9550. RUS requires a signed original and three copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Fred J. Gatchell, Deputy Director, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, Stop 1569, 1400 Independence Ave., SW., Washington, DC 20250–1569. Telephone: (202) 720–1398. FAX: (202) 720–7491. E-mail: *fgatchel@rus.usda.gov.* The proposed contract forms are available on the RUS website at: *http://www.usda.gov/rus/electric/regs.htm.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled, ''Department Programs and Activities Excluded from Executive Order 12372,'' (50 FR 47034) advising that RUS loans and loan guarantees were not covered by Executive Order 12372.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule; and in accordance with sec. 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. sec. 6912(e)) administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

RUS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS electric program provides loans and loan guarantees to borrowers at interest rates and on terms that are more favorable than those generally available from the private sector. Small entities are not subjected to any requirements which are not applied equally to large entities. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), RUS invites comments on this information collection. RUS will request approval from the Office of Management and Budget (OMB).

Comments on this notice must be received by September 3, 2002.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis,

Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 4034 South Building, Washington, DC 20250–1522.

For further information contact Mr. Fred Gatchell, Deputy Director, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1569, Washington, DC 20250–1569. Telephone: (202) 720–1398. Fax: (202) 720–7491. E-mail: *fgatchel@rus.usda.gov.*°

Title: 7 CFR 1726, ''Electric System Construction Policies and Procedures—Electric.''

OMB Control Number: 0572–0107.

Type of Request: Revision of a currently approved collection.

Abstract: In order to facilitate the programmatic interest of the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.* (RE Act), and, in order to assure that loans made or guaranteed by RUS are adequately secured, RUS , as a secured lender, has established certain standards and specifications for materials, equipment, and the construction of electric systems. The use of standards forms, construction contracts, and procurement procedures helps assure RUS that appropriate standards and specifications are maintained; RUS'' loan security is not adversely affected; and the loan and loan guarantee funds are used effectively and for the intended purposes.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.5 minutes per response.

Respondents: Not-for-profit institutions, business or other for-profit.

Estimated Number of Respondents: 697.

Estimated Number of Responses per Respondent: 5.

Estimated Total Annual Burden on Respondents: 71 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078.

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Background

The standard loan agreement between RUS and its electric borrowers provides that, in accordance with applicable RUS regulations, the borrower shall use standard forms of contracts promulgated by RUS for construction, procurement, engineering services, and architectural services financed by a loan made or guaranteed by RUS. RUS also provides forms of contracts which serve as guidance to borrowers and which borrowers may use at their discretion. RUS proposes to update, consolidate, and streamline the standard forms of contracts used for construction and procurement. The forms affected are:

Primary Contract Forms

1. RUS Form 198, Rev. 2–95, Equipment Contract. This form is used for equipment purchases.
2. RUS Form 200, Rev. 2–95, Construction Contract—Generating. This form is used for generating plant construction or for the furnishing and installation of major items of equipment.
3. RUS Form 201, Rev. 2–95, Right-of-Way Clearing Contract. This form is used for distribution line right-of-way clearing work which is to be performed separate from line construction.
4. RUS Form 203, Rev. 2–95, Transmission System Right-of-Way Clearing Contract. This form is used for transmission right-of-way clearing work which is to be performed separate from line construction.
5. RUS Form 257, Rev. 2–95, Contract to Construct Buildings. This form is used to construct headquarters buildings and other structure construction.
6. RUS Form 764, Rev. 2–95, Substation and Switching Station Erection Contract. This form is used to construct substations and switching stations.
7. RUS Form 786, Rev. 2–95, Electric System Communications and Control Equipment Contract. This form is used for delivery and installation of equipment for system communications.
8. RUS Form 790, Rev. 2–95, Distribution Line Extension Construction Contract (Labor and Materials). This form is used for limited distribution construction accounted for under work order procedure.
9. RUS Form 792, Rev. 2–95, Distribution Line Extension Construction Contract (Labor Only). This form is used for limited distribution construction accounted for under work order procedure.
10. RUS Form 830, Rev. 2–95, Electric System Construction Contract (Labor and Materials). This form is used for distribution and transmission line project construction.
11. RUS Form 831, Rev. 2–95, Electric Transmission Construction Contract (Labor and Materials). This form is used for transmission line project construction.

Secondary Contract Forms

1. RUS Form 168b, Rev. 2–95, Contractor's Bond. This form is used to obtain a surety bond and is included in RUS Forms 200, 201, 203, 257, 764, 786, 790, 792, 830, and 831.
2. RUS Form 168c, Rev. 2–95, Contractor's Bond (less than $1 million). This form is used in lieu of RUS Form 168b to obtain a surety bond when contractor's surety has accepted a Small Business Administration guarantee.
3. RUS Form 180, Rev. 2–95, Construction Contract Amendment. This form is used to amend distribution line construction contracts.
4. RUS Form 181, Rev. 2–95, Certificate of Completion, Contract Construction for Buildings. This form is used for the closeout of RUS Form 257.
5. RUS Form 187, Rev. 2–95, Certificate of Completion, Contract Construction. This form is used for the closeout of and is included in RUS Forms 200, 203, 764, 786, 830, and 831.
6. RUS Form 213, Rev. 11–99, Certificate (''Buy American''). This form is used to document compliance with the ''Buy American'' requirement.
7. RUS Form 224, Rev. 2–95, Waiver and Release of Lien. This form is used for the closeout of and is included in RUS Forms 200, 203, 764, 786, 830, and 831.
8. RUS Form 231, Rev. 2–95, Certificate of Contractor. This form is used for the closeout of and is included in RUS Forms 200, 203, 764, 786, 830, and 831.
9. RUS Form 238, Rev. 2–95, Construction or Equipment Contract Amendment. This form is used to amend contracts except distribution line construction contracts.
10. RUS Form 251, Rev. 2–95, Material Receipt. This form is used to document receipt of owner furnished materials and is included in RUS Forms 764, 830, and 831.
11. RUS Form 254, Rev. 2–95, Construction Inventory. This form is used for the closeout of RUS Forms 203, 764, 830, and 831.
12. RUS Form 307, Rev. 2–95, Bid Bond. This form is used to obtain a bid bond and is included in RUS Forms 200, 203, 257, 764, 830, and 831.

13. RUS Form 792b, Rev. 2–95, Certificate of Construction and Indemnity Agreement. This form is used for the closeout of and is included in RUS Forms 201, 790, 792.

14. RUS Form 792c, Rev. 2–95, Supplemental Contract for Additional Project. This form is used to amend and is included in RUS Forms 201, 790, 792.

Guidance Forms

1. RUS Form 172, Rev. 9–58, Certificate of Inspection, Contract Construction. This form is used to notify RUS that construction is ready for inspection.

2. RUS Form 173, Rev. 3–55, Materials Contract. This form is used for distribution, transmission, and general plant material purchases.

3. RUS Form 274, Rev. 6–81, Bidder's Qualifications. This form is used to document bidder's qualifications.

4. RUS Form 282, Rev. 11–53, Subcontract. This form is used for subcontracting.

5. RUS Form 458, Rev. 3–55, Materials Contract. This form is used to obtain generation plant material and equipment purchases not requiring acceptance tests at the project site.

Proposed Changes

The proposed revisions to the listed contract forms include:

1. Eliminate unneeded forms. This includes merging the Form 181 into the Form 187, merging the Form 180 and 792c into the Form 238, merging the Form 201, 203, and 764 into the Form 830, and eliminating Forms 180, 181, 201, 203, 764 and 792c. We are also proposing to eliminate infrequently used guidance forms (Forms 172, 173, 274, 282, and 458.)

2. Make forms suitable for ''subject to'' or ''not subject to'' RUS approval. This includes merging the Form 831 into the Form 830 and eliminating Form 831.

3. Make construction contract forms suitable for ''labor only'' or ''labor and material.'' This includes merging the Form 792 into the Form 790 and eliminating Form 792.

4. Standardize tables and information pages and incorporate them as separate attachments. RUS is planning to publish the ''Construction Units'' pages as a separate bulletin. This would allow the borrower to include in its bid package only those construction unit pages that are relevant to a particular project.

5. Maximize consistency among forms. This includes standardizing common provisions and terminology, and adding a ''Notice and Instructions to Bidders'' to forms not having one. This also includes restructuring the Form 198, Equipment Contract, to a ''proposal'' and ''acceptance'' format (like the other forms), and adding certain provisions, such as insurance and protection to persons and property, applicable to work performed at the project site, such as technical assistance during installation.

6. Add a provision regarding assignment of the contract to RUS for security purposes.

7. Update and clarify certain contract provisions in the forms. This includes:

a. Clarify that the contractor (not the owner or engineer) is solely responsible for the means and methods of construction and for the supervision of the contractor's employees.

b. Delete the reference to a ''Supervisor'' appointed by RUS.

c. Delete the reference to the loan contract and owner's access to funding.

d. Delete the option for eliminating retainage after the contract is 50 percent complete.

e. Update the ''Buy American'' and ''Civil Rights'' requirements.

f. Eliminating gender specific terms such as him, his, and materialmen.

Comments

RUS published an Advanced Notice of Proposed Rulemaking in the **Federal Register** on September 16, 1998, at 63 FR 49503. Comments were received from two distribution borrowers and two power supply borrowers. RUS reviewed and considered all comments. Several of the comments are addressed herein.

Commenters requested that RUS:

- Add a liquidated damages clause to the Forms 198 and 200. This comment has been incorporated.
- Allow electronic reproduction for all or part of the forms. In this proposal, RUS is proposing to remove many of the tables contained in the forms and to make them optional attachments which may be modified (electronically or otherwise) as needed. RUS is also proposing to allow exact electronic reproduction of the contract forms. This change will also be made to 7 CFR 1724, Electric Engineering, Architectural Services and Design Policies and Procedures.
- Modify the closeout and accounting requirements for certain types of contract forms. RUS has determined that it will not make this suggested change. RUS believes that the existing requirements are a reasonable balance between ease of use and accountability.
- Include certification forms concerning lobbying and debarment. RUS has included a certification form for debarment. RUS has determined that a lobbying form is not needed in the contract forms.
- Eliminate the requirement to include owner furnished materials under the contractor's bond for certain contracts. RUS has determined that it will not make this suggested change. RUS believes that the existing bonding requirements are necessary for protection of the borrower's and the government's financial interests.
- Add or modify a number of contract provisions to define or clarify the contractor's obligations. RUS proposes to modify the contract provisions as appropriate to clarify the contractor's obligations.

One commenter suggested that by eliminating Form 274, Bidder's Qualifications, RUS is not encouraging prequalification of bidders. On the contrary, RUS requires prequalification of bidders (see 7 CFR 1726.23) for all contracts. RUS is proposing to eliminate the Form 274 because RUS believes that the substance of the bidder's qualification is more important than the form used. Borrowers and engineers may use whatever form or format they feel is appropriate for obtaining bidder's qualifications.

Other Changes

In addition to the modifications of the contract forms and the associated changes in 7 CFR 1726, RUS is making several other minor changes and corrections to 7 CFR 1726. For example, § 1726.125(b), which covers approval by RUS of plans and specifications for generating facilities, is being removed because this topic is now covered in 7 CFR 1724, Electric Engineering, Architectural Services and Design Policies and Procedures. Since some of the electric program contract forms are also used in the RUS telecommunications program, RUS is proposing to change the list of forms in 7 CFR 1755. RUS is proposing to remove the reference to year 2000 compliance since this is no longer relevant.

List of Subjects

7 CFR Part 1724

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1726

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1755

Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telecommunications.

For reasons set forth in the preamble, RUS proposes to amend 7 CFR chapter XVII as follows:

PART 1724—ELECTRIC ENGINEERING, ARCHITECTURAL SERVICES AND DESIGN POLICIES AND PROCEDURES

1. The authority citation for part 1724 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

Subpart F—RUS Contract Forms

2. Amend § 1724.71 by revising paragraph (b) to read as follows:

§ 1724.71 Borrower contractual obligations.

* * * * *

(b) *Compliance.* If a borrower is required by this part or by its loan agreement with RUS to use a listed standard form of contract, the borrower shall use the listed contract form in the format available from RUS, either paper or electronic format. Exact electronic reproduction is acceptable. The approved RUS standard forms of contract shall not be retyped, changed, modified, or altered in any manner not specifically authorized in this part or approved by RUS in writing on a case-by-case basis. Any modifications approved by RUS on a case-by-case basis must be clearly shown so as to indicate the modification difference from the standard form of contract.

* * * * *

PART 1726—ELECTRIC SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

3. The authority citation for part 1726 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

Subpart A—General

4. Revise § 1726.20 to read as follows:

§ 1726.20 Standards and specifications.

All materials, equipment, and construction must meet the minimum requirements of all applicable RUS standards and specifications. (See part 1728 of this chapter, Electric Standards and Specifications for Materials and Construction, which is applicable regardless of the source of funding.)

5. Amend § 1726.24 by revising paragraph (b)(1) to read as follows:

§ 1726.24 Standard forms of contracts for borrowers.

* * * * *

(b) * * *

(1) *Contract forms.* The borrower must use RUS Form 238, Construction or Equipment Contract Amendment, for any change or addition in any contract for construction or equipment.

* * * * *

6. Revise § 1726.25 to read as follows:

§ 1726.25 Subcontracts.

Subcontracts are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

7. Amend § 1726.27 by revising paragraphs (a) and (b) to read as follows:

§ 1726.27 Contractor's bonds.

(a) RUS Form 168b, Contractor's Bond, shall be used when a contractor's bond is required by RUS Forms 200, 257, 786, 790, or 830 unless the contractor's surety has accepted a Small Business Administration guarantee and the contract is for $1 million or less.

(b) RUS Form 168c, Contractor's Bond, shall be used when a contractor's bond is required by RUS Forms 200, 257, 786, 790, or 830 and the contractor's surety has accepted a Small Business Administration guarantee and the contract is for $1 million or less.

* * * * *

Subpart B—Distribution Facilities

8. Amend § 1726.50 by revising paragraph (a)(2) to read as follows:

§ 1726.50 Distribution line materials and equipment.

(a) * * *

(2) The borrower may, in its discretion, use RUS Form 198, Equipment Contract, or a written purchase order for purchases of equipment of less than $500,000 and for all materials.

* * * * *

9. Amend § 1726.51 by revising paragraph (a) to read as follows

§ 1726.51 Distribution line construction.

(a) *Contract forms.* The borrower must use RUS Form 790, or 830, as outlined in this paragraph (a), for distribution line construction, except for minor modifications or improvements.

(1) The borrower may use RUS Form 790, Electric System Construction Contract—Unit Price, under the following circumstances:

(i) For contracts for which the borrower supplies all materials and equipment; or

(ii) For non-site specific construction contracts accounted for under the work order procedure; or

(iii) If neither paragraph (a)(1)(i) or (a)(1)(ii) of this section are applicable, the borrower may use RUS Form 790 for contracts, up to a cumulative total of $250,000 or one percent of net utility plant (NUP), whichever is greater, per calendar year of distribution line construction, exclusive of the cost of owner furnished materials and equipment.

(2) The borrower must use RUS Form 830, Electric System Construction Contract—Lump Sum, for all other distribution line construction.

* * * * *

Subpart C—Substation and Transmission Facilities

10. Amend § 1726.76 by revising paragraph (a)(2) to read as follows:

§ 1726.76 Substation and transmission line materials and equipment.

(a) * * *

(2) The borrower may, in its discretion, use RUS Form 198, Equipment Contract, or a written purchase order for purchases of equipment of less than $500,000 and for all materials.

* * * * *

11. Amend § 1726.77 by revising paragraph (a) to read as follows:

§ 1726.77 Substation and transmission line construction.

(a) *Contract forms.* The borrower must use RUS Form 830, Electric System Construction Contract—Lump Sum, for construction of substations, except for minor modifications or improvements.

* * * * *

Subpart D—Generation Facilities

§ 1726.125 [Amended]

12. Amend § 1726.125 by removing paragraph (b) and redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

Subpart F—General Plant

13. Amend § 1726.175 by revising paragraph (a) to read as follows:

§ 1726.175 General plant materials.

* * * * *

(a) *Contract forms.* The borrower may, in its discretion, use RUS Form 198, Equipment Contract, or a written purchase order.

* * * * *

Subpart H—Modifications to RUS Standard Contract Forms

14. Amend § 1726.250 by revising it to read as follows:

§ 1726.250 General.

RUS provides standard forms of contract for the procurement of

materials, equipment, and construction and for contract amendments and various related forms for use by RUS borrowers. See § 1726.304 for a listing of these forms and how to obtain them. The standard forms of contract shall be used by the borrowers in accordance with the provisions of this part. RUS will give prior approval to certain modifications to these forms without changing the applicable requirements for RUS approval. Such approved modifications are set forth in this subpart. These are the only modifications given prior RUS approval.

15. Amend § 1726.252 by revising paragraph (a) and removing paragraph (d) to read as follows:

§ 1726.252 Prior approved contract modification related to liability for special and consequential damages.

* * * * *

(a) Insert new paragraphs in the ''Notice and Instructions to Bidders'' as follows:

''Proposals are invited on the basis of alternative Liability Clause Numbers 1 and 2. The Owner will determine on which Liability Clause basis the award will be made. Any other liability clauses in the proposal or any other modifications will be considered not responsive and unacceptable. These Liability Clauses are defined as follows:

Liability Clause Number 1. This will include unmodified all of the standard terms and conditions of the form of contract furnished by the Owner and attached hereto.

Liability Clause Number 2. This will include the following paragraph, in addition to all of the standard terms and conditions, otherwise unmodified, of the form of contract furnished by the Owner and attached hereto:

'Except for Bidder's willful delay or refusal to perform the contract in accordance with its terms, the Bidder's liability to the Owner for special or consequential damages on account of breach of this contract shall not exceed in total an amount equal to____ percent [the borrower will insert an appropriate percentage between 0 and 100 percent, inclusive] of the contract price.' ''

* * * * *

§ 1726.254 [Removed and Reserved]

16. Remove and reserve § 1726.254.

17. Amend § 1726.255 by revising paragraph (c) and removing paragraphs (d) and (e) to read as follows:

§ 1726.255 Prior approved contract modification related to indemnification.

* * * * *

(c) If the alternative indemnification provision in paragraph (a) or (b) of this section is chosen by the borrower, the language of paragraph (a) or (b) of this section would be inserted in lieu of subsection (i) of the section indicated in the RUS standard construction contract forms as follows:

(1) RUS Form 198, Equipment Contract, article IV, section 1(d).

(2) RUS Form 200, Construction Contract '' Generating, article IV, section 1(d).

(3) RUS Form 257, Contract to Construct Buildings, article IV, section 1(d).

(4) RUS Form 786, Electric System Communications and Control Equipment Contract, article IV, section 1(d).

(5) RUS Form 790, Electric System Construction Contract—Unit Price, article IV, section 1(g).

(6) RUS Form 830, Electric System Construction Contract—Lump Sum, article IV, section 1(g).

Subpart I—RUS Standard Forms

18. Amend § 1726.301 by revising paragraph (b) to read as follows:

§ 1726.301 Borrower contractual obligations.

* * * * *

(b) *Compliance.* If a borrower is required by this part or by its loan agreement with RUS to use a listed standard form of contract, the borrower shall use the listed contract form in the format available from RUS, either paper or electronic format. Exact electronic reproduction is acceptable. The approved RUS standard forms of contract shall not be retyped, changed, modified, or altered in any manner not specifically authorized in this part or approved by RUS in writing on a case-by-case basis. Any modifications approved by RUS on a case-by-case basis must be clearly shown so as to indicate the modification difference from the standard form of contract.

* * * * *

19. Amend § 1726.302 by revising paragraph (b) to read as follows:

§ 1726.302 Notice and publication of listed contract forms.

* * * * *

(b) *Availability.* Listed standard forms of contract are available from: Rural Utilities Service, Program Development and Regulatory Analysis, U.S. Department of Agriculture, Stop 1522, 1400 Independence Avenue, SW., Washington DC 20250–1522, telephone number (202) 720–8674. The listed standard forms of contract are also available on the RUS website at: *http://www.usda.gov/rus/electric/forms.htm.* The listed standard forms of contract can be found in § 1724.304(c), List of Required Contract Forms.

20. Amend § 1726.304 by revising paragraph (c) and (d) to read as follows:

§ 1726.304 List of electric program standard contract forms.

* * * * *

(c) List of required contract forms.

(1) RUS Form 168b, Rev. 11–01, Contractor's Bond. This form is used to obtain a surety bond and is used with RUS Forms 200, 257, 786, 790, and 830.

(2) RUS Form 168c, Rev. 11–01, Contractor's Bond (less than $1 million). This form is used in lieu of RUS Form 168b to obtain a surety bond when contractor's surety has accepted a Small Business Administration guarantee.

(3) RUS Form 187, Rev. 11–01, Certificate of Completion, Contract Construction. This form is used for the closeout of RUS Forms 200, 257, 786, and 830.

(4) RUS Form 198, Rev. 11–01, Equipment Contract. This form is used for equipment purchases.

(5) RUS Form 200, Rev. 11–01, Construction Contract—Generating. This form is used for generating plant construction or for the furnishing and installation of major items of equipment.

(6) RUS Form 213, Rev. 11–01, Certificate (''Buy American''). This form is used to document compliance with the ''Buy American'' requirement.

(7) RUS Form 224, Rev. 11–01, Waiver and Release of Lien. This form is used for the closeout of RUS Forms 198, 200, 257, 786, 790, and 830.

(8) RUS Form 231, Rev. 11–01, Certificate of Contractor. This form is used for the closeout of RUS Forms 198, 200, 257, 786, 790, and 830.

(9) RUS Form 238, Rev. 11–01, Construction or Equipment Contract Amendment. This form is used for amendments.

(10) RUS Form 254, Rev. 11–01, Construction Inventory. This form is used for the closeout of RUS Form 830. Minor electronic modifications are acceptable for RUS Form 254.

(11) RUS Form 257, Rev. 11–01, Contract to Construct Buildings. This form is used to construct headquarters buildings and other structure construction.

(12) RUS Form 307, Rev. 11–01, Bid Bond. This form is used to obtain a bid bond.

(13) RUS Form 786, Rev. 11–01, Electric System Communications and Control Equipment Contract (including installation). This form is used for delivery and installation of equipment for system communications.

(14) RUS Form 790, Rev. 11–01, Electric System Construction Contract—Unit Price. This form is used for limited distribution construction accounted for under work order procedure.

(15) RUS Form 792b, Rev. 11–01, Certificate of Construction and

Indemnity Agreement. This form is used for the closeout of RUS Form 790.

(16) RUS Form 830, Rev. 11–01, Electric System Construction Contract—Lump Sum. This form is used for distribution and transmission line project construction.

(d) List of guidance contract forms. RUS does not currently publish any guidance forms for electric borrowers.

Subpart J—Contract Closeout

§ 1726.401 [Amended]

21. Amend § 1726.401 by removing the introductory text.

22. Amend § 1726.403 by revising the introductory text and paragraph (c) to read as follows:

§ 1726.403 Project construction contract closeout.

This section is applicable to contracts executed on RUS Forms 200, 257, 786, and 830.

* * * * *

(c) *Closeout documents.* (1) Upon satisfactory completion of construction (including all changes and corrections by the contractor), the borrower (acting through its architect or engineer, if applicable) will obtain executed copies of the following documents:

(i) RUS Form 187, Certificate of Completion, Contract Construction.

(ii) RUS Form 213, ''Buy American'' certificate.

(iii) RUS Form 224, Waiver and Release of Lien, from each manufacturer, supplier, and contractor which has furnished material or services or both in connection with the construction.

(iv) RUS Form 231, Certificate of Contractor.

(v) RUS Form 254, Construction Inventory, including all supporting documents, such as RUS Forms 254a-c, construction change orders, and amendments for contracts executed on RUS Form 830.

(vi) Certification by the project architect or engineer in accordance with § 1726.403(a), if applicable.

(vii) Final design documents, as outlined in part 1724 of this chapter.

(2) *Distribution of closeout documents.* (i) The borrower will retain one copy of each of the documents identified in paragraph (c)(1) of this section in accordance with applicable RUS requirements regarding retention of records.

(ii) For contracts subject to RUS approval, the borrower will submit the following closeout documents for RUS approval (through the GFR except for generation projects):

(A) RUS Form 187, Certificate of Completion, Contract Construction.

(B) RUS Form 231, Certificate of Contractor.

(C) RUS Form 254, Construction Inventory, including all supporting documents, such as RUS Forms 254a–c and construction change orders, for contracts executed on RUS Form 830.

(iii) For contracts not subject to RUS approval, the closeout is not subject to RUS approval. The borrower will send one copy of RUS Form 187 to RUS for information prior to or in conjunction with the applicable RUS Form 219, Inventory of Work Orders. The remaining closeout documents need not be sent to RUS unless specifically requested by RUS.

* * * * *

23. Amend § 1726.404 by revising the introductory text to read as follows:

§ 1726.404 Non-site specific construction contract closeout.

This section is applicable to contracts executed on RUS Form 790.

* * * * *

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT, AND CONSTRUCTION

24. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

25. Amend § 1755.30 by revising paragraphs (c)(4) through (c)(8), (c)(12) through (c)(14), (c)(17), and (c)(24) to read as follows:

§ 1755.30 List of telecommunications standard contract forms.

* * * * *

(c) * * *

(4) RUS Form 168b, issued 11–01, Contractor's Bond.

(5) RUS Form 168c, issued 11–01, Contractor's Bond.

(6) RUS Form 181a, issued 3–66, Certificate of Completion (Force Account Construction).

(7) RUS Form 187, issued 11–01, Certificate of Completion, Contract Construction.

(8) RUS Form 213, issued 11–01, Certificate (Buy American).

* * * * *

(12) RUS Form 224, issued 11–01, Waiver and Release of Lien.

(13) RUS Form 231, issued 11–01, Certificate of Contractor.

(14) RUS Form 238, issued 11–01, Construction or Equipment Contract Amendment.

* * * * *

(17) RUS Form 257, issued 11–01, Contract to Construct Buildings.

* * * * *

(24) RUS Form 307, issued 11–01, Bid Bond.

* * * * *

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 02–16278 Filed 7–1–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–16–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Model TB 21 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain SOCATA—Groupe AEROSPATIALE (Socata) Model TB 21 airplanes. This proposed AD would require you to modify the exhaust system. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this proposed AD are intended to prevent high levels of carbon monoxide from entering the cockpit during certain flight configurations, which could result in the pilot becoming incapacitated or impairing his/her judgement. Such a condition could lead to the pilot not being able to make critical flight safety decisions and result in loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before August 1, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–16–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2002–CE–16–AD'' in the subject line. If you send comments electronically as attached electronic

files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone: 011 33 5 62 41 73 00; facsimile: 011 33 5 62 41 76 54; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; facsimile: (954) 964–4141. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2002–CE–16–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified FAA that an unsafe condition may exist on certain Socata Model TB 21 airplanes. The DGAC reports three occurrences in which carbon monoxide levels in the cockpit have been found to be above specified tolerance levels during certain flight configurations. Carbon monoxide is entering the cockpit from the rear part of the fuselage.

This condition resulted from a design problem and all three occurrences were discovered prior to delivery of any of the affected airplanes. The modification required in this proposed AD is being applied at the factory for all other Model TB 21 airplanes.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not corrected, could result in high levels of carbon monoxide entering the cockpit during certain flight configurations. High levels of carbon monoxide in the cockpit could result in the pilot becoming incapacitated or impairing his/her judgement. Such a condition could lead to the pilot not being able to make critical flight safety decisions and result in loss of control of the airplane.

Is There Service Information That Applies to This Subject?

Socata has issued TB Aircraft Mandatory Service Bulletin SB 10–126 78, dated November 2001.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for modifying the exhaust pipe.

What Action Did the DGAC Take?

The DGAC classified this service bulletin as mandatory and issued French AD 2001–610(A), dated December 12, 2001, in order to ensure the continued airworthiness of these airplanes in France.

Was This in Accordance With the Bilateral Airworthiness Agreement?

This airplane model is manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the DGAC has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Socata Model TB 21 airplanes of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 13 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × $60 = $180.	$260	$440	$440 × 13 = $5,720.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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 airworthiness directive (AD) to read as follows:

SOCATA—Groupe AEROSPATIALE: Docket No. 2002–CE–16–AD

(a) *What airplanes are affected by this AD?* This AD affects Model TB 21 airplanes, serial numbers 500 through 2080, 2091, and 2101, that are certificated in any category.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent high levels of carbon monoxide from entering the cockpit during certain flight configurations, which could result in the pilot becoming incapacitated or impairing his/her judgement. Such a condition could lead to the pilot not being able to make critical flight safety decisions and result in loss of control of the airplane.

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

Actions	Compliance	Procedures
(1) Install a part number (P/N) TB 21 9600200000 exhaust extension to the exhaust pipe. This installation is Modification No. MOD.178.	Within the next 50 hours time-in-service (TIS) after the effective date of this AD.	In accordance with Socata TB Aircraft Mandatory Service Bulletin SB 10–126 78, dated November 2001, and the applicable maintenance manual.
(2) Do not install, on any affected airplane, any of the following components without incorporating Modification No. MOD.178 as required by paragraph (d)(1) of this AD: (i) Exhaust installation assemblies P/N TB21 56001000, P/N TB21 56001005, or P/N TB21 5600100501; or (ii) Turbo exhaust tubes P/N TB21 56001001, P/N TB21 56001006, or P/N TB21 5600100601.	As of the effective date of this AD	Not applicable.

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

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

(2) The Standards Office 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 Standards Office Manager.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD. No passengers are allowed for this flight.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930–F65009 Tarbes Cedex, France; telephone: 011 33 5 62 41 73 00; facsimile: 011 33 5 62 41 76 54; or the Product Support Manager, SOCATA Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; facsimile: (954) 964–4141. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in French AD 2001–610(A), dated December 12, 2001.

Issued in Kansas City, Missouri, on June 25, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–16532 Filed 7–1–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–04–AD]

RIN 2120–AA64

Airworthiness Directives; Avions Mudry et Cie Model CAP 10 B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 98–12–10 and AD 99–21–23, which currently apply to Avions Mudry et Cie (Avions Mudry) Model CAP 10 B airplanes. AD 98–12–10 requires installing an inspection opening in the wing, repetitively inspecting the upper and lower wing spars for structural cracking, and, if any cracks are found, repairing the cracks in accordance with a repair method. AD 99–21–23 requires restricting the entry speed for performing flick maneuvers to 97 knots, inserting a copy of the AD into the Limitations Section of the CAP 10B flight manual, and fabricating and installing a placard (in the cockpit of the airplane within the pilot's clear view) that indicates this limitation. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. This proposed AD would retain the wing modification and repair requirements from AD 98–12–10. This proposed AD would also incorporate new repetitive inspection procedures, further reduce the flick maneuver speed specified in AD 99–21–23, and temporarily reduce the load factor limits prior to the initial inspection. The actions specified by this proposed AD are intended to provide the flight information necessary to the pilot so that excessive speed is not used during aerobatic maneuvers and to detect and correct structural cracks in the wing spar, which could result in the wing separating from the airplane. Such failure could lead to loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this rule on or before August 1, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–04–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain ''Docket No. 2002-CE–04-AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from APEX Aircraft, 1 Route de Troyes, F21121 Darois, France; telephone: +33 (380) 356 510; facsimile: +33 (380) 356 515. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2002–CE–04-AD.'' We will date stamp and mail the postcard back to you.

Discussion

Has FAA Taken Any Action to This Point?

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified FAA that it was receiving reports of cracks on the upper and lower surfaces of the wing spar. The DGAC reported that the cracking was occurring as a result of exceeding the load limit determined for the airplane, executing snap roll maneuvers outside the envelope for which the airplane is certificated, and experiencing repetitive hard landings. This condition caused us to issue AD 98–12–10, Amendment 39–10566 (63 FR 31104, June 8, 1988). AD 98–12–10 requires the following on Model CAP 10 B airplanes, all serial numbers through 263:

—Installing an inspection opening in the wing;

—Repetitively inspecting the upper and lower wing spars for structural cracking; and

—If any cracks are found, repairing the cracks.

Accomplishment of these actions is required in accordance with Avions Mudry Service Bulletin No. 15, CAP10B–57–003, Revision 1, dated April 3, 1996, and Avions Mudry Service Bulletin CAP10B No. 16 (ATA 57–004), dated April 27, 1992.

The DGAC also reported that there was no airspeed limitation for performing flick maneuvers during aerobatic flight. The speeds listed in sections 4 and 7 of the CAP 10B flight manual are only recommendations instead of required speeds.

Without required entry speeds for flick maneuvers when performing aerobatic flight, the pilot could use excessive speed and cause the wing to separate from the airplane. This situation caused us to issue AD 99–21–23, Amendment 39–11368 (64 FR 55416, October 13, 1999). AD 99–21–23 requires the following on Model CAP 10 B airplanes, all serial numbers:

—Restricting the entry speed for performing flick maneuvers to 97 knots;

—Inserting a copy of the AD into the Limitations Section of the CAP 10B flight manual; and

—Fabricating and installing a placard (in the cockpit of the airplane within the pilot's clear view).

What Has Happened Since AD 98–12–10 and AD 99–21–23 To Initiate This Action?

The DGAC notified the FAA that an unsafe condition may still exist on all Avions Mudry Model CAP 10 B airplanes, which creates the need to change AD 98–12–10 and AD 99–21–23. The DGAC reports that additional fractures in the wing spar are being found that were not detected using the inspection procedures specified in AD 98–12–10.

Is There Service Information That Applies to This Subject?

APEX Aircraft has issued the following service information:

—CAP10B—Upper spar cap inspection Document No. 1000913GB, Revision No. 00, dated April 2, 2002;

—CAP10B—Landing gear attachment blocks inspection Document No. 1000914GB, Revision No. 00, dated April 2, 2002; and

—CAP10B—Main spar undersurface inspection Document No. 1000915GB, Revision No. 00, dated April 2, 2002.

What Are the Provisions of These Service Documents?

These service documents include procedures for inspecting specified sections of the wing spar for cracks.

What Action Did the DGAC Take?

The DGAC classified these service documents as mandatory and issued French AD Number 2001–616(A) R1, dated May 29, 2002, in order to ensure the continued airworthiness of these airplanes in France.

Was This in Accordance With the Bilateral Airworthiness Agreement?

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the DGAC has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of the Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on all Avions Mudry Model CAP 10 B airplanes of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would the Proposed AD Require? This proposed AD Would Supersede AD 98–12–10 and AD 99–21–23 with a new AD that would require the following:

—Installing an inspecting opening in each wing;

—Temporarily reducing the load factor limits until completion of the initial inspection of the upper and lower surfaces of the wing spar and landing gear attachment blocks and are found free of cracks;

—Repetitively inspecting the upper and lower surfaces of the wing spar and the landing gear attachment blocks for cracks;

—Reducing the flick maneuver speed;

—Inserting a copy of the AD into the Limitation Section of the CAP 10B flight manual; and

—Fabricating and installing a placard that indicates the flick maneuver speed in the cockpit in the pilot's clear view. The placard will incorporate the following language:

''The Never-Exceed Airspeed for Positive or Negative Flick Maneuvers Is 160 KM/H (86 KTS)''

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 36 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed installation of the inspection opening:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
18 work hours × $60 per hour = $1,080	No parts required to make the inspection	$1,080	$1,080 × 36 = $38,880

We estimate the following costs to accomplish the proposed inspection(s):

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
5 workhours × $60 per hour = $300	No parts required to perform the inspection	$300	$300 × 36 = $10,800

The FAA has no method of determining the number of repetitive inspections each owner/operator would incur over the life of each of the affected airplanes so the cost impact is based on the initial inspection.

The FAA has no method of determining the number of repairs each owner/operator would incur over the life of each of the affected airplanes based on the results of the proposed inspections. We have no way of determining the number of airplanes that may need such repair. The extent of damage may vary on each airplane.

Accomplishing the proposed flight manual and placard requirements of this proposed AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this proposed AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of this proposed action is the time it would take each owner/operator of the affected airplanes to insert the information into the flight manual and fabricate and install the placard.

What Is the Difference Between the Cost Impact of This Proposed AD and the Cost Impacts of AD 98–12–10 and AD 99–21–23?

The only difference between this proposed AD and AD 98–12–10 and AD 99–21–23 is the change of inspection procedures. The FAA has determined that the costs of these proposed changes are minimal and does not increase the cost impact over that already required by the previous ADs.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 98–12–10, Amendment 39–10566 (63 FR 31104, June 8, 1988), and AD 99–21–23, Amendment 39–11368 (64 FR 55416, October 13, 1999), and by adding a new AD to read as follows:

Avions Mudry et Cie: Docket No. 2002–CE–04–AD; Supersedes AD 98–12–10, Amendment 39–10566, and AD 99–21–23, Amendment 39–11368.

(a) *What airplanes are affected by this AD?* This AD affects Model CAP 10B airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to provide the flight information necessary to the pilot so that excessive speed is not used during aerobatic maneuvers and to detect and correct structural cracks in the wing spar, which could result in the wing separating from the airplane. Such failure could lead to loss of control of the airplane.

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

Actions	Compliance	Procedures
(1) For CAP 10 B airplanes, all serial numbers through 263, install a permanent inspection opening in the No. 1 wing rib. Inspection openings are incorporated during production for airplanes having a serial number of 264 or higher.	Within the next 100 hours time-in-service (TIS) after July 23, 1993 (the effective date of AD 93–10–11, which was superseded by AD 98–12–10), unless already accomplished.	In accordance with Avions Mudry Service Bulletin CAP10B No. 16 (ATA 57–004), dated April 27, 1992.
(2) For all airplanes, accomplish the following: (i) Restrict the load factors limitation to +5 & −3 G's. (ii) Restrict the entry speed for performing flick maneuvers to 86 knots through the incorporation of the following information into the CAP 10B flight manual: ''The never-exceed airspeed for positive or negative flick maneuvers is 160 km/h (86 knots).''.. (iii) Fabricate a placard that incorporates the following words (using at least ⅛-inch letters) and install this placard on the instrument panel within the pilots clear view: THE NEVER EXCEED AIRSPEED FOR POSITIVE OR NEGATIVE FLICK MANEUVERS IS 160 KM/H (86 KNOTS)''.	Within the next 25 hours TIS after the effective date of this AD.	Accomplish the limitations of paragraphs (d)(2)(i) and (d)(2)(ii) of this AD by inserting a copy of the AD into the Limitations Section of the CAP 10B flight manual. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regualtions (14 CFR 43.7) may accomplish this flight manual insertion and the placard requirements of paragraph (d)(2)(iii) of this AD. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(3) Inspect the upper wing spar cap, the main wing spar undersurface, and the landing gear attachment blocks for cracks.	Within the next 50 hours TIS after the effective date of this AD and thereafter at repetitive intervals not-to-exceed 50 hours TIS.	In accordance with APEX Aircraft CAP10B—Upper spar cap inspection Document No. 1000913GB, Revision No. 00, dated April 2, 2002; APEX Aircraft CAP10B—Landing gear attachment blocks inspection Document No. 1000914GB, Revision No. 00, dated April 2, 2002; and APEX Aircraft CAP10B—Main spar undersurface inspection Document No. 1000915GB, Revision No. 00, dated April 2, 2002.

Actions	Compliance	Procedures
(4) If cracks are found during any inspection required in paragraph (d)(3) of this AD, accomplish the following:. (i) Obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (f) of this AD;. (ii) Incorporate this repair scheme; and ..... (iii) The repair scheme will indicate whether or not you may raise the load factor limits.	Obtain and incorporate the repair scheme prior to further flight after the inspection in which the cracks are found. Continue to inspect as specified in paragraph (d)(3) of this AD.	In accordance with the repair scheme obtained from APEX Aircraft, Direction Technique, 1b Route de Troyes, F21121, Darois, France. Obtain this repair scheme through the FAA at the address specified in paragraph (f) of this AD.
(5) If no cracks are found during the initial inspection required in paragraph (d)(3) of this AD, you may raise load factor limits back to +6 & −4.5 G's.	Prior to further flight after the initial inspection required in paragraph (d)(3) of this AD in which no cracks were found.	Not applicable.

Note 1: The service information specified in paragraph (d)(3) of this AD is available on CD-ROM from the manufacturer. You may contact them at the address and phone number in paragraph (h) of this AD.

(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 Standards Office 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 Standards Office Manager.

(2) Alternative methods of compliance approved in accordance with AD 98–12–10 and AD 99–21–23, which are 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 S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; facsimile: (816) 329–4090.

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

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from APEX AIRCRAFT, 1 Route de Troyes, 21121 Darois, France; telephone: +33 (380) 356 510; facsimile: +33 (380) 356 515. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 98–12–10, Amendment 39–10566 and AD 99–21–23, Amendment 39–11368.

Note 3: The subject of this AD is addressed in French AD Number 2001–616(A) R1, dated May 29, 2002.

Issued in Kansas City, Missouri, on June 25, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–16533 Filed 7–1–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic Atmospheric Administration

15 CFR Part 930

[Docket No. 020422093–2093]

RIN 0648–AP98

Procedural Changes to the Federal Consistency Process

AGENCY: Office of Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: NOAA is evaluating whether limited and specific procedural changes or guidance to the existing Federal consistency regulations are needed to improve efficiencies in the Federal consistency procedures and Secretarial appeals process, particularly for energy development on the Outer Continental Shelf (OCS). This advance notice of proposed rulemaking requests public comment on the need for limited and specific changes or guidance on what such changes or guidance should be.

DATES: Comments on this advance notice of proposed rulemaking must be received by September 3, 2002.

ADDRESSES: Address all comments regarding this advance notice of proposed rulemaking to David Kaiser, Federal Consistency Coordinator, Coastal Programs Division, Office of Ocean and Coastal Resource Management, NOAA, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910. Attention: Federal Consistency Energy Review Comments.

FOR FURTHER INFORMATION CONTACT: David Kaiser, Federal Consistency Coordinator, Office of Ocean and Coastal Resource Management, NOAA, 301–713–3155 ext. 144.

SUPPLEMENTARY INFORMATION:

I. Background

For nearly 30 years the Coastal Zone Management Act (CZMA) has met the needs of coastal States and Territories (referred to as States), Federal agencies, industry and the public to balance the protection of coastal resources with coastal development, including energy development. The CZMA requires States to adequately consider the national interest in the siting of energy facilities in the coastal zone through the development and implementation of their federally approved State Coastal Management Programs (CMPs). States have collaborated with industry on a variety of energy facilities, including oil and gas pipelines, nuclear power plants, hydroelectric facilities, and alternative energy development. States have reviewed and approved thousands of offshore oil and gas facilities and related onshore support facilities. On December 8, 2000, NOAA issued a comprehensive revision to the Federal Consistency regulations, which reflected substantial effort and participation by Federal agencies, States, industry, and the

public, over a five year period. Given this recent broad-based review, NOAA is not re-evaluating the 2000 final rule, rather it is considering whether limited modifications are needed to address the specific concerns discussed in this advance notice.

II. History of the CZMA and NOAA's Federal Consistency Regulations.

The CZMA was enacted in 1972 to encourage States to be proactive in managing natural resources for their benefit and the benefit of the Nation. The CZMA recognizes a national interest in the resources of the coastal zone and in the balancing of competing uses of those resources. The CZMA is a voluntary program for States. If a State elects to participate it must develop and implement a CMP pursuant to federal guidelines. State CMPs are comprehensive management plans that describe the uses subject to the management program, the authorities and enforceable policies of the management program, the boundaries of the State's coastal zone, the organization of the management program, and other State coastal management concerns. The State CMPs are developed with the participation of Federal agencies, industry, other interested groups and the public. Once the Secretary of Commerce approves a State's CMP, then the CZMA Federal Consistency provision applies. Federal Consistency is a limited waiver of federal supremacy and authority. Federal agency activities that have coastal effects must be consistent to the maximum extent practicable with the federally approved enforceable policies of the State's CMP. In addition, non-Federal applicants for federal approvals and funding must be fully consistent with the enforceable policies of State CMPs. The Federal Consistency provision is a cornerstone of the CZMA program and a primary incentive for States to participate. While States have negotiated changes to thousands of federal actions over the years, States have concurred with approximately 93% of all federal actions reviewed. Thirty-five States, Great Lake States and United States Trust Territories and Commonwealths (collectively referred to as ''coastal States'' or ''States'') are eligible to participate. Thirty-three of the eligible coastal States have federally approved CMPs. Indiana is developing a program and Illinois is not currently participating.

NOAA's Federal Consistency regulations, first promulgated in 1979, provide reliable procedures and predictability to the implementation of Federal Consistency. The regulations operated well for the Federal and State agencies and permit applicants and provided a reasonable interpretation of the CZMA's broad requirements. When Congress amended the CZMA in 1990, it specifically endorsed NOAA's consistency regulations and interpretation of the CZMA. However, changes to the CZMA in 1990 and 1996 made clear that revisions to the regulations were needed.

In late 1996, OCRM began a process to revise the regulations by informally consulting and collaborating with Federal agencies, States, industry, Congress, and other interested parties. NOAA submitted two sets of draft rules to States, Federal agencies and others for comments and produced written responses to comments to each draft, before proposing a rule in April 2000. NOAA evaluated comments on the proposed rule and published a final rule on December 8, 2000, which became effective on January 8, 2001.

Most of the changes in the revised regulations were dictated by changes in the CZMA or by specific statements in the accompanying legislative history. For instance, the new regulations added language concerning the scope of the Federal Consistency ''effects test.'' Prior to the 1990 amendments, Federal agency activities ''directly affecting'' the coastal zone were subject to Federal Consistency. The amendments broadened this language by dropping the word ''directly'' to include projects with ''effects'' on any land or water use or natural resource of the coastal zone. Other changes in the 2000 final rule improved and clarified procedural efficiencies and processes and made changes based on long-standing interpretive practice by NOAA.

III. The Role of the CZMA in OCS Energy Development

In February 2001, the Administration established the National Energy Policy Development Group to bring together business, government, local communities and citizens to promote a dependable, affordable, and environmentally sound National Energy Policy. Vice-President Cheney submitted the Group's Report (Energy Report) to President Bush on May 16, 2001.

The Energy Report contains numerous recommendations for obtaining a long-term, comprehensive energy strategy to advance new, environmentally beneficial technologies to increase energy supplies and encourage less polluting, more efficient energy use. The CZMA and the Outer Continental Shelf Lands Act (OCSLA), a statute administered by the Minerals Management Service (MMS) within the Department of the Interior (DOI), are specifically mentioned. Energy Report at 5–7.

This advance notice is part of NOAA's evaluation of the Energy Report and NOAA's ongoing responsibility to address the national interest in effective coastal management. When States develop and amend their CMPs, and when making coastal management decisions, the CZMA requires State CMPs to adequately consider the national interest in the CZMA objectives and to give priority consideration to coastal dependant uses and processes for facilities related to national defense, energy, fisheries, recreation, ports and transportation.

The CZMA and the OCSLA interact both by explicit cross-reference in the statutes and through their regulatory implementation. Both statutes mandate State review of OCS oil and gas Exploration Plans (EPs) and Development and Production Plans (DPPs). Both statutes and their corresponding regulations provide a compatible and interrelated process for States to review EPs and DPPs. The Energy Report identifies potential lack of effectiveness in the CZMA–OCSLA interaction resulting from a lack of clearly defined requirements and information needs from Federal and State entities, as well as uncertain deadlines for completing the procedures of both statutes. Energy Report at 5–7.

The CZMA requires that when a lessee seeks MMS approval for its EP or DPP, the lessee must certify to the affected State(s) that activities covered in the plans are fully consistent with the enforceable policies of the State's CMP. If the State objects to the consistency certification, then MMS is prohibited from approving the activities described in detail in the EP or DPP. The lessee may appeal to the Secretary of Commerce to override the State objection and allow MMS to issue the approval. When deciding an appeal, the Secretary balances the national interest of the energy development against adverse effects on coastal resources and coastal uses. When MMS offers an OCS lease sale, it is considered a federal agency activity. If MMS determines that the lease sale will have reasonably foreseeable coastal effects, then MMS must provide a CZMA consistency determination to the affected State(s) stating whether the lease sale is ''consistent to the maximum extent practicable'' with the enforceable policies of the State's CMP. If the State objects, MMS may still proceed with the lease sale if MMS can show that it is

fully consistent or consistent to the maximum extent practicable.

There are several safeguards within the CZMA and NOAA's regulations to ensure that Federal requirements are met and that the national interest in the CZMA objectives is furthered. These safeguards are discussed below using OCS oil and gas activities to illustrate.

The ''Effects Test.'' As discussed above, Federal Consistency review is triggered only when a federal action has reasonably foreseeable coastal effects, referred to as the ''effects test.'' Consistency does NOT apply to everything a Federal agency, or a non-federal applicant for federal approvals, does in or near a coastal State.

For OCS oil and gas lease sales, MMS determines which States will be affected and provides only those States with a Consistency Determination. For example, in the Gulf of Mexico, MMS has established the Eastern Planning, Central Planning and Western Planning Areas. MMS usually finds that lease sales in the Central and Western Planning Areas will not have reasonably foreseeable effects on Florida coastal uses or resources (within the Eastern Planning Area) and does not provide Florida with a Consistency Determination.

For OCS EPs and DPPs the CZMA mandates, as a general matter, State consistency review. However, as with Federal agency activities, a coastal State's ability to review the Plans stops where coastal effects are not reasonably foreseeable. For example, in the Gulf of Mexico, Florida reviews OCS Plans in the Eastern Planning Area, and only reviews an OCS Plan in the Central Planning Area if effects to Florida's coastal uses or resources are reasonably foreseeable. Usually, an OCS oil and gas activity in the Central Planning Area will be beyond the point where the activity will affect Florida. The State of Texas (in the Western Planning Area) does not usually review an OCS oil and gas activity proposed for the Eastern Planning Area because coastal effects in Texas are not reasonably foreseeable.

Under the CZMA and NOAA's regulations, if Florida wanted to review OCS plans in the Central Planning Area, or if Texas wanted to review OCS plans in the Eastern Planning Area, they could, if NOAA approved, amend their CMP to describe an area within the particular Planning Area as a geographic location where the plans are subject to State review. Or, the States could request approval from NOAA on a case by case basis. In both cases, NOAA would approve only if the States could show that effects on their coastal uses or resources are reasonably foreseeable as a result of an activity in the described geographic location.

NOAA Approval of State CMPs. NOAA, with substantial input from Federal agencies, local governments, industry, non-governmental organizations and the public, must approve State CMPs and their enforceable policies, including later changes to a State's CMP. For example, NOAA has denied State requests to include policies in its federally approved CMP that would prohibit all oil and gas development or facilities off its coast. NOAA has found that such policies conflict with the CZMA requirement that States consider the national interest in energy development and balance resource protection with coastal uses.

Federal Agency Activities—''Consistent to the Maximum Extent Practicable and Fully Consistent.'' For Federal agency activities under CZMA section 307(c)(1), such as the OCS Lease Sales, the Federal agency may proceed with the activity over a State's objection if the Federal agency is Consistent to the Maximum Extent Practicable with the enforceable policies of the State's CMP. This means that even if a State objects, MMS may proceed with an OCS lease sale if MMS provides to the State the reasons why the OCSLA requires MMS to proceed, despite inconsistency with the State. MMS could also proceed if it determined it was fully consistent. Under NOAA's regulations, the consistent to the maximum extent practicable standard also allows Federal agencies to deviate from State enforceable policies and CZMA procedures due to unforeseen circumstances and emergencies.

Appeal to the Secretary of Commerce. For non-federal applicants for federal approvals, such as OCS lessees, the applicant may appeal a State's objection to the Secretary of Commerce pursuant to CZMA sections 307(c)(3) and (d). The State's objection is overridden if the Secretary finds that the activity is consistent with the objectives or purposes of the CZMA or is necessary in the interest of national security. If the Secretary overrides the State's objection, then the Federal agency may issue its approval.

Since 1978, MMS has approved over 10,600 EPs and over 6,000 DPPs. States have concurred with nearly all of these plans. In the history of the CZMA, there have been only 15 instances where the oil and gas industry appealed a State's Federal Consistency objection to the Secretary of Commerce. Of those 15 cases (2 DPPs and 13 EPs), there were 7 decisions to override the State's objection, 7 decisions not to override the State, and 1 decision pending. The record shows that energy development continues to occur, while reasonable State review ensures that the CZMA objectives have been met.

Since 1990, when the CZMA Federal Consistency provision was amended, there have been several OCS oil and gas lease sales by MMS and only one State objection. However, in that one case OCRM determined that the State's objection was not based on enforceable policies. Thus, all lease sales offered by MMS since 1990 have proceeded under the CZMA. In addition, since 1990, there have been six State objections to Exploration Plans. In three of those cases, the Secretary did not override the State's objection. In two of the cases the Secretary did override the State, and one case is still pending before the Secretary.

Mediation. While mediation is not technically a safeguard as those described above, it has been used to resolve Federal Consistency disputes and allowed Federal actions to proceed. In the event of a serious disagreement between a Federal agency and a State, either party may request that the Secretary of Commerce mediate the dispute. NOAA's regulations also provide for OCRM mediation to resolve disputes between States, Federal agencies, and others.

IV. Action Requested From the Public

Because of the thoroughness of NOAA's efforts during the recent revision of the Federal Consistency regulations, and the importance of the CZMA Federal Consistency provision to the State-Federal partnership, NOAA is not considering significant changes to the Federal Consistency regulations. However, the Energy Report and recent public interest in the energy industry has highlighted the need to evaluate whether NOAA should make procedural adjustments to improve efficiency in the administration of the Federal Consistency provision. Therefore, NOAA is considering limited regulatory changes or additional policy guidance that will further improve the operation of Federal Consistency.

NOAA is primarily addressing issues raised by the Energy Report which are related to the scope of information needed by the States and the Secretary in their respective reviews of OCS oil and gas activities on the OCS. NOAA is particularly concerned that the various timing requirements of the OCSLA, CZMA and their applicable regulations can result in procedural delays or delayed information requests. Under the existing regulations, the Federal Consistency review period starts when

the State agency receives the applicant's consistency certification, the OCS plan, and the necessary data and information described in 15 CFR 930.58. The necessary data and information includes a detailed description of the activity, coastal effects, etc., and an evaluation relating the coastal effects to the enforceable policies of a State's CMP. This information is usually contained in the OCS plan and accompanying information. In addition, the necessary data and information can include information that is specifically identified in the State's CMP. NOAA's Federal Consistency regulations, 15 CFR 930.77(a)(2), specify the information available for the State's review of OCS oil and gas plans:

> The State agency shall use the information submitted pursuant to the Department of the Interior's OCS operating regulations (*see* 30 CFR 250.203 and 250.204) and OCS information program (*see* 30 CFR part 252) regulations and necessary data and information (*see* 15 CFR 930.58).

Despite this direction for information requirements, issues continue to arise as to the adequacy and types of information requested by and/or provided to the States. There are also instances where the State asks for additional information late in the CZMA review period. Frequently there is a time delay between the time a Federal agency or applicant for federal license or permit provides a coastal State with a consistency certification and the subsequent availability of routine environmental review documents such as National Environmental Policy Act (NEPA) compliance documents, reviews required under the Endangered Species Act (ESA) and related Clean Water Act (CWA) and/or Clean Air Act (CAA) reviews.

To address these and other procedural issues, NOAA seeks comments from the public concerning the following:

- Whether NOAA needs to further describe the scope and nature of information necessary for a State CMP and the Secretary to complete their CZMA reviews and the best way of informing Federal agencies and the industry of the information requirements.
- Whether a definitive date by which the Secretary must issue a decision in a consistency appeal under CZMA sections 307(c)(3)(A), (B) and 307(d) can be established taking into consideration the standards of the Administrative Procedures Act and which, if any, Federal environmental reviews should be included in the administrative record to meet those standards.
- Whether there is a more effective way to coordinate the completion of Federal environmental review documents, the information needs of the States, MMS and the Secretary within the various statutory time frames of the CZMA and OCSLA.
- Whether a regulatory provision for a ''general negative determination,'' similar to the existing regulation for ''general consistency determinations,'' 15 CFR 930.36(c), for repetitive Federal agency activities that a Federal agency determines will not have reasonably foreseeable coastal effects individually or cumulatively, would improve the efficiency of the Federal consistency process.
- Whether guidance or regulatory action is needed to assist Federal agencies and State CMPs in determining when activities undertaken far offshore from State waters have reasonably foreseeable coastal effects and whether the ''listing'' and ''geographic location'' descriptions in 15 CFR 930.53 should be modified to provide additional clarity and predictability to the applicability of State CZMA Federal Consistency review for activities located far offshore.
- Whether multiple federal approvals needed for an OCS EP or DPP should be or can be consolidated into a single consistency review. For instance, in addition to the permits described in detail in EPs and DPPs, whether other associated approvals, air and water permits not ''described in detail'' in an EP or DPP, can or should be consolidated in a single State consistency review of the EP or DPP.

Comments received by NOAA will help to determine its next steps, i.e., whether the Federal Consistency regulations should be amended to clarify data and information requirements in the State consistency review process or during the Secretarial appeal process or whether additional policy guidance on these and related issues is more appropriate. Any proposed changes to the Federal Consistency regulations would be published in the **Federal Register** following compliance with the Administrative Procedures Act and other relevant statutes and executive orders. Any proposed policy statement would be published in the **Federal Register**.

Dated: June 25, 2002.

Jamison Hawkins,

Deputy, Assistant Administrator for Oceans and Coastal Zone Management.

[FR Doc. 02–16417 Filed 7–1–02; 8:45 am]

BILLING CODE 3510–08–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–49–1–7400; FRL–7240–1]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Louisiana: Motor Vehicle Inspection and Maintenance (I/M) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed approval.

SUMMARY: The EPA is proposing approval of a Vehicle Inspection and Maintenance (I/M) Program adopted by the State of Louisiana as part of the Louisiana SIP. This proposed action is taken under section 110 of the Clean Air Act as amended in 1990 (the Act).

DATES: Comments must be received on or before August 1, 2002.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Region 6 Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733

Louisiana Department of Environmental Quality, Air Quality Compliance Division, 7290 Bluebonnet, 2nd Floor, Baton Rouge, Louisiana

Louisiana Department of Environmental Quality Capital Regional Office, 11720 Airline Highway, Baton Rouge, Louisiana

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Rennie, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7367.

SUPPLEMENTARY INFORMATION:

What Action Is EPA Taking Today?

We, the EPA, are proposing approval of Louisiana's I/M program.

What Are the Clean Air Act Requirements?

An I/M program is required in the Baton Rouge area because of its classification as a nonattainment area for ozone and the population exceeds 200,000. The SIP credits are not taken for the I/M plan in the 15% Rate-of-

Progress (ROP) Plan or the 9% ROP plan. However, SIP credits are taken for the I/M plan in the pending attainment demonstration. Additional information on these actions can be found in EPA's proposed approval of the Reasonable-Further-Progress Plan for the 1996–1999 Period in 63 FR 44192 dated August 18, 1998.

What Events Led Up to This Action?

EPA disapproved the Louisiana 1996 I/M SIP revision effective February 13, 1998. Discussion of background leading up to that final disapproval can be found in the rulemakings on that SIP, 62 FR 31388 (June 9, 1997), 62 FR 41002 (July 31, 1997), and 62 FR 61633 (November 19, 1997). An 18-month sanction clock was started under section 179 of the Act on the effective date of the final disapproval. In July 1998, Louisiana sought greater flexibility from EPA for designing an I/M program tailored to meet the State's air quality needs. We parallel processed a proposed conditional approval, which was published on December 30, 1998, at 63 FR 71807.

Because the proposal did not stop the sanction clock due to expire on August 13, 1999, on August 10, 1999, EPA made an interim final determination that the State had more likely than not cured the deficiencies prompting the original disapproval (64 FR 45454, August 20, 1999). The reader is referred to this notice for details of EPA's basis for this determination. This action deferred the future application of the offset sanction and the highway sanction.

Why Is EPA Taking This Action?

We are taking this action today because the State submitted a revised I/M SIP on December 28, 2001, as part of the Baton Rouge SIP. EPA has concluded that the State's submittal represents an acceptable approach to the I/M requirements and meets the requirements for approval.

What Did the State Submit for an I/M Program?

The State adopted I/M SIP revision was submitted on December 28, 2001. The SIP contains a SIP narrative, I/M Rules, and several appendices including the Department of Public Safety (DPS) Manual addressing the requirements of the I/M program. The submittal is intended to fulfill the requirements of the Act for the ozone nonattainment area of Louisiana that is required to implement an I/M program.

We reviewed the State's submittal against the requirements contained in the Act and Federal I/M rules (40 CFR part 51, subpart S). An analysis of the Federal requirements and how the State intends to fulfill the requirements of the Act and the Federal I/M rules follows.

Section 51.350 Applicability

The SIP needs to describe the applicable areas in detail and, consistent with § 51.372 of the Federal I/M rule, shall include the legal authority or rules necessary to establish program boundaries.

The Louisiana regulations specify that an I/M program will be implemented in the Baton Rouge ozone nonattainment area. The low enhanced I/M program will be implemented in the urbanized area that includes East Baton Rouge Parish. In addition, the program will cover Ascension, Iberville, Livingston, and West Baton Rouge parishes in the nonattainment area. The authority to establish program boundaries in this area is found in LA R.S. 32:1304(3).

Section 51.351–2 Low Enhanced I/M Performance Standard

The I/M program provided for in the SIP must be designed to meet a performance standard, either basic or enhanced as applicable. The performance standard sets an emission reduction target that must be met by a program in order for the SIP to be approvable. The SIP must also provide that the program will meet the performance standard in actual operation, with provisions for appropriate adjustments if the standard is not met. Equivalency of emission levels needed to achieve the I/M program design in the SIP to those of the model program described in this section must be demonstrated using the most current version of EPA's mobile source emission model, or an alternative approved by the Administrator.

The State submitted a modeling demonstration using the EPA computer model MOBILE5b and localized parameters showing that the low enhanced performance standard can be met in the Baton Rouge area with the program proposed by the State.

The low enhanced performance standard is established in 40 CFR 51.351(g). That section provides that states may select the low enhanced performance standard if they have an approved SIP for Reasonable Further Progress (RFP) in 1996, commonly known as a 15% Rate-of-Progress (ROP) Plan, do not have any other disapproved ROP plans, and are not needing the high enhanced program to demonstrate attainment. Louisiana's 15% Plan for Baton Rouge was approved on October 22, 1996 (61 FR 54737). There are no disapproved ROP plans for Baton Rouge and the area does not need a high enhanced program to demonstrate timely attainment. In order to meet the low enhanced standard, the State needed to show a reduction of 11 percent VOCs with the I/M program. Projections of oxides of nitrogen (NO_X) emissions were not included at the time EPA approved the 15% plan because EPA had approved a NO_X waiver for Baton Rouge on January 16, 1996, which was published on January 26, 1996 at 61 FR 2438.

In a revised attainment demonstration SIP analysis now pending before EPA for action, it was determined that NO_X reductions from I/M would now be necessary. A recission of the NO_X waiver was proposed for approval by the Administrator on May 1, 2002, and published on May 7, 2002. Credits from I/M NO_X reductions are part of the attainment demonstration currently under EPA review.

Light and heavy duty vehicles up to 10,000 lb. from 1980 and newer will be required to participate in the I/M program. No covered model years are exempted. The State is modeling with a test and repair program which assumes 75 percent credit for network credits. This amount of credit was chosen by the State to complete the modeling necessary to demonstrate compliance with the performance standard. Modeling with MOBILE5b, the State showed that the proposed program with 75 percent network credits is projected to meet the performance standard of 2.18 grams per mile (gpm) of VOCs and 2.19 gpm of NO_X. Compliance with the performance in operation is discussed below in the following section on program evaluation.

The State meets the performance standard requirements of the Federal I/M rule for approval.

Section 51.353 Network Type and Program Evaluation

The SIP needs to include a description of the network to be employed, and the required legal authority. Also, for enhanced areas, the SIP needs to include a description of the evaluation schedule and protocol, the sampling methodology, the data collection and analysis system, the resources and personnel for evaluation, and related details of the evaluation program, and the legal authority enabling the evaluation program.

The State is implementing a decentralized test and repair program. The program includes an on-going evaluation process with results reported to EPA on a biennial basis, in July, starting two years after the initial start of mandatory testing. Surveys assessing effectiveness, measured rates of

tampering, and results of covert audits will be reported. In addition, the SIP commits to meet the ongoing program evaluation using testing of sound methodology of at least 0.1 percent of subject vehicles and reporting the results of such evaluation on a biennial basis. Resources and personnel for the program evaluation are described in the SIP. Legal authority, which is contained in R.S. 32:1305–1306, authorizes the Department of Public Safety (DPS) to implement the program and conduct the program evaluation.

For the purposes of this SIP revision, the State must demonstrate and have EPA approve after public comment that the network effectiveness credit claimed in that attainment demonstration for the I/M program is in fact being met, or adjust the credit accordingly in the attainment demonstration to reflect the actual effectiveness of the test network. In December 2001, the State submitted a program network effectiveness demonstration based on partial program implementation. The State also submitted a supplement to the 2001 effectiveness demonstration on May 6, 2002, which focuses on the future growth and benefits of the State's I/M program after full implementation employing the newly added OBD requirements.

In the SIP, the program effectiveness claim was 75 percent. To demonstrate program effectiveness, the State utilized criteria set forth in guidance [1] for performing I/M program effectiveness demonstrations under the National Highway System Designation Act of 1995. Although Louisiana did not start up their program under the NHSDA, the Federal I/M rules also require an effectiveness demonstration.

In the analysis, the State is able to compare the performance of the Test and Repair (T&R) stations with Test Only stations by dividing the network into two subsets. The T&R subset is 79% of the stations, and the Test Only/Surrogate for Test Only (TO/SFTO) subset is 21% of the stations. The network had a total of 192 stations operating during the period of data collection.

Criteria that were compared between T&R and TO/SFTO stations are:

1. Unannounced audits of I/M equipment;
2. Success rates for first retest after repairs;
3. Overt site audits;
4. Enforcement actions taken; and
5. Training and certification of inspectors.

Using these five criteria on the partially implemented program, the State was able to show that the T&R stations were at least 75 percent as effective as TO/SFTO stations in the network. In fact, T&R stations were at least 95 percent as effective as TO/SFTO. With four out of the five criteria, the T&R stations were actually demonstrated to be more effective than the TO/SFTO stations.

Program enhancements resulting from adding OBD testing improve the program effectiveness. OBD testing will include realtime on-line data collection that the partial program did not have. The benefits from this enhancement are to collect more accurate I/M data in a timely manner, resulting in an even more effective I/M program.

The State meets the network type and program evaluation requirements of the Federal I/M rule for approval.

Section 51.354 Adequate Tools and Resources

The SIP needs to include a description of the resources that will be used for program operation and discuss how the performance standard will be met which includes (1) a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, purchase of necessary equipment (such as vehicles for undercover audits), and any other requirements discussed throughout, for the period prior to the next biennial self-evaluation required in the Federal I/M rule, and (2) a description of personnel resources. The plan shall include the number of personnel dedicated to overt and covert auditing, data analysis, program administration, enforcement, and other necessary functions and the training attendant to each function.

Louisiana R.S. 32:1306.C(2) authorizes the program to charge an emission inspection fee and a safety/anti-tampering inspection fee to support program operations. The SIP also describes the budget, staffing support, and equipment needed to implement the program in the narrative and in detailed budgets for LDEQ and the DPS in Appendix E of the SIP.

The State submittal meets the adequate tools and resources requirements of the Federal I/M rule for approval. The State committed to implementing on-board diagnostic testing on all 1996 and newer vehicles beginning January 1, 2002. Acting as expeditiously as possible, the State intends to begin on-board diagnostic testing in July 2002.

Section 51.355 Test Frequency and Convenience

The SIP needs to describe the test schedule in detail, including the test year selection scheme if testing is other than annual. Also, the SIP needs to include the legal authority necessary to implement and enforce the test frequency requirement. In addition, in enhanced I/M programs, test systems shall be designed in such a way as to provide convenient service to motorists who are required to get their vehicles tested. The SIP needs to demonstrate that the network of stations providing test services is sufficient to insure short waiting times to get a test and short driving distances.

The revised Louisiana I/M SIP commits to testing all designated vehicles 1980 and newer annually. The program is decentralized and stations will adhere to regular inspection hours. The network of stations will consist of familiar locations where motorists regularly receive the currently required annual safety/antitampering inspections and other vehicle services. Louisiana R.S. 1301–1310 provides the legal authority for implementation and enforcement of the test frequency. In addition, at least 0.5 percent of the vehicle population will be subject to on-road testing.

The State submittal meets the test frequency and convenience requirements of the Federal I/M regulations for approval.

Section 51.356 Vehicle Coverage

The SIP needs to include a detailed description of the number and types of vehicles to be covered by the program, and a plan for how those vehicles are to be identified. Also, the SIP needs to include a description of any special exemptions which will be granted by the program, and an estimate of the percentage and number of subject vehicles which will be impacted. Such exemptions need to be accounted for in the emission reduction analysis. In addition, the SIP needs to include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement.

The revised Louisiana I/M SIP includes coverage of light and heavy-duty cars and trucks up to 10,000 lb. GVWR registered or required to be registered in the I/M program area, including fleets. Subject vehicles will be identified through the Department of Motor Vehicle database. No covered vehicles are exempt. Approximately 400,000 vehicles will be subject to

[1] 1996 draft guidance prepared by a work group (the ECOS Group) made up of EPA, the Environmental Council of States, the State and Territorial Air Pollution Program Administrators, and the Association of Local Air Pollution Control Officers.

inspection. Legal authority for vehicle coverage is contained in LA R.S. 32:1304.A(2), and LA R.S. 47:501 and 503.

The state revised the Louisiana DPS Manual to increase the weight of light- and heavy-duty vehicles included in their program in order to meet the performance standard. The weight of light- and heavy-duty vehicles covered by the program in the nonattainment area was changed from 8,500 lb. to 10,000 lb. GVWR. The updated DPS Manual for 2000 reflects these changes and is included in the SIP in Appendix D.

The State submittal meets the requirements for vehicle coverage of the Federal I/M regulation.

Section 51.357 Test Procedures and Standards

The SIP needs to include a description of each test procedure used. The SIP also needs to include the rule, ordinance or law describing and establishing the test procedures.

Vehicles tested in the program shall be subject to an antitampering check, a gas cap pressure test, and On-Board Diagnostic Testing (OBDII). OBD testing will be performed on all 1996 and newer vehicles. Pressure testing procedures shall meet requirements in EPA IM240 and Evaporative Test Guidance (1998 Revised Technical Guidance). OBD testing will be according to 40 CFR 85, subpart W, § 85.2207. Authority to conduct tests on vehicles is established in LA R.S. 1304.

The State submitted a revision to the Louisiana DPS Manual that includes the gas cap pressure test and the final DPS rule (Appendix K) that also requires OBD II testing effective January 1, 2002, to meet the test procedures requirements of the Federal I/M regulations for approval. Acting as expeditiously as possible, the State intends to begin on-board diagnostic testing in July 2002.

The State submittal meets the requirements for test procedures and standards of the Federal I/M regulation.

Section 51.358 Test Equipment

The SIP needs to include written technical specifications for all test equipment used in the program and needs to address each of the requirements contained in 40 CFR 51.358 of the Federal I/M rule. The specifications need to describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The revised Louisiana I/M SIP states that gas cap integrity test equipment specifications will be consistent with that described in the IM240 and Evap Technical Guidance (August 1998). In addition, the OBD equipment will meet the specifications in Performing Onboard Diagnostics System Checks as Part of a Vehicle Inspection and Maintenance Program (June 2001, EPA420–R–01–015). Data on OBD testing will be collected on a real-time basis via wireless/modem that communicates with a central database in accordance with 40 CFR 51.258.

The State submittal meets the requirements for test equipment of the Federal I/M regulation.

Section 51.359 Quality Control

The SIP needs to include a description of quality control and record keeping procedures. The SIP needs to include the procedure manual, rule, ordinance or law describing and establishing the quality control procedures and requirements.

The revised Louisiana I/M SIP states that the quality control procedures will be conducted in accordance with 40 CFR 51.359. These requirements under LA R.S. 32:1305 and 1306 will help ensure that equipment calibrations are properly performed and recorded while maintaining compliance document security. Equipment manufacturers' quality control procedures, periodic maintenance schedules, and calibration procedures will be performed to ensure proper operation of the test equipment.

The State submittal meets the requirements for quality control of the Federal I/M regulations.

Section 51.360 Waivers and Compliance Via Diagnostic Inspection

The SIP needs to include a maximum waiver rate expressed as a percentage of initially failed vehicles. This waiver rate needs to be used for estimating emission reduction benefits in the modeling analysis. Also, the State needs to take corrective action if the waiver rate exceeds that committed to in the SIP, or revise the SIP and the emission reductions claimed accordingly. In addition, the SIP needs to describe the waiver criteria and procedures, including cost limits, quality assurance methods and measures, and administration. Lastly, the SIP needs to include the necessary legal authority, ordinance, or rules to issue waivers, set and adjust cost limits as required, and carry out any other functions necessary to administer the waiver system, including enforcement of the waiver provisions.

The State does not have a minimum waiver amount. The revised Louisiana I/M program includes a waiver rate of 0 percent of initially failed vehicles. This waiver rate is used in the modeling demonstration.

This means the State does not intend to allow any waiver from the program. The State need not provide for waiver program administration or future corrective action because it does not have a waiver program at all. Therefore, the State submittal meets the waivers and compliance via diagnostic inspection requirement of the Federal I/M regulation for approval.

Section 51.361 Motorist Compliance Enforcement

The SIP needs to provide information concerning the enforcement process, including (1) A description of the existing pre-1990 compliance mechanism if it is to be used in the future and the demonstration that it is more effective than registration-denial enforcement; (2) an identification of the agencies responsible for performing each of the applicable activities in this section; (3) a description of and accounting for all classes of exempt vehicles; and (4) a description of the plan for testing fleet vehicles, rental car fleets, leased vehicles, and any other subject vehicles. Also, the SIP needs to include a determination of the current compliance rate based on a study of the system that includes an estimate of compliance losses due to loopholes, counterfeiting, and unregistered vehicles. Estimates of the effect of closing such loopholes and otherwise improving the enforcement mechanism shall be supported with detailed analyses. In addition, the SIP needs to include the legal authority to implement and enforce the program.

The State has chosen to enforce the I/M program with sticker-based enforcement. The current pre-1990 safety/antitampering and I/M program relies on sticker-based enforcement. Penalties for missing or non-issued stickers include a fine, as well as possible criminal charges, or revocation of the inspector from the program.

The motorist compliance enforcement program is handled cooperatively by the DPS, local law enforcement agencies, and the LDEQ. The State submitted an acceptable demonstration of sticker-based enforcement effectiveness on March 13, 2001, to show this method of enforcement is more effective than registration denial, as required by the Act. The statute also provides for enforcement by registration suspension.

There are no classes of on-road exempt vehicles. Fleet vehicles are allowed to conduct self-testing provided that they meet the required equipment standards, are certified by the

administrative authority, and tests are performed in accordance with established inspection procedures. Motorists operating vehicles in the I/M areas with an expired or invalid registration are subject to penalties and/or citations by local and state law enforcement officials, or registration suspension. The SIP anticipates a compliance rate of 96 percent through cooperation with the DPS. The legal authority to implement and enforce the program is included in the Louisiana statutes cited in the SIP.

The State submittal meets the requirements for motorist compliance enforcement of the Federal I/M regulations for approval.

Section 51.362 Motorist Compliance Enforcement Program Oversight

The SIP needs to include a description of enforcement program oversight and information management activities.

The Louisiana I/M SIP provides for regular auditing of its enforcement efforts and for following effective management practices, including adjustments to improve the program when necessary. The program oversight and information management activities listed in the SIP narrative include procedures for I/M document handling and processing, audit procedures, procedures for dealing with motorists and inspection facilities suspected of violating program rules.

The State submittal meets the motorist compliance enforcement program oversight requirements of the I/M regulations for approval.

Section 51.363 Quality Assurance

The SIP needs to include a description of the quality assurance program, and written procedures manuals covering both overt and covert performance audits, record audits, and equipment audits. This requirement does not include materials or discussion of details of enforcement strategies that would ultimately hamper the enforcement process.

The revised Louisiana I/M SIP includes a description of its quality assurance program. The program includes both covert and overt audits which will be conducted on a regular basis. The SIP describes regular performance audits which include the inspection of records and equipment. Procedures for program oversight are based upon written instructions and will be updated as necessary.

The State submittal meets the quality assurance requirement of the Federal I/M regulations for approval.

Section 51.364 Enforcement Against Contractors, Stations and Inspectors

The SIP needs to include the penalty schedule and the legal authority for establishing and imposing penalties, civil fines, license suspension, and revocations. In the case of state constitutional impediments to immediate suspension authority, the state Attorney General needs to furnish an official opinion for the SIP explaining the constitutional impediment as well as relevant case law. Also, the SIP needs to describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts, and jurisdictions are involved; who will prosecute and adjudicate cases; and other aspects of the enforcement of the program requirements, the resources to be allocated to this function, and the source of those funds. In States without immediate suspension authority, the SIP needs to demonstrate that sufficient resources, personnel, and systems are in place to meet the three day case management requirement for violations that directly affect emission reductions.

The revised Louisiana I/M SIP states that the State may assess penalties in its enforcement against stations and inspectors. The penalty schedule is discussed in the SIP narrative under Motorist Compliance Enforcement. The SIP describes the enforcement process, including administrative procedures and resources. The legal authority for Louisiana to assess penalties is located in LA R.S. 32:1312. The authority for DPS to deny application for license or revoke or suspend an outstanding certificate of any inspection station or the certificate of any person to inspect vehicles is found in LA R.S. 32:1305(C). Louisiana indicated that the State Constitution does not preclude immediate suspension of licenses to inspect. Even though Louisiana is a due process state, immediate suspension authority is currently available. The State submitted a statement from James H. Brent, Assistant Secretary of the LDEQ, on August 21, 2001, enclosing a letter from the LDEQ Deputy General Counsel, Ann Coco (August 20, 2001), outlining the Constitutional prohibition and outlining the process by which State can suspend or revoke a license within three business days of discovery of the violation, as required, and not violate the State Constitution. This statement is necessary for approval of this SIP revision.

The State submittal meets the requirements for approval of enforcement against inspection stations and inspectors of the Federal I/M regulations.

Section 51.365–6 Data Collection, Analysis and Reporting

The SIP needs to describe the types of data to be collected and reported.

The revised Louisiana I/M SIP provides for collection of test data to link specific test results to specific vehicles, I/M program registrants, test sites, and inspectors. The SIP lists the specific types of test data and quality control data which will be collected to evaluate program effectiveness. The data collected will be consistent with that required in the Federal I/M rule. The data will be used to generate reports in the areas of test data, quality assurance, quality control, and enforcement.

The State submittal meets the data collection, analysis and reporting requirements of the Federal I/M regulations for approval.

Section 51.367 Inspector Training and Licensing or Certification

The SIP needs to include a description of the training program, the written and hands-on tests, and the licensing or certification process.

The revised Louisiana I/M SIP provides for the implementation of training, licensing, and refresher programs for emission inspectors. The SIP describes this program including written and hands-on testing. Inspector licenses will expire two years after issuance. All inspectors must be licensed to inspect vehicles in the Louisiana I/M program.

The State submittal meets the requirements for inspector training and licensing or certification of the Federal I/M regulations.

Section 51.368 Public Information and Consumer Protection

The SIP needs to include a plan for informing the public on an ongoing basis throughout the life of the I/M program of the air quality problem, the requirements of federal and state law, the role of motor vehicles in the air quality problem, the need for and benefits of an inspection program, how to maintain a vehicle in a low-emission condition, how to find a qualified repair technician, and the requirements of the I/M program. Also, the SIP shall include a detailed consumer protection plan.

The revised Louisiana I/M SIP commits to the establishment of an ongoing public awareness plan addressing the significance of the air quality problem, the requirements of Federal and state law, the role of motor vehicles in the air quality problem, the needs for and benefits of an inspection

program, the ways to maintain a vehicle in low-emission condition, how to find a qualified repair technician, and the requirements of the I/M program. The SIP states under the Improving Repair Effectiveness section that motorists will be offered general repair information including a list of repair facilities, information on the results of the repairs by repair facilities in the area, diagnostic information and warranty information. The SIP also describes consumer protection provisions which include a challenge mechanism, oversight of the program through the use of audits, and whistle blower protection.

The State submittal meets the public information and consumer protection requirements of the Federal I/M regulations for approval.

Section 51.369 Improving Repair Effectiveness

The SIP needs to include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements of the Federal I/M rule, and a description of the repair technician training resources available in the community.

The revised Louisiana I/M SIP includes a description of the technical assistance plan, repair industry performance monitoring plan, repair technician training assessment, and recognized repair technician requirements. The State will regularly inform repair facilities through the use of a newsletter regarding changes to the inspection program, training course schedules, common problems and potential solutions for particular engine families, diagnostic tips, repair, and other technical assistance issues. Repair facility performance monitoring statistics will be available to motorists whose vehicles fail the I/M test. The State will also ensure that adequate repair technician training resources are available to the repair community.

The state submittal meets the improving repair effectiveness requirements of the Federal I/M regulations for approval.

Section 51.370 Compliance With Recall Notices

The SIP needs to describe the procedures used to incorporate the lists of vehicles with recall notices provided by EPA into the inspection or registration database, the quality control methods used to insure that recall repairs are properly documented and tracked, and the method (inspection failure or registration denial) used to enforce the recall requirements.

The revised Louisiana I/M SIP commits to ensuring compliance with EPA I/M recall rules when they are finalized. Additional rulemaking by EPA is needed before the State will be able to implement this provision. Inspections failure will be used to enforce the recall requirements.

The State submittal meets the compliance with recall notices requirement of the Federal I/M regulations for approval.

Section 51.371 On-Road Testing

The SIP needs to include a detailed description of the on-road testing program, including the types of testing, test limits and criteria, the number of vehicles (the percentage of the fleet) to be tested, the number of employees to be dedicated to the on-road testing effort, the methods for collecting, analyzing, utilizing, and reporting the results of on-road testing and, the portion of the program budget to be dedicated to on-road testing. Also, the SIP needs to include the legal authority necessary to implement the on-road testing program, including the authority to enforce off-cycle inspection and repair requirements. In addition, emission reduction credit for on-road testing programs shall be granted for a program designed to obtain significant emission reductions over and above those already predicted to be achieved by other aspects of the I/M program. The SIP needs to include technical support for the claimed additional emission reductions.

The revised Louisiana I/M SIP includes a description of its on-road testing program, including test limits, criteria, data collection and reporting methods. The State is planning roadside antitampering checks and evaporative emission testing. The State has committed to cover 0.5 percent of the EPA required subject vehicles. The legal authority to conduct on-road testing is in LA R.S.32:1302–1303. The SIP describes adequate funding, resources and personnel to implement the on-road testing program. The State does not claim any additional reductions from on-road testing.

Louisiana's on-road testing program will check for hydrocarbon emissions as a complement to the required evaporative emissions testing program and will do an antitampering inspection.

The State submittal meets the requirements for on-road testing of the Federal I/M regulations for approval.

Section 51.372 State Implementation Plan Submissions

Under the Federal I/M rule, the SIP submittal should include legal authority for I/M program operation until such time as it is no longer necessary. The State is operating the I/M program under the continuous legal authority of the established antitampering and safety inspection program. Due to the nature of the I/M program, no other legal authority is required.

The revised Louisiana I/M SIP commits to revising the I/M SIP as new regulations are promulgated. The SIP contains the current interagency agreement between LDEQ and the DPS. This agreement is renewed annually with an effective date of July 1, and will be modified as needed to include future program requirements.

The State submittal meets the requirements for state implementation plan submissions of the Federal I/M regulations for approval.

Section 51.373 Implementation Deadlines

The original Federal I/M rule had a January 1995 start date requirement as well as subsequent start dates for special circumstances. In response to states' requests for greater flexibility in implementing I/M program SIPs processed under the NHSDA, EPA SIP approvals allowed programs to start as soon as possible, and specified start dates of November 15, 1997. Then in a narrower application, a January 1, 1999, start date was designated as a result of providing greater flexibility in Ozone Transport Regions (OTR) (FRN, Vol. 61, No. 144, July 25, 1996, p. 39034). OTRs would normally be exempt from I/M program requirements except for their location within the OTR. The January 1, 1999, start date allowed the affected areas to meet the performance standard by the Act's attainment and reasonable further progress deadlines, including the end of 1999 for serious ozone nonattainment areas. The EPA received no public comment regarding the 1999 start date in this notice. Finally, at this late date, starting the program in the Baton Rouge nonattainment area initially by January 1,2000, is ''as soon as possible'' for Louisiana.

The Louisiana I/M program started on January 1, 2000, with implementation of the gas cap pressure test. The State intends to implement OBD II testing in July 2002, which is as expeditious as possible following the January 2002 OBD start date requirement.

The State submittal meets the implementation deadlines requirement of the Federal I/M regulations for approval.

What Is EPA's Concluding Statement of Approval?

Our review of this material indicates that the SIP revision meets the minimum requirements of the Act and Federal I/M rules. Based upon the discussion contained in the analysis section of the proposal, the technical support document, and review of the DPS final I/M rules and updated MOU, we conclude that the State's submittal represents an acceptable approach to the I/M requirements and meets the requirements for approval. Therefore, EPA is proposing approval of the Louisiana I/M SIP revision.

EPA's Rulemaking Action

The EPA is proposing approval of the State's I/M SIP revision.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed 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 proposes to approve 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 proposed 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 proposed 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 13, 2002.

Sam Becker,

Acting Regional Administrator, Region 6.

[FR Doc. 02–16461 Filed 7–01–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–02–11707]

RIN 2127–AI34

Federal Motor Vehicle Safety Standards; Child Restraint Systems

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

ACTION: Extension of comment period.

SUMMARY: NHTSA has received two petitions asking the agency to extend the comment period for a proposal to amend the Federal safety standard for child restraint systems pursuant to the Transportation Recall Enhancement, Accountability and Documentation Act of 2000. Under the proposal, the standard would be revised to incorporate improved test dummies and updated procedures used to test child restraints, new or revised injury criteria to assess the dynamic performance of child restraints, and extended to apply to child restraints recommended for use by children up to 65 pounds. The comment period for the proposal closes July 1, 2002. To provide parties more time to assess various aspects of the proposal, the agency is extending the deadline by one month.

DATES: Written comments must be received by July 31, 2002.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System website at http://dms.dot.gov. Click on ''Help & Information'' or ''Help/Info'' to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mike Huntley of the NHTSA Office of Crashworthiness Standards, at (202) 366–0029.

For legal issues, you may call Deirdre Fujita of the NHTSA Office of Chief Counsel, at (202) 366–2992.

SUPPLEMENTARY INFORMATION: Section 14(a) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, Pub. L. 106–414 mandated that the agency

''initiate a rulemaking for the purposes of improving the safety of child restraints, including minimizing head injuries from side impact collisions.'' Section 14(b) identifies specific elements that the agency must consider in its rulemaking. The Act directed the agency to complete the rulemaking by November 1, 2002. Pursuant to the TREAD Act, the agency published a notice of proposed rulemaking (NPRM) on Wednesday, May 1, 2002 (67 FR 21806). A 60-day comment period was provided.

The Juvenile Products Manufacturers Association (JPMA), representing manufacturers of child restraint systems, and ARRCA, Incorporated, petitioned for an extension of the comment period on the NPRM (*see* Docket No. NHTSA–02–11707). JPMA said that it was requesting an extension so that it can complete testing designed to generate data that will enable it to better analyze the NPRM. JPMA's testing is intended to assess what differences, if any, result from dynamically testing child restraints on a test seat assembly that incorporates the changes proposed in the NPRM, as compared to tests on the current seat assembly.

ARCCA petitioned for an extension of time to comment on the NPRM to fully evaluate a technical report on a test program performed for NHTSA by the U.S. Naval Air Warfare Center Aircraft Division at Patuxent River, Maryland. This report assesses the seat geometry and crash pulses of vehicles. The report was placed in the docket on June 19, 2002. ARCCA wanted more time to review and comment on the report and the proposals to which the report pertained.

In considering the petitions, NHTSA weighed the statutory deadline, the complexity and importance of this rulemaking, and the basis for the requests. The agency supports efforts to develop useful technical information on the proposal that do not unduly delay the rulemaking. Extending the comment period for a month will provide the time needed for the petitioners to obtain test data and other analyses that could help NHTSA decide whether and how to proceed with the rulemaking. Accordingly, the comment closing date is extended to July 31, 2002. However, given the statutory deadline of the TREAD Act, NHTSA does not anticipate granting any further extensions of the comment period in this proceeding. The agency will consider comments submitted after July 31, 2002, but only to the extent that it is possible to do so without causing additional delay.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued: June 26, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–16632 Filed 6–27–02; 2:48 pm]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 67, No. 127

Tuesday, July 2, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Send comments on or before September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov.*

SUPPLEMENTARY INFORMATION:

OMB NO: OMB 0412–0545.

Form No.: AID 1550–4.

Title: Commodity Request for Foreign Distribution (Voluntary Agency).

Type of Review: Renewal of Information Collection.

Purpose: Public Law 480 states that the President may utilize nonprofit voluntary agencies (PVOs) registered with and approved by the USAID in furnishing food commodities to needy persons outside the United States. The USAID Form 1550–4 is an instrument by which the PVOs communicate their specific needs in this regard to the U.S. Government. This form is used by eligible PVOs to request food commodities for approved country programs overseas and to furnish delivery instructions and other information necessary to ship these commodities to destination ports.

Annual Reporting Burden

Respondents: 70.

Total annual responses: 1,311.

Total annual hours requested: 120 hours.

Dated: June 20, 2002.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–16589 Filed 7–01–02; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Send comments on or before September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC, 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov.*

SUPPLEMENTARY INFORMATION:

OMB No.: 0412–0546.

Form No.: AID 1550–12.

Title: Request for Shipment of Commodities for Foreign Distribution (Foreign Government).

Type of Review: Renewal of Information Collection.

Purpose: A USAID Title III form is needed by which the specific needs of the recipient country can be communicated to U.S. Department of Agriculture by USAID. The form will be used to request food commodities for approved P.L. 480 Titlte III country programs overseas and to furnish procurement instruction and other pertinent information necessary to ship these commodities to destination ports.

Annual Reporting Burden

Respondents: 13.

Total annual responses: 55.

Total annual hours requested: 60 hours.

Dated: June 20, 2002.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–16590 Filed 7–1–02; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the

functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Send comments on or before September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC, 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov*.

SUPPLEMENTARY INFORMATION:

OMB NO: OMB 0412–0003.

Form No.: AID 1550–3.

Title: Annual Estimate of Requirements—Fiscal Year (AER) P.L. 480, Title II Commodities.

Type of Review: Renewal of Information Collection.

Purpose: The Annual Estimate of Requirements (AER) is used by the Office of Food for Peace to obtain information critical for the planning and budgeting cycle of the P.L. Title II Program. The AERs include planned recipient and ration levels, number of distributions, operating reserves that are needed and inventories on hand.

Annual Reporting Burden

Respondents: 70.

Total annual responses: 56.

Total annual hours requested: 1,344 hours.

Dated: June 20, 2002.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–16664 Filed 7–1–02; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: North Central Idaho Resource Advisory Committee, Grangeville, ID, USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 102–393) the Nez Perce and Clearwater National Forests' North Central Idaho Resource Advisory Committee will meet Thursday, June 25, 2002 in Elk City, Idaho for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on June 25, begins at 2 p.m., at the Elk City Forest Service Ranger Station, Elk City Idaho. Agenda topics will include review FY03 work plans. A public forum will begin at 3 p.m. (PST).

FOR FURTHER INFORMATION CONTACT: Ihor Mereszczak, Staff Officer and Designated Federal Officer, at (208) 983–1950.

Dated: June 24, 2002.

Ihor Mereszczak,

Acting Forest Supervisor.

[FR Doc. 02–16548 Filed 7–1–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Tobesofkee Creek Watershed: Lamar and Monroe Counties, GA

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102[2][c] of the National Environmental Policy Act of 1969, the Council on environmental Quality Regulations [40 CFR Part 1500]; and the Natural Resources Conservation Service Regulations [7 CFR Part 650]; the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Tobesofkee Creek Watershed, Lamar and Monroe Counties, Georgia.

FOR FURTHER INFORMATION CONTACT: Leonard Jordan, State Conservationist, Natural Resources Conservation Service, Federal Building STOP 200, 355 East Hancock Avenue, Athens, Georgia 30601, telephone [706] 546–2272.

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Leonard Jordan, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purposes are watershed protection and improvement of water quality. The planned works of improvement include accelerated cropland and pasture treatment, and animal waste management systems.

The Notice of a Finding of No Significant Impact [FONSI] has been forwarded to the U.S. Environmental Protection Agency and to various Federal, State, and local agencies and interest parties. A limited number of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Jimmy Bramblett at the above number.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Leonard Jordan,

State Conservationist.

[This activity is listed in the Catalog of Federal Domestic Assistance under 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernment consultation with State and local officials].

[FR Doc. 02–16412 Filed 7–1–02; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Finding of No Significant Impact for Tobosofkee Creek Watershed; Lamar and Monroe Counties, GA, June 2002

Introduction

The Tobosofkee Creek Watershed is a federally assisted action authorized for planning under Public Law 83–566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with the development of the watershed plan. This assessment was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, 355 East Hancock Avenue, Athens, Georgia 30601.

Recommended Action

This document describes a plan for watershed protection, and improvement

of water quality, and includes measures for the control of agricultural animal waste related pollution, and reduction of sediment from pasture and cropland. The plan reduces excessive animal waste, and associated nutrients and bacteria entering waterways from about 20 beef, 13 dairy, 4 poultry, and 1 swine operation. The plan also provides measures to reduce nutrient runoff and erosion on 3,450 acres of cropland, sedimentation from stream banks and animal walkways will be substantially reduces and forage quality will be improves on 10,347 acres of pasture. These measures will be accomplished by providing financial and technical assistance through a local sponsor.

The principal project measures are to:

1. Develop and install approximately 38 animal waste management systems and provide enhanced cover to 13,797 acres of cropland, pasture, and adjoining stream banks to reduce sedimentation, improve water quality improve fish and wildlife habitats, enhance crop productivity, and enhance forage production. These practices will include all or parts of the following: fencing, cross fencing with gates, alternative livestock water supply with piping and troughs, stream crossings, riparian buffers, animal waste, flush down and hose down systems, solid waste separators, heavy use protection areas, solid waste stack facilities and dead bird composters on 20 beef, 13 dairy, 4 poultry and 1 swine operation. Conservation management, with nutrient and grazing land management practices, will be used when applying animal waste.

2. The measures will be planned and installed by developing long-term contracts will landowners.

Effects of Recommended Action

Installation of animal waste management measures and grazing land practices will reduce offsite nutrient, bacteria, sediment and chemical damages, and increase utilization of nutrients onsite. The results will be a significant reduction in current impairments to the area's water quality, biological habitats, recreational opportunities, land values and improvement of long-term productivity and quality of pastureland in the watershed. Installation of the selected plan will also provide local and regional employment, promote rural economic development in the drainage area, and provide long term natural resource protection in the watershed.

The project measures will reduce agricultural related nutrients, bacteria and sediment entering watershed streams, the Tobosofkee Creek and Lake Tobosofkee. The project will also minimize the impact on surface and ground water quality by:

- Reducing the 61,115 tons of sediment from agricultural lands and stream banks by 45%.
- Providing a significant reduction in the amount of nitrates, ammonia, and bacteria delivered annually to area waterways, thus improving biological habitats, recreational opportunities, and real estate values.
- Improving cropland and paster productivity in the watershed by an average of 28%.

Grazing land practices will increase forage productivity through improved management and utilizing waste more efficiently. This will reduced stream enrichment and conserve the nutrients for plant production. The proposed plan will also encourage and promote the agricultural enterprises in the watershed through improved efficiency.

Wildlife habitat will not be disturbed during installation of animal waste systems and grazing land practices. No wetlands, wildlife habitat, fisheries, prime farmland, or cultural resources will be destroyed or threatened by this project. Some 2,316 acres of wetland and wetland type wildlife habitat will be improved. Conversions to permanent vegetation will provide a more diverse upland game habitat. The value of woodland habitat will not decline. Fishery habitats will also be maintained.

No endangered or threatened plant or animal species will be adversely affected by the project.

There are no wilderness areas in the watershed.

Scenic values will be completed with improved riparian quality and cover conditions resulting from the installation of conservation animal waste management system and grazing land practices.

Alternatives

Four alternative plans, that included 27 combinations of systems and practices, was considered in project planning. No significant adverse environmental impacts are anticipated from installation of the selected alternative. Also, the planned action is the most practical, complete and acceptable means of protecting the watershed by managing animal waste and stabilizing pasture and cropland.

Consultation—Public Participation

Since the 1980's citizens within the Tobesofkee Watershed have recognized increasing water quality issues and potential problems related to agriculture. Land-owners utilized assistance through EQIP to address their concerns but were limited by program policy and budget constraints. Meetings were held to evaluate the problem and determine if the issues warranted application for additional federal assistance through the PL–566, Small Watershed Program. Based on data obtained and interest within the watershed the Districts (Sponsors) and NRCS agreed that this watershed should be targeted for special water quality improvement efforts. The Sponsor(s) submitted an application on September 27, 2001 to the Georgia Soil and Water Conservation Commission for NRCS planning assistance under the PL–566 authority. The Commission approved the application and gave it high priority.

To facilitate consultation and public involvement in the Tobesofkee Creek Watershed Project, a project organizational structure was developed. It considered of the Project Sponsors, who were supported by an Interdisciplinary Planning Team, a Technical Advisory Group, and Stakeholder Involvement.

NRCS developed an interdisciplinary, interagency planning team to work with the Sponsor, landowners, and other interested groups. The Technical Advisory Group was compiled of specialists from the Lamar County Soil and Water Conservation District; Towaliga Soil and Water Conservation District (SWCD); Georgia Cooperative Extension Service (CES), Georgia Department of Natural Resources, Environmental Protection Division (EPD), Water Protection Branch Georgia Department of Natural Resources, Wildlife Resources Division (WRD), Game and Fisheries Section; Georgia Forestry Commission; USDA, Farm Services Agency (FSA); USDA, Natural Resources Conservation Service (NRCS); USDA, US Forest Service (FS); USDI, Fish and Wildlife Service (F&WS) to again insight to the magnitude of the problems and possible solutions.

At the initiation of the planning process, meetings were held with key farmers and District representatives from the watershed area to discuss problem identification, conservation systems and PL–566 requirements. A public meeting was held on January 24, 2002 to scope the problems and concerns and to explain impacts of the PL–566 program initiatives relative to a watershed project and discuss possible solutions. Notice of the meeting appeared in the local newspaper and on radio for several weeks prior to the date. Seventy-five landowners, operators, and interested citizens attended the meeting.

Several meetings, group discussions, and interviews were held with local planners, individuals, government

officials, and other technical experts to inventory resources, identify cause-effect relationships, and develop—and evaluate—alternative plans of action to address resource concerns.

Another public meetings was held in Redbone, Georgia on May 23, 2002. Local operators, landowners, and citizens attended the meeting. The results of surveys, studies, field investigations, and alternative plans of actions were presented. Those attending agreed upon a Recommended Plan, developed by the Planning Team.

From January 2002 to May 2002, representatives of the SWCD, NRCS, EPD, WRD, CES, and other officials evaluated data to determine the quality and quantity of resources that would be impacted by selected practices and to consider possible mitigation measures. It was the consensus of the group that an Environmental Impact Statement (EIS) was not needed for this project. This agreement was based on the type of practices and systems planned and that each would be installed on previously disturbed land. With this consensus, and Environmental Assessment (EA) was prepared accordingly.

Upon review of the EA, this Finding of No Significant Impact (FONSI) was prepared. These documents are being distributed to all concerned agencies, groups, and interested individuals. A Notice of Availability of the FONSI is being published in the **Federal Register**.

Agency consolations and public participation to date has shown no conflicts with the implementation of the selected plan.

Conclusion

The Environmental Assessment summarized above indicates that this Federal action will not cause significant adverse local, regional, or national impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the recommended Tobosofkee Creek Watershed Plan is not required.

Dated: June 18, 2002.

Leonard Jordan,

State Conservationist.

[FR Doc. 02–16413 Filed 7–1–02; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

South Logan/Scott Counties Water Supply Project; Logan and Scott Counties, AR

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the creation of a municipal and industrial water supply for the cities of Booneville and Waldron, Arkansas in Logan and Scott Counties, Arkansas.

FOR FURTHER INFORMATION CONTACT: Kalven L. Trice, State Conservationist, Natural Resources Conservation Service, Room 3416 Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201, Telephone (501) 301–3100.

SUPPLEMENTARY INFORMATION: The cities of Booneville and Waldron, Arkansas are in need of additional water to ensure an adequate supply of municipal and industrial water due to current and expected growth in the future. Since federal funds will be expened in this study and due to potential public concern, Kalven L. Trice, State Conservationist, has determined that the preparation and review of an environmental impact statement is needed for this project.

Alternatives currently being considered for inclusion in the EIS include the ''No Action'' alternative; the construction of a flood control/water supply lake located oin the Upper Petit Jean River near Elm Springs, Arkansas; expansion of the existing Boonville and Waldron water supply reservoirs; and pumping water from Blue Mountain Lake, a Corps of Engineers flood control and water supply lake.

A draft environmental impact statement (DEIS) will be prepared and circulated for review by agencies and the public. The Natural Resources Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. A public scoping meeting will be held to solicit input from the public and to determine the scope of the environmental impact statement on August 13, 2002 from 7 p.m. to 9 p.m. at the Scott County Courthouse in Waldron, Arkansas.

Submit written comments and suggestions on the proposal, or requests to be placed on the EIS mailing list, to Jim Ellis, Biologist, Natural Resources Conservation Service, Natural Resources Planning Staff, Room 3416, Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201, or email to *Jim.Ellis@ar.usda.gov.*

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: June 25, 2002.

David A. Weeks,

Assistant State Conservationist, Natural Resources Planning.

[FR Doc. 02–16577 Filed 7–1–02; 8:45 am]

BILLING CODE 3210–16–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Task Force on Agricultural Air Quality

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Task Force on Agricultural Air Quality will meet to continue discussions on critical air quality issues relating to agriculture. Special emphasis will be placed on obtaining a greater understanding about the relationship between agricultural production and air quality. The meeting is open to the public.

DATES: The meeting will convene Wednesday, July 17, 2002, at 9 a.m., and continue until 4 p.m. The meeting will resume Thursday, July 18, 2002, from 9 a.m. to 4 p.m. Written material and requests to make oral presentations should reach the Natural Resources Conservation Service, at the address below, on or before July 3, 2002.

ADDRESSES: On both days, July 17–18, the meeting will be held at the Radisson Quad City Plaza at 111 East Second Street, Davenport, Iowa 52801; telephone: (563) 322–2200. Written material and requests to make oral presentations should be sent to Beth Sauerhaft, USDA–NRCS, Post Office Box 2890, Room 6158, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Questions or comments should be directed to Beth Sauerhaft, Designated Federal Official; telephone: (202) 720–8578; fax: (202) 720–2646; e-mail: *Beth.Sauerhaft@usda.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information about the Task Force on Agricultural Air Quality, including any revised agendas for the July 17 and 18, 2002, meeting that occur after this **Federal Register** Notice is published, may be found on the World Wide Web at *http:\\www.nhq.nrcs.usda.gov/faca/aaqtf.html.*

Draft Agenda of the July 17 and 18, 2002, Meeting

A. Welcome to the Quad Cities

1. Local Officials

B. Approve Minutes of the Washington, DC, May 1–2, 2002, AAQTF Meeting

C. EPA Update

- EPA Official
- National Academy of Sciences Scientific Assessment update
- RPO Update—potential impacts to agriculture
- Title V Update

D. Subcommittee Business

- Research Priorities and Oversight Subcommittee
- Emissions Factors Subcommittee
- Concentrated Animal Feeding Operation Subcommittee
- Voluntary/Incentive Based Program Subcommittee
- Follow-up Subcommittee
- Agricultural Burning Subcommittee
- Title V Subcommittee
- Monitoring Subcommittee
- Implementation Subcommittee

E. New Topics

- Iowa CAFO Study
- Engine Emissions

F. Discussion of Final Report

G. Public Input

(Time will be reserved before lunch and at the close of each daily session to receive public comment. Individual presentations will be limited to 5 minutes).

Procedural

This meeting is open to the public. At the discretion of the Chair, members of the public may give oral presentations during the meeting. Persons wishing to make oral presentations should notify Beth Sauerhaft no later than July 3, 2002. If a person submitting material would like a copy distributed to each member of the committee in advance of the meeting, that person should submit 25 copies to Beth Sauerhaft no later than July 3, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Beth Sauerhaft.

USDA prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, discrimination on the basis of political beliefs and marital or family status is also prohibited by statutes enforced by USDA. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternate means for communication of program information (braille, large print, audio tape, etc.) should contact the USDA's Target Center at (202) 720–2000 (voice and TDD). The USDA is an equal opportunity provider and employer.

Signed in Washington, D.C., on June 27, 2002.

P. Dwight Holman,

Deputy Chief for Management, Natural Resources Conservation Service.

[FR Doc. 02–16634 Filed 7–1–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 020621156–2156–01]

National Defense Stockpile Market Impact Committee Request for Public Comments on the Potential Market Impact of Proposed Stockpile Disposals of Celestite and Quinidine.

AGENCY: Department of Commerce.

ACTION: Notice of inquiry.

SUMMARY: This notice is to advise the public that the National Defense Stockpile Market Impact Committee (co-chaired by the Departments of Commerce and State) is seeking public comments on the potential market impact of a proposed increase in the disposal levels of Celestite and Quinidine from the National Defense Stockpile under the proposed Fiscal Year 2003 Annual Materials Plan.

DATES: Comments must be received by August 1, 2002.

ADDRESSES: Written comments should be sent to Richard V. Meyers, Co-Chair, Stockpile Market Impact Committee, Office of Strategic Industries and Economic Security, Room 3876, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; FAX (202) 482–5650; E-Mail: *rmeyers@bis.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Richard V. Meyers, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, (202) 482–3634; or Terri L. Robl, Office of International Energy and Commodity Policy, U.S. Department of State, (202) 647–3423; co-chairs of the National Defense Stockpile Market Impact Committee.

SUPPLEMENTARY INFORMATION: Under the authority of the Strategic and Critical Materials Stock Piling Act of 1979, as amended, (50 U.S.C. 98 *et seq.*), the Department of Defense (''DOD''), as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. Section 3314 of the Fiscal Year (''FY'') 1993 National Defense Authorization Act (''NDAA'') (50 U.S.C. 98h–1) formally established a Market Impact Committee (''Committee'') to ''advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile * * *'' The Committee must also balance market impact concerns with the statutory requirement to protect the Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, Treasury, and the Federal Emergency Management Agency, and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the Committee to ''consult from time to time with representatives of producers, processors and consumers of the types of materials stored in the stockpile.''

The National Defense Stockpile Administrator has proposed revising the proposed FY 2003 Annual Materials Plan (''AMP'') to increase the disposal quantity levels of Celestite, from 3,600 ST to 12,794 ST, and Quinidine, from 750,000 Av. Oz. to 2,211,122 Av. Oz. These increased quantity levels are equivalent to the remaining stockpile inventory of these materials. Because these materials have limited commercial value, making the remaining stockpile inventory of these materials available for disposal during FY 2003 will

enhance the ability of the National Defense Stockpile Manager to dispose of the entire stockpile inventory of these materials by the end of FY 2003, thereby avoiding significant and continuing storage costs. These levels are also being proposed to take advantage of a possible long term sales contract for Celestite and to dispose of Quinidine that has passed its maximum shelf life. The Committee is seeking public comments on the potential market impact of these proposed increases.

The quantities of Celestite and Quinidine listed in the proposed FY 2003 AMP are not targets for either sale or disposal. They are only a statement of the proposed maximum disposal quantity of the materials that may be sold in a particular fiscal year. The quantity of the materials that would actually be offered for sale or disposal will depend on the market for the material at the time of the offering as well as on the quantity of the materials approved for disposal by Congress.

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the proposed increased disposal levels of Celestite and Quinidine. Although comments in response to this Notice must be received by August 1, 2002 to ensure full consideration by the Committee, interested parties are encouraged to submit comments and supporting information at any time thereafter to keep the Committee informed as to the market impact of the sale of the materials. Public comments are an important element of the Committee's market impact review process.

Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public file. The Committee will seek to protect such information to the extent permitted by law.

The records related to this Notice will be made accessible in accordance with the regulations published in part 4 of Title 15 of the Code of Federal Regulations (15 CFR § 4.1 *et seq.*). Specifically, the Bureau of Industry and Security's FOIA reading room is located on its web page, which can be found at *http://www.bis.doc.gov.*, and copies of the public comments received will be maintained at that location (*see* Freedom of Information Act (FOIA) heading). If requesters cannot access the web, they may call (202) 482–2165 for assistance.

Dated: June 25, 2002.

Matthew S. Borman,

Deputy Assistant Secretary, Bureau of Industry and Security.

[FR Doc. 02–16641 Filed 7–1–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

National Renewable Energy Laboratory, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW, Washington, DC.

Docket Number: 02–014. *Applicant:* National Renewable Energy Laboratory, Golden, CO 80401. *Instrument:* Electron Microscope, Model Tecnai G2 F20 U–TWIN STEM. *Manufacturer:* FEI Company, The Netherlands. *Intended Use*: *See* notice at 67 FR 35960, May 22, 2002. *Order Date:* December 11, 2001.

Docket Number: 02–015. *Applicant*: University of California, Riverside, Riverside, CA 92521–0411. Instrument: Electron Microscope, Model Tecnai 12 TWIN. *Manufacturer*: FEI Company, The Netherlands. *Intended Use*: *See* notice at 67 FR 35961, May 22, 2002. *Order Date*: December 20, 2001.

Comments: None received. *Decision*: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–16657 Filed 7–1–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Thomas Jefferson University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–018. Applicant: Thomas Jefferson University, Philadelphia, PA 19107–5587. *Instrument:* Electron Microscope, Model Tecnai 12 TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use: See* notice at 67 FR 38643, June 5, 2002. *Order Date:* March 25, 2002.

Docket Number: 02–019. *Applicant:* Vanderbilt University, Nashville, TN 37232. *Instrument:* Electron Microscope, Model Tecnai 12 TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 67 FR 38643, June 5, 2002. Order *Date:* January 28, 2002.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–16658 Filed 7–1–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Saskatchewan, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5 P.M. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW, Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 02–013. *Applicant:* University of Saskatchewan. Saskatoon, SK, Canada S7N 5C9. *Instrument:* Photoelectron Emission Microscope, Model PEEM III. *Manufacturer:* ELMITEC GmbH, Germany. *Intended Use:* See notice at 67 FR 35960, May 22, 2002. *Reasons:* The foreign instrument provides: (1) A lateral spatial resolution of 7 nm and (2) upgradeability for aberration corrected imaging. *Advice received from:* National Institutes of Health, June 5, 2002.

Docket Number: 02–017. *Applicant:* Emory University, Atlanta, GA 30322. *Instrument:* Micromanipulator Assembly for Slice Physiology Setup. *Manufacturer:* Luigs & Neumann, Germany. *Intended Use:* See notice at 67 FR 3776, May 30, 2002. *Reasons:* The foreign instrument provides: (1) Customized design for the type of electrophysiological experiments being performed and (2) computer control of microscope and manipulator positioning. Advice received from: National Institutes of Health, June 5, 2002.

The National Institutes of Health advises in its memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–16656 Filed 7–1–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5 P.M. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–020. *Applicant:* Vanderbilt University. 1161 21st Avenue South, Nashville, TN 37232. *Instrument:* Electron Microscope, Model Tecnai G2 F30 TWIN Helium. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used to study the three-dimensional structures of biological macromolecules and assemblies, such as viruses and protein complexes. The materials to be studied include adenovirus, a common human respiratory virus; the ribonucleoprotein vault, a cytoplasmic particle implicated in multi-drug resistance in certain cancer cell lines; the DNA–PK protein/DNA complex, which is involved in repair of DNA double-stranded breaks after exposure to ionizing radiation; the family of small heat-shock proteins, which help the cell to resist heat-induced protein aggregation; CAM kinase complexes, which are involved in regulation of synaptic function in the brain; monoamine transporters (serotonin, norepinephrine, and dopamine), which are targets for antidepressants and psychostimulants; transcription complexes isolated from yeast; and other macromolecular protein assemblies involved in DNA transactions. Application accepted by Commissioner of Customs: June 6, 2002.

Docket Number: 02–021. *Applicant:* The Regents of the University of California, Material Management, 301 Watkins Drive, Riverside, CA 92521. *Instrument:* Two (2) Confocal Microscopes. Models TCS SP2/UV and TCS SPS RS–2P. *Manufacturer:* Leica Microsystems, Germany. *Intended Use:* The instrument is intended to be used to study different kinds of experimental plants, animals and microorganisms, e.g., Arabidopsis leaf cells, mammalian cell lines, and budding yeast. Various fundamental cellular processes, e.g., protein trafficking, organelle dynamics, protein complex formation, signal transduction, gene expression, will be investigated. In addition, the instrument will be used for educational purposes in the following courses: BPSC132, Plant Anatomy; BPSC135, Plant Cell Biology; BPSC237, Plant Cell Biology; BPSC230L, Cytogenetics Laboratory; BPSC232, Plant Development; Biol200A, Cell Biology. Application accepted by Commissioner of Customs: June 6, 2002.

Docket Number: 02–022. *Applicant:* National Institutes of Health, Office of the Director, Office of Research Services, Division of Bioengineering and Physical Science, 13 South Drive, Room 3N17, Bethesda, MD 20892–5766. *Instrument:* Electron Microscope, Model Tecnai TF30T. *Manufacturer:* FEI Company, The Netherlands. Intended Use: The instrument is intended to be used to study proteins, nucleic acids, viruses, bacteria, and eukaryotic cells. The following experiments will be conducted:

(a) Tilt series will be automatically recorded from sections of plastic embedded cells in order to perform three-dimensional tomographic reconstructions of cellular architecture at high-spatial resolution. These measurements will be performed at an accelerating voltage of 300 kV to facilitate analysis of sections that are tilted to high angle.

(b) Tomographic reconstructions will be performed on cryosectioned frozen-hydrated cells to study cellular structure in close to the living state.

(c) Suspensions of supramolecular assemblies will be rapidly frozen, cryotransferred into the electron microscope, and imaged at low electron dose either on film or directly on a cooled CCD camera.

(d) Images will be recorded under well defined electron optical conditions with highly coherent illumination facilitated by the instrument's field-emission source. Images will be

processed to determine the three-dimensional structure of the supramolecular assemblies.

(e) To determine the masses of the macromolecules, a finely focused nanometer-diameter probe of electrons will be digitally scanned across a thin specimen on which macromolecules are adsorbed: high-angle elastic scattering will be measured. Application accepted by Commissioner of Customs: June 6, 2002.

Docket Number: 02–023. *Applicant:* University of California, Los Alamos National Laboratory, BUS–6 Customs Office, P.O. Box 1663, MS C308, Los Alamos, NM 87545. *Instrument:* Electron Microscope, Model Tecnai G2 F30 TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used to investigate biological tissue samples, polymeric materials (including high explosives), polymeric films containing semiconductor quantum dots, steels and other metals (especially Be and U alloys), superconducting tapes on metal substrates, other superconducting materials, ceramic oxides and nitrides, ion beam damaged ceramics, and other materials. Some typical experiments are: (a) To determine which phases are present in a material and their morphology, distribution, and relative fractions; (b) determining material deformation behavior by studying the dislocation, stacking fault, and twin types, densities, and distributions; (c) determining interfacial structures, misfits, chemical reactions (cross-diffusion and new phase formation) at near-atomic resolution; (d) examining ion beam damage to materials through imaging, mapping for chemistry, and diffraction analysis for crystallinity. Application accepted by Commissioner of Customs: June 6, 2002.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–16654 Filed 7–1–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062602F]

Taking and Importing of Marine Mammals

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

ACTION: Reopening of nomination period for expert panels.

SUMMARY: The Secretary of Commerce is required by the Dolphin Protection Consumer Information Act to conduct specified scientific research under of the Marine Mammal Protection Act and, by December 31, 2002, to make a finding based on the results of that research, on information obtained under the International Dolphin Conservation Program, and on any other relevant information as to whether the intentional deployment on or the encirclement of dolphins with purse seine nets is having a ''significant adverse impact'' on any depleted dolphin stock in the eastern tropical Pacific Ocean.

This notice reopens the nomination period for scientists to serve on two expert panels referenced in the proposed organized decision process published in the **Federal Register** on Feb. 15, 2002: the Ecosystem Expert Panel and the Indirect Effects Expert Panel. Each expert panel will assess peer-reviewed scientific studies and other information and individually provide scientific advice to address specific issues the Secretary will be considering in making the final finding. The expert panels are scheduled to meet September 4–6, 2002, in La Jolla, CA.

DATES: The nomination period will be open from June 25, 2002, to July 10, 2002.

ADDRESSES: Nominations should be sent to the Director, NMFS Office of Science and Technology, F/ST, 1315 East-West Highway, Silver Spring, MD, 20910. Nominations may also be sent via facsimile at 301-713-1875. Nominations will not be accepted if submitted via electronic mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Nicole R. Le Boeuf, Office of Protected Resources, NMFS, 301–713–2322.

SUPPLEMENTARY INFORMATION: On May 9, 2002, NMFS published a request for nominations for the two expert panels. The **Federal Register** notice at 67 FR 31279 provides instructions on the questions and charge of each expert panel, the nomination process, panel member qualifications, the selection process, and the determination of cost reimbursement. It also describes the process NMFS will carry out to solicit nominations, select five qualified scientists for each panel, and recommend them for appointment by the Secretary. The expert panels are scheduled to meet September 4–6, 2002, in La Jolla, CA. Each expert panel will assess peer-reviewed scientific studies and other information and individually provide scientific advice to address specific issues the Secretary will be considering in making the final finding.

Deadline for Submission of Nominations

NMFS is soliciting nominations by July 10, 2002. See **ADDRESSES** above.

Dated: June 26, 2002.

Phil Williams

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–16538 Filed 7–1–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Re-Initiation of Public Scoping Period on the Review of the Gerry E. Studds Stellwagen Bank National Marine Sanctuary Management Plan; Notice of Availability of the ''State of the Sanctuary Report''

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

SUMMARY: The Stellwagen Bank National Marine Sanctuary (SBNMS) was designated in 1992. Encompassing an 842-square mile area off the coast of Massachusetts, SBNMS protects one of the most biologically diverse areas along the eastern seaboard. It is one of the primary feeding grounds of the highly migratory humpback whale, the part-time home of the endangered northern right whale, and has a highly varied seafloor that supports a wide variety of demersal fish species and invertebrate species.

In accordance with section 304(e) of the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C. 1431 *et seq.*), the NMSP is re-initiating a review of the SBNMS management plan to evaluate substantive progress toward implementing the goals of the Sanctuary and to make revisions to the plan as necessary to fulfill the purposes and policies of the NMSA. NOAA is now seeking comments on the scope, types, and significance of issues related to the Sanctuary management plan and regulations.

Background

The current management plan for the Sanctuarywas originally published in July 1993. In December 1998 and January 1999, the NMSP initiated a reviewd of this plan by holding scoping meetings to solicit public comments on

the status of site management. Scoping participants comments on a variety of issues, which were then characterized by Sanctuary staff and drafted into a ''State of the Sanctuary Report'' during Winter 2001/2002 (a change in sanctuary adminstration delayed the management plan review process for approximately one year).

The State of the Sanctuary Report, which also contains current background information on the Sanctuary's administrative capacities, its environmental features and human uses, and its ongoing activities, is now being released to familiarize the public with the current status of Sanctuary management and the range of issues identified during the initial scoping period of 1998/1999. The report can be obtained by contacting the Management Plan Review Coordinator at the address below or by downloading it from the SBNMS Web site at <*http://stellwagen.nos.noaa.gov*>. Interested parties should refer to this report in preparation for submitting comments on the Sanctuary's management plan during this re-initiation of the scoping period.

Comments on the Sanctuary management plan may be submitted in three ways: (1) In writing to SBNMS Management Plan Review Coordinator at the address or fax number below; (2) via e-mail to *sbnmsplan@noaa.gov;* or (3) in writing or orally at formal public meetings that NOAA will conduct at various locations in the Sanctuary region during the Fall 2002. Details on locations, dates, and times for these meetings will be published in a subsequent **Federal Register** notice and local newspapers.

DATES: Comments should be received on or before October 18, 2002.

ADDRESSES: For a copy of the State of the Sanctuary Report, contact the Management Plan Review Coordinator, Stellwagen Bank National Marine Sanctuary, 175 Edward Foster Rd. Scituate, MA 02066. Copies can also be downloaded from the SBNMS Web site at <*http://stellwagen.nos.noaa.gov*>.

To submit comments, you may (1) mail them to the address above; (2) fax them to (781) 545–8036; (3) e-mail them to *sbnmsplan@noaa.gov;* or (4) attend the upcoming meetings in the Fall 2002 (dates, times, and locations will be announced in a subsequent **Federal Register** notice and in local newspaper). Comments should be addressed to the attention of the Management Plan Review Coordinator.

FOR FURTHER INFORMATION CONTACT: Katrina VanDine at (781) 545–8026 x203 or via e-mail at *sbnmsplan@noaa.gov.*

Authority: 16 U.S.C. Section 1431 *et seq.*

Dated: June 25, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–16651 Filed 7–1–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.061202D]

Endangered Species; File No. 1324

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Dr. Nancy Thompson, National Marine Fisheries Service, Southeast Fisheries Science Center (SEFSC) has been issued an amendment to scientific research Permit No. 1324.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Lillian Becker or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On September 27, 2001, notice was published in the **Federal Register** (66 FR 49353) that a modification of Permit No. 1324, issued August 9, 2001 (66 FR 42995), had been requested by the above-named organization. The requested modification has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The modification requested the increase in authorized lethal take of leatherback turtles from one to two over the life of the permit and to increase the authorized lethal take of green, hawksbill, and Kemp's ridley turtles, in combination, from one to two. It was also requested to include the category of unidentifiable turtles to the lethal take. The request to increase lethal takes of turtles was withdrawn. An additional request to modify the experimental design for 2002 to test the effects of soak times, mackerel bait, and the use of 18/0 circle hooks was authorized. This modification to the research design will decrease the number of turtles caught and the magnitude of the injury if they are caught. This new experimental design decreases the number of hooks used by 121,908 to 324,324.

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 26, 2002.

Trevor Spradlin,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–16601 Filed 7–1–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Inspector General; Privacy Act of 1974; System of Records

AGENCY: Inspector General, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Inspector General, DoD is adding a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action is effective without further notice on August 1, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Freedom of Information Act Office, Office of the Inspector General, DoD, 400 Army Navy Drive, Arlington, VA 22202–4704.

FOR FURTHER INFORMATION CONTACT: Major Eric L. Kase, USAF, at (703) 604–9744.

SUPPLEMENTARY INFORMATION: The Inspector General, DoD, systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 21, 2002, to the

House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 27, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

CIG 19

SYSTEM NAME:

Recall Roster/Locator Records.

SYSTEM LOCATION:

Administration and Information Management Directorate, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704 and at field offices of the OIG DoD, nationwide. Field office locations may be obtained by writing to the above location.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees, military personnel and contractors assigned to the Inspector General of the Department of Defense (OIG, DoD).

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, organizational and home addresses, work/home/cellular telephone numbers, home e-mail account, and pager number (if applicable); emergency personnel rosters, contact listing files, organizational telephone directories, and listing of office personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and DoD Directive 3020.26, Continuity of Operations Policy and Planning.

PURPOSE(S):

Information is being collected and maintained to ensure that the Office of the Inspector General, DoD, has the ability to recall personnel to place of duty when required, for use in emergency notification, and to perform relevant functions/requirements/actions consistent with managerial functions during an emergency/discovery.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, state, or local governments or civic organizations during actual emergencies, exercises or continuity of operation tests for the purpose of responding to emergency situations.

The DoD 'Blanket Routine Uses' published at the beginning of the OIG DoD compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on a computer client server and in paper form at each location.

RETRIEVABILITY:

Retrieved by individual's name and by organization.

SAFEGUARDS:

Records are maintained in areas accessible only to OIG DoD personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings in locked offices, or locked cabinets during non-duty hours.

RETENTION AND DISPOSAL;

Records are perpetual because individual records are deleted or added when the file is updated.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Administration and Information Management, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves in contained in this system of records should address written inquiries to the Chief, Freedom of Information Act/ Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written requests should contain the individual's full name and work organization.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written requests to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written requests should contain the individual's full name and work organization.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Official Personnel Folder and other information obtained from the subject individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–16665 Filed 7–1–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision (ROD) for the Programmatic Environmental Impact Statement (PEIS)–Army Transformation

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the ROD for the PEIS for Army Transformation.

The ROD details the environmental concerns, identified in the PEIS, that may affect various aspects of Army transformation including, but not limited: unit location; materiel acquisition and testing; training areas; range requirements; and strategic deployment.

ADDRESSES: To obtain a copy of the PEIS ROD, access the Army home page at *www.army.mil/a-z.htm,* and scroll to Programmatic Environmental Impact Statement. The PEIS ROD has been posted at this Wed site to facilitate public access.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Lucas at (703) 805–2522.

SUPPLEMENTARY INFORMATION: The Department of the Army prepared a PEIS assessing potential impacts of the Army transformation on the environment. The PEIS was prepared pursuant to the National Environmental Policy Act of 1969 and the Record of Decision has been signed.

As a result of this effort, it has been decided to proceed with a multi-year, phased, and synchronized process to transform the Army. The results of the PEIS were considered along with supporting studies and comments provided during the formal comment and review periods. Based on this review, it was determined that the preferred alternative reflects the proper balance between initiatives for

protection of the environment, appropriate mitigation, and actions to achieve the Army Vision. The Army has identified and shall adopt and implement a variety of measures to avoid or minimize harm to the environment that may be caused by implementation of the proposed action.

Project- and site-specific proposals for transformation actions and activities will be appropriately evaluated for their potential environmental effects. Future planning for and initiating actions to accomplish transformation shall be subject to appropriate evaluation pursuant to the National Environmental Policy Act and other requirements.

Dated: June 21, 2002.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA(I&E).

[FR Doc. 02–16647 Filed 7–1–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Draft Environmental Impact Statement (DEIS) for Activities Associated With Future Programs at the U.S. Army Dugway Proving Ground, Utah

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: This announces the availability of the DEIS for Activities Associated with Future Programs at the U.S. Army Dugway Proving Ground (DPG). The DEIS provides information on potential effects to the human and physical environment resulting from present and reasonably foreseeable future activities that have been or may be undertaken by the various units and organizations at DPG. Mitigation of these potential effects is also considered in the DEIS.

DATES: The public comment period for the DEIS will end 45 days after publication of the notice of availability in the **Federal Register** by Environmental Protection Agency.

ADDRESSES: Written comments on the DEIS should be forwarded to: Commander, U.S. Army Dugway Proving Ground, Attn: STEDPPA (Draft EIS), Dugway, UT 84022–5000.

FOR FURTHER INFORMATION CONTACT: Ms. Paula Nicholson at (435) 831–3409, or by e-mail at *nicholsn@dpg.army.mil.*

SUPPLEMENTARY INFORMATION: The Proposed Action (preferred alternative) for the DEIS includes continuation of existing DPG activities (including chemical and biological defensive testing, other testing programs, training, real property management, and environmental management) with future increases in most testing and training operating areas. Additionally, the Proposed Action includes diversification of DPG operations and implementation of a Summary Development Plan identifying real property planning recommendations for DPG.

The DEIS considers two action alternatives to the Proposed Action and a No Action alternative. The two action alternatives are: (1) Decreased mission with a major reduction in operations at DPG and (2) a maximum expanded mission with major increases in most operating areas compared to current DPG operations.

The No Action alternative represents the status quo and assumes that existing DPG operations would continue at approximately their current rates into the foreseeable future. All existing actions currently the subject of environmental documentation, associated mitigation measures and mitigative planning strategies would continue to be implemented under the No Action alternative.

The DEIS is being produced as both a full volume (approximately 1000 pages) and as an Executive Summary (approximately 100 pages). Both the DEIS and Executive Summary are available on Compact Disc in Adobe PDF format.

Public meetings on the DEIS will be held in English Village (on DPG), Tooele, and Salt Lake City, UT. Exact dates and locations will be advertised in the local media and announced on the EIS website (http://www.dugway.army.mil) at least 15 days prior to the meetings. Additional information on the public meetings can also be obtained from the DPG Public Affairs Office at (435) 831–3409.

Anyone wishing to receive a copy of the DEIS or the Executive Summary may write to: U.S. Army Dugway Proving Ground, ATTN: CSTE–DTC–DP–PA (Paula Nicholson), Dugway, UT 84022–5000. A copy of either document may also be requested through the EIS website (http:\\www.dugway.army.mil).

The full DEIS and Executive Summary will be available at the following rooms: Whitmore Library, 2197 East 7000 South, Salt Lake City; University of Utah, J. Willard Marriott Library, Special Collections—Western Americana (5th floor), 15th East and South Campus Drive, Salt Lake City; Dugway Public Library, 5124 Kister Avenue, Dugway; Tooele City Public Library, 47 East Vine Street, Tooele. Copies at the public reading rooms are for review purposes only, and extra copies of the documents will not be available at these locations.

Dated: June 27, 2002.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA(I&E).

[FR Doc. 02–16648 Filed 7–1–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Bioforce Nanosciences, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Bioforce Nanosciences, Inc., a revocable, nonassignable, exclusive license to practice in the United States and certain foreign countries, the Government-owned inventions described in U.S. Patent No. 5,372,930 (Navy Case No. 73,568) issued December 13, 1994, entitled ''Sensor for Ultra-Low Concentration Molecular Recognition'' U.S. Patent No. 5,958,701 (Navy Case No. 79,257) issued September 28, 1999, entitled ''Method for Measuring Intramolecular Forces by Atomic Force''; and U.S. Patent No. 5,992,226 (Navy Case No. 78,838) issued November 30, 1999, entitled ''Apparatus and Method for Measuring Intermolecular Interactions by Atomic Force Microscopy''.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than July 17, 2002.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D. Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, telephone (202) 767–7230. Due to U.S. Postal delays, please fax (202) 404–7920, e-mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: June 25, 2002.

R.E. Vincent, II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–16587 Filed 7–1–02; 8:45 am]

BILLING CODE 3810–FF–P

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 September 3, 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: June 26, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: Revision.

Title: Vocational Technical Education Annual Performance and Financial Reports.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 54

Burden Hours: 7,006.

Abstract: The information contained in the Consolidated Annual Performance Report for Vocational Technical Education is needed to monitor State performance of the activities and services funded under the Carl D. Perkins Vocational and Technical Education Act of 1998. The respondents include eligible agencies in 54 states and insular areas. This revision clarifies instructions and definitions and eliminates the collection of some data elements.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2072. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–16546 Filed 7–1–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory 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 September 3, 2002.

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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: June 26, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education.

Type of Review: New.

Title: Final Reporting Forms for FIPSE International Consortia Programs.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 40. Burden Hours: 240.

Abstract: Protocols for final performance reports for the European Community-US Higher Education Program, the US-Brazil Higher Education Consortia Program and the Program for North American Mobility in Higher Education are necessary to assure the quality of program management and progress toward meeting performance objectives which include student learning, encouraging international cooperation, and partnerships among higher education institutions in the US and abroad.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2047. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–16547 Filed 7–1–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–269]

Application To Export Electric Energy; Energy America LLC.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Energy America LLC (Energy America) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before August 1, 2002.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) 202–586–7983 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16U.S.C. § 824a(e)).

On June 4, 2002, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from Energy America LLC (Energy America) to transmit electric energy from the United States to Canada. Energy America is a Delaware corporation having its principal place of business in Toronto, Ontario, Canada. Energy America is a direct, wholly-owned subsidiary of Centrica US Holding Ltd. (Centricia US) and Centrica Canada Ltd. Energy America is currently an energy supplier that engages in the purchase and sale of both wholesale and retail energy and capacity in the U.S. and Canadian electricity markets. Energy America does not own or control any electric power generation or transmission facilities and does not have a franchised service area in the United States.

Energy America proposes to arrange for the delivery of wholesale and retail electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizen Utilities, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by Energy America , as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's rules of practice and procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Energy America application to export electric energy to Canada should be clearly marked with Docket EA–269. Additional copies are to be filed directly with Nick Fulford, Sr. Vice President Business Development, Centrica North America/Energy America, 25 Shepard Avenue, W., Suite 1500, Toronto, Ontario, Canada, M2N 6S6 AND Jerry L. Pfeffer, Energy Industries Advisor, Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue, NW., Washington, DC 20005–2111.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.de.gov.* Upon reaching the Fossil Energy Home page, select ''Electricity Regulation,'' and then ''Pending Procedures'' from the options menus.

Issued in Washington, DC, on June 21, 2002.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–16640 Filed 7–1–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–387–000, CP01–384–000, CP01–385–000, CP01–386–000, CP02–52–000, CP02–31–000]

Algonquin Gas Transmission Company, Islander East Pipeline Company, L.L.C. and Iroquois Gas Transmission System, L.P.; Notice of Non-Decisional Status

June 26, 2002.

Take notice that, for purposes of the above-captioned dockets (and all subdockets in those dockets), Randolph E. Mathura, Director, Division of Pipeline Certificates, Office of Energy Projects, is a non-decisional authority and a non-decisional employee. *Cf.* 18 CFR 385.102(a)(2002) (definition of decisional authority); 18 CFR 385.2201(c)(3) (2002) (definition of decisional employee).

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16606 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1936–001]

Ameren Services Company; Notice of Filing

June 25, 2002.

Take notice that on June 21, 2002, Ameren Services Company (ASC) tendered for filing a Network Integration Transmission Service Agreement and Network Operating Agreement between ASC and Mount Carmel Public Utility Co. ASC asserts that the purpose of the Agreement is to replace the unexecuted Agreements in Docket No. ER02–1936–000 with the executed Agreements.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: July 12, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16556 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1936–002]

Ameren Services Company; Notice of Filing

June 25, 2002.

Take notice that on June 21, 2002, Ameren Services Company (ASC) tendered for filing a Network Integration Transmission Service Agreement and Network Operating Agreement between ASC and Ameren Energy Marketing Company. ASC asserts that the purpose of the Agreement is to replace the unexecuted Agreements in Docket No. ER02–1936–000 with the executed Agreements.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: July 12, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16557 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1957–001]

Ameren Services Company; Notice of Filing

June 25, 2002.

Take notice that on June 21, 2002, Ameren Services Company (ASC) tendered for filing a Firm Point-to-Point Transmission Service Agreement between ASC and Aquila Energy Marketing Corp. ASC asserts that the purpose of the Agreement is to replace the unexecuted Agreement in Docket No. ER02–1957–000 with the executed Agreement.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for

assistance). 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.

Comment Date: July 12, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16558 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES01–19–001]

American Transmission Company LLC; Notice of Application

June 26, 2002.

Take notice that on June 19, 2002, American Transmission Company LLC submitted an amendment to its original application in this proceeding, under section 204 of the Federal Power Act. The amendment seeks authorization to issue long-term debt with a maturity date of thirty years or less instead of the previously approved maturity date of ten years or less (with no change in the total aggregate amount outstanding of $400 million).

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 the comment date. 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 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.

Comment Date: July 12, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16611 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1381–002]

Aquila Merchant Services, Inc.; Notice of Filing

June 25, 2002.

Take notice that on June 21, 2002, Aquila Merchant Services, Inc. submitted its compliance filing in the above-captioned docket.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: July 12, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16552 Filed 6–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–3103–002 et al.]

Astoria Generating Co., LP., et al.; Notice of Filing

June 21, 2002.

In the matter of: ER01–3103–002, ER98–4095–002, ER99–1764–003, ER00–1463–002, ER01–2398–004, ER01–852–001; Astoria Generating Co., L.P., Carr Street Generating Station, L.P., Erie Boulevard Hydropower, L.P., Orion Power MidWest, L.P., Liberty Electric Power, LLC and Twelvepole Creek, LLC.

Take notice that on June 17, 2002, Astoria Generating Co., L.P., Carr Street Generating Station, L.P., Erie Boulevard Hydropower, L.P., Orion Power MidWest, L.P., Liberty Electric Power, LLC and Twelvepole Creek, LLC (collectively, the Orion Companies) tendered for filing their joint triennial market power update.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: July 8, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16564 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1770–002]

California Independent System Operator Corporation; Notice of Filing

June 25, 2002.

Take notice that on June 21, 2002, the California Independent System Operator Corporation (ISO) submitted a filing in compliance with the Commission's May 22, 2002, Order ''Granting in Part and Denying in Part Rehearing, and Directing Compliance Filing'' 99 FERC ¶ 61, 212. The ISO states that it has served copies of this filing upon all parties listed on the official service list for this proceeding.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: July 12, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16549 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1656–003]

California Independent System Operator Corporation; Notice of Filing

June 21, 2002.

Take notice that on June 17, 2002, California Independent System Operator Corporation (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission), proposed revised tariff sheets that implement additional elements of its Comprehensive Market Design Proposal.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: July 8, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16567 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–78–000]

Central Vermont Public Service Corporation and Green Mountain Power Corporation; Notice of Filing

June 21, 2002.

Take notice that on June 18, 2002, Central Vermont Public Service Corporation (Central Vermont) and Green Mountain Power Corporation (Green Mountain) filed with the Federal Energy Regulatory Commission (Commission),an application pursuant to Section 203 of the Federal Power Act for authorization to purchase certain shares of non-voting Class C Common Stock ($100 par value) issued by the Vermont Electric Power Company, Inc. (VELCO). The Vermont Public Service Board has previously approved the issuance of the stock by VELCO.

Copies of the filing were served upon the Vermont Public Service Board and the Vermont Department of Public Service.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: July 9, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16561 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–320–001]

Chandeleur Pipe Line Company; Notice of Compliance Filing

June 26, 2002.

Take notice that on June 21, 2002, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff, to become effective August 1, 2002:

Second Revised Sheet No. 2
Third Revised Sheet No. 3
Third Revised Sheet No. 3A
Second Revised Sheet No. 6
Original Sheet No. 6A
Fourth Revised Sheet No. 18
Second Revised Sheet No. 18A
Fifth Revised Sheet No. 19
Sixth Revised Sheet No. 19A
First Revised Sheet No. 19A.01
First Revised Sheet No. 19A.02
Sixth Revised Sheet No. 19B
Third Revised Sheet No. 19C
Third Revised Sheet No. 27
Third Revised Sheet No. 28
Original Sheet No. 28A
Sixth Revised Sheet No. 29
First Revised Sheet No. 29A
First Revised Sheet No. 30
Third Revised Sheet No. 31
First Revised Sheet No. 31A
Fourth Revised Sheet No. 32
Original Sheet No. 32A
Second Revised Sheet No. 50
Third Revised Sheet No. 51
First Revised Sheet No. 57
First Revised Sheet No. 72
Original Sheet No. 72A
Original Sheet No. 72B

Chandeleur asserts that the purpose of this filing is to comply with the Commission's directives in Docket No. RP00–320–000 issued May 21, 2002 (May 21 Order). The tariff sheets incorporate all of the *pro forma* provisions approved by the May 21 Order and proposed changes to certain provisions as directed by the May 21 Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 3, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16621 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX96–2–005]

City of College Station, TX; Notice of Filing

June 21, 2002.

Take notice that on June 19, 2002, City of Bryan, Texas (Bryan) tendered for filing with the Federal Energy Regulatory Commission (Commission), its compliance filing setting forth the rates, terms and conditions under which Bryan will provide transmission service to the City of College Station (College Station). The compliance filing is submitted pursuant to the Commission's order in City of College Station, Texas, 86 FERC ¶ 61,165 (February 16, 1999) (Final Order).

Copies of the filing were served upon the official service list in this proceeding.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: July 10, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16575 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP96–711–003, CP96–711–004, CP96–712–005, and CP96–719–003]

Discovery Gas Transmission, LLC; Notice of Compliance Filing

June 26, 2002.

Take notice that on May 31, 2002, Discovery Gas Transmission LLC. (Discovery) tendered for filing revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to be effective July 1, 2002. Discovery states that the purpose of the limited Section 4 filing is to submit revised tariff sheets and supporting workpapers in compliance with Ordering Paragraph C of the Commission's Order Denying Rehearing and Granting Clarification, issued on October 11, 2001, in Discovery Producer Services LLC's Docket No. CP96–711–002 and Discovery Gas Transmission LLC's Docket Nos. CP96–712–004 and CP96–719–002. The October 11, 2002, order directed Discovery to file tariff sheets that state separate gathering rates for those facilities that the Commission determined, in its underlying July 25, 2001, order, to be gathering facilities.

Included in Appendix B of the filing are the worksheets supporting the allocation of the transmission rates and gathering rates on a gross plant basis. Discovery states that copies of the filing are being mailed to affected customers and interested state commissions.

Any person desiring to be heard or to protest this 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 Sections 385.211 and 384.214 of the Commission's Rules of Practices and Procedures. All such motions and comments 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 proceeding. 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 in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (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 at *http://www.ferc.fed.us/efi/doorbell.htm*). Applicant's designated contact person is Kevin Rehm at 713–215–2694.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16605 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–134–000]

Duke Energy Moapa, LLC; Notice of Amended and Restated Application for Commission Determination of Exempt Wholesale Generator Status

June 21, 2002.

Take notice that on June 19, 2002, Duke Energy Moapa, LLC (Duke Moapa) filed an amended and restated application with the Federal Energy Regulatory Commission (the Commission) for determination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's regulations.

Duke Moapa states it is a Delaware limited liability company that will be engaged directly and exclusively in the business of operating all or part of one or more eligible facilities to be located in Clark County, Nevada. The eligible facilities will consist of an approximately 1,200 MW natural gas-fired, combined cycle electric generation plant and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: July 12, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16562 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–782–003]

Florida Power & Light Company; Notice of Filing

June 25, 2002.

Take notice that on June 21, 2002, Florida Power & Light Company submitted a compliance filing of the May 21, 2002 Letter Order issued by the Federal Energy Regulatory Commission in the above-referenced proceeding.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: July 12, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16551 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–189–000]

Fresno Cogeneration Partners, L.P.; Notice of Filing

June 21, 2002.

Take notice that on June 19, 2002, Fresno Cogeneration Partners, L.P. (Fresno) designates the long-term service agreement entitled Master Power Purchase & Sales Agreement, dated August 3, 2001 (Service Agreement No. 1) between Fresno and the California Department of Water Resources for the sale of power filed in the above referenced docket on October 30, 2001 as Fresno Cogeneration Partners, L.P. Service Agreement No. 1 under FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 1.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: July 10, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16565 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–374–000, CP02–376–000, CP02–377–000, and CP02–378–000]

Hackberry LNG Terminal, L.L.C.; Notice of Application

June 26, 2002.

Take notice that on May 30, 2002; [as revised on June 24, 2002], Hackberry LNG Terminal, L.L.C. (Hackberry LNG), 1000 Louisiana, Suite 5800, Houston, Texas 77002, filed an application seeking authorization to site, construct and operate a liquefied natural gas (LNG) terminal located at Hackberry, Louisiana, and a new 35 mile natural gas pipeline in Cameron, Calcasieu, and Beauregard Parishes, Louisiana. The purpose of the LNG terminal is to provide open access LNG tanker services to shippers importing LNG. Hackberry LNG is requesting authorization to offer open access terminalling services at market-based rates; open access transportation service on the proposed pipeline will be separately charged, and calculated on a cost-of-service basis.

The application 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 # '' and follow the instructions (please call (202) 208–2222 for assistance). Any initial questions regarding the application should be directed to Sarah Tomalty, Dynegy Inc., 1500 K Street, NW., Suite 400, Washington DC 20005, Phone: (202) 216–1123.

Hackberry LNG made the request to site, construct and operate the LNG terminal pursuant to section 3(a) of the Natural Gas Act and part 153 of the Commission's regulations (Docket No. CP02–378–000); and section 7(c) of the NGA and part 157, subpart A of the Commission's Regulations (Docket No.CP02–374–000). Hackberry LNG also requests approval of the Hackberry LNG terminal as the place of entry for the imported LNG supplies under section 3(a) of the Natural Gas Act and part 153 of the Commission's regulations (Docket No.CP02–378–000). Hackberry LNG also requested authorization in Docket No.CP02–376–000 to provide the LNG terminalling services on a firm and interruptible basis pursuant to Section 7(c) of the NGA and Part 284 of the Commission's Regulations. In addition, Hackberry LNG seeks authorization, pursuant to section 7(c) of the NGA and part 157, subpart A of the Commission's Regulations, to construct and operate a 35 mile pipeline and related facilities to transport natural gas on an open access basis under Part 284. Finally, in Docket No. CP02–377–000, Hackberry LNG requests a blanket certificate under section 7(c) of the NGA and part 157, subpart F of the Commission's regulations to perform routine activities in connection with the future construction, operation and maintenance of the proposed 35 mile pipeline.

Hackberry LNG says that following the conclusion of an 85-day open season, it executed a binding precedent agreement with Dynegy Marketing and Trade (Dynegy Marketing) for all of the available firm LNG terminalling capacity. The total available delivery capacity offered by Hackberry LNG in its open season was 1,500,000 Dth per day, and Dynegy Marketing was awarded the entire available delivery quantity because Dynegy Marketing submitted the highest net present value bid. Hackberry LNG says that Dynegy Marketing will contract for and pay a monthly reservation fee based upon its Maximum Daily Delivery Quantity (MDDQ) of 1,500,000 Dth per day. Hackberry LNG says that shippers are allocated LNG storage capacity based on fixed ratio of storage capacity to contracted MDDQ. The LNG storage capacity is proposed to be 1,006,000 barrels or 10.4 Bcf.

Hackberry LNG proposes to offer open-access, non-discriminatory LNG terminalling services, which would include the receipt of imported LNG from ocean-going tankers, and the storage and vaporization of the LNG. Hackberry LNG will also provide pipeline transportation of vaporized LNG from the tailgate of the LNG terminal to the pipeline grid through a proposed pipeline. Dynegy Marketing will be allocated 1,500,000 Dth per day of transportation capacity in the new pipeline. The new 35 mile pipeline is proposed to be interconnected with the facilities of Transcontinental Gas Pipe Line and will cross several other pipelines which could become interconnected.

In order to provide the LNG terminalling and pipeline transportation services, Hackberry LNG requests Commission authorization to construct, install, and operate the following facilities :

—An LNG unloading slip with two berths, each equipped with three liquid unloading arms and one vapor return/delivery arm;
—Three LNG storage tanks each with a usable volume of 160,000 cubic meters (1,006,000 barrels);
—Nine in-tank pumps, each sized for 250,000 Mcf/d;
—Ten second stage pumps, each sized for 188,000 Mcf/d;
—Twelve submerged combustion vaporizers, each sized at 150,000 Mcf/d;
—A boil-off gas compressor and condensing system;
—An LNG circulation system to maintain the facilities at the appropriate temperature when LNG tankers are not being unloaded;
—An natural gas liquids recovery unit;
—Utilities, buildings and service facilities; and
—A 35.4-mile, 36-inch-diameter natural gas send out pipeline.

Hackberry LNG's filing includes a *pro forma* copy of the FERC Gas Tariff under which Hackberry LNG proposes to provide firm and interruptible LNG terminalling services on an open access basis under Rate Schedules LNG–1 and LNG–2, and firm and interruptible transportation services under Rate Schedules FTS and ITS. Hackberry LNG has requested waiver of certain nomination/confirmation/scheduling provisions contained in the GISB/NAESB standards due to the unique nature of scheduling receipt if ocean-going LNG tankers.

Hackberry LNG has requested approval of market based rates for its LNG terminalling services and has requested waiver of the requirements to disclose the capital and operating costs of the LNG terminal. To support its request for market based rates, Hackberry LNG has proved a study in Exhibit Z of its application which concludes that Hackberry LNG meets the criteria for market based rates set forth in Commission's 1996 Policy Statement on this topic. However, Hackberry LNG has estimated the capital cost of the new 35 mile pipeline to be about $ 74.5 million and an annual cost-of-service for the new pipeline to be $ 12.7 million. The proposed firm transportation reservation rate for the new pipeline is $ 0.7087.

Hackberry LNG requests that the Commission issue a preliminary determination on all non-environmental matters, including Hackberry LNG's request for market-based rate authority for the pricing of terminalling services

and the proposed tariff, by October, 2002, and a final order granting the requested authorizations by August 15, 2003. Hackberry LNG says that this proposed schedule will enable it to commence LNG import terminalling services by November, 2006.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before July 19, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, 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.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16608 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2050–000]

Hartford Power Sales, L.L.C.; Notice of Filing

June 21, 2002.

Take notice that on June 19, 2002, Hartford Power Sales, L.L.C., by and through Edison Mission Energy, submitted its Notice of Cancellation on June 7, 2002, on Market-Base Rate Tariff. It has come to our attention that the first paragraph on page 2 of that filing inadvertently contains erroneous statements as to the history of the Hartford Power sales, L.L.C., market-based rate authority and a corrected version has been submitted.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: July 10, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16570 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1939–000]

Louisville Gas and Electic Company; Notice of Filing

June 21, 2002.

Take notice that on May 30, 2002, Louisville Gas and Electric Company (LG&E) filed with the Federal Energy Regulatory Commission (Commission) an executed letter agreement extending the interconnection agreement between LG&E and Kentucky Utilities (KU) (hereinafter Companies) and Trimble County LLC (TCLC).

The Companies respectfully request that the Commission waive its usual minimum notice requirements and any other requirements of its rules and regulations with which this filing may not comply and accept for filing this service agreement to be effective at the date of filing.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: July 12, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16568 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–3001–003]

New York Independent System Operator, Inc.; Notice of Filing

June 25, 2002.

Take notice that on June 20, 2002, the New York Independent System Operator, Inc. (NYISO) submitted a supplemental report on the status of its demand side management programs in New York State in compliance with the Commission's October 25 Order in the above-captioned proceeding. The NYISO has served a copy of this filing upon all parties that have executed service agreements under the NYISO's Open Access Transmission Tariff and Market Administration and Control Area Services Tariff.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: July 11, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16550 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–638–003]

New York Independent System Operator, Inc.; Notice of Filing

June 21, 2002.

Take notice that on June 18, 2002, the New York Independent System Operator, Inc. (NYISO) filed with the Federal Energy Regulatory Commission (Commission) corrected revisions to its Open Access Transmission and Market Administration and Control Area Services Tariffs in order to comply with the Commission's Order issued on February 26, 2002, in the above-captioned docket.

The NYISO has requested an effective date of April 11, 2002, for the filing. The NYISO has served a copy of this filing upon all parties on the official service list maintained by the Commission in the above-captioned docket.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: July 9, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16566 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–367–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 26, 2002.

Take notice that on June 21, 2002, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 2002:

Third Revised Sheet No. 286C
Third Revised Sheet No. 287

Northern Border is filing revised tariff sheets to set forth clearly the conditions under which the Company may elect to terminate a temporary capacity release. Northern Border states that the proposed changes are in response to the Commission's observations as stated in an order at Docket No. RP02–206–000 (95 FERC ¶ 61,182).

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers and interested state regulatory commissions.

Any person desiring to 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16624 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–365–000]

Northern Natural Gas Company; Notice of Petition for Declaratory Order

June 26, 2002.

Take notice that on June 5, 2002, Northern Natural Gas Company (Northern), filed a Petition for Declaratory Order requesting that the Commission find that: (1) the Commission did not direct Northern to make Kansas *ad valorem* tax refunds to its non-jurisdictional customers; and, (2) Northern is not in violation of any Commission *ad valorem* tax refund orders.

Northern states that on May 10, 2002, the Iowa Utilities Board (IUB) issued an order directing Northern to refund approximately $825,000 of Kansas *ad valorem* tax refunds received from producers to Peoples Natural Gas Company. Peoples was a non-jurisdictional sales customer of Northern during the period at issue. In its May 10th order, the IUB claimed that the Commission required interstate pipelines, including Northern, to refund all Kansas *ad valorem* tax overcharges to their customers, ''whether jurisdictional or non-jurisdictional.'' Further, the IUB asserted that Northern's retention of non-jurisdictional refunds is ''a violation of FERC orders.''

Northern states that these allegations are erroneous, that the Commission has never ordered Northern to make refunds to its non-jurisdictional customers, and that refunds of non-jurisdictional amounts, if any, are governed by the contracts between Northern and its non-jurisdictional customers. Further, Northern states that the Commission has: (1) issued an order requiring pipelines to make Kansas *ad valorem* tax refunds only to their jurisdictional customers; (2) accepted Northern's annual refund reports showing the allocation of Kansas *ad valorem* tax refunds between jurisdictional and non-jurisdictional customers and approved Northern's refunds to its jurisdictional customers; and, (3) approved a settlement requiring refunds to Northern's jurisdictional customers only.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 16, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16623 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–387–000]

Petal Gas Storage, L.L.C.; Notice of Application

June 26, 2002.

Take notice that on June 18, 2002, Petal Gas Storage, L.L.C. (Petal), Nine Greenway Plaza, Houston, Texas 77046, filed in Docket No. CP02–387–000 , for an application pursuant to Section 7(c) of the Natural Gas Act (NGA) for authorization to construct, install, own, operate, and maintain new natural gas underground storage facilities, and related above-ground facilities, located in Forrest County, Mississippi, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for 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 (call (202) 208–2222 for assistance).

Petal seeks: (1) A certificate of public convenience and necessity that would authorize Petal to construct, install, own, operate, and maintain high-deliverability salt-dome gas storage facilities that will accommodate the injection, storage, and subsequent withdrawal of natural gas for redelivery in interstate commerce; (2) authorization to provide storage services at market-based rates; and (3) waiver of any Commission regulations necessary to grant the authorizations requested.

Petal proposes to construct and operate one new subsurface natural gas storage cavern (Cavern No. 8), and convert an existing subsurface brine storage cavern (Cavern No. 3) to natural gas storage. Both of these natural gas storage caverns are located adjacent to Petal's existing facilities within the Petal Salt Dome subsurface geologic feature, located in Forrest County, Mississippi.

In association with the construction of Cavern No. 8, Petal is proposing the construction of a 16-inch diameter natural gas pipeline approximately 1,276 feet long; a 12-inch diameter water line approximately 1,786 feet long; and a 12-inch diameter brine transmission line approximately 1,789 feet long. Petal also proposes to construct an additional 16-inch diameter natural gas transmission pipeline, approximately 2,407 feet in length, located between the Petal Cavern

No. 3 wellhead and the existing Petal No. 2 Compressor Station. In addition, Petal proposes to construct fiber optics communications cables between both the Cavern No. 8 and Cavern No. 3 wellheads, and the existing Petal No. 2 Compressor Station, for remote operations of the proposed wellhead facilities.

Petal proposes to construct above-ground facilities. The above-ground facilities consist of: (1) A 5,000 horsepower natural gas compression unit on an existing concrete pad located within the Petal No. 2 Compressor Station building; (2) a 250 MMcf/d dehydration contractor, knockout scrubber, and gas/glycol exchanger to the existing Petal dehydration system, adjacent to the Petal No. 2 Compressor Station; and (3) a pressure control system at the Petal No. 2 Compressor Station to control the injection and withdrawal pressures between the station and Cavern No. 3 and Cavern No. 8.

Petal states that the proposed facilities will provide additional gas storage capacity to Petal's storage system, in response to significant increased demand from both existing and new customers for additional firm and interruptible storage services. Petal asserts that currently, all available gas storage space in Petal's existing caverns is fully subscribed.

Petal indicates that in order to accommodate these significant new market demands, Cavern No. 8 will be constructed with a working storage capacity of up to 5.0 Billion cubic feet (Bcf) and Cavern No. 3, once converted for natural gas storage, will have a working storage capacity of up to 3.0 Bcf. Petal states that upon completion of both caverns, the average daily withdrawal capacity for the entire Petal system (4 caverns) will be 1.65 Bcf/d and the daily average injection capacity will be 0.825 Bcf/d.

Any questions regarding this amendment should be directed to Thomas G. Joyce or Veronica Hill, El Paso Corporation, Nine Greenway Plaza, Houston, Texas 77046, at (832) 676–3295, or to J. Gordon Pennington, El Paso Corporation, 555 11th Street, NW, Suite 750, Washington, DC 20004, (202) 637–3544.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before July 17, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, 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.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16609 Filed 6–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–122–004]

PJM Interconnection, L.L.C.; Notice of Filing

June 21, 2002.

Take notice that on June 19, 2002, PJM Interconnection, L.L.C. (PJM), in compliance with the Commission's May 15, 2002 ''Order Addressing Compliance Filing and Directing Further Modification,'' 99 FERC ¶ 61,170 (May 15 Order), supplemented its May 30, 2002 compliance filing in this docket to incorporate in the PJM West Transmission Owners Agreement (PJM West TOA) the same changes ordered by the Commission to the PJM Transmission Owners Agreement (PJM TOA). PJM states that, in compliance with the May 15 Order, it requests an effective date of May 15, 2002 for the enclosed revisions to the PJM West TOA.

Copies of this filing have been served on all persons on the service list in Docket No. EL01–122, and on all parties to the PJM West TOA.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211

and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: July 10, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16563 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2115–000]

PJM Interconnection, L.L.C.; Notice of Filing

June 21, 2002.

Take notice that on June 18, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing an executed interim interconnection service agreement between PJM and Conectiv Mid-Merit, Inc. (CMM) and an executed interconnection service agreement between PJM and Conectiv Bethlehem, Inc. (CBI).

PJM requests a waiver of the Commission's 60-day notice requirement to permit an October 9, 2001 effective date for the interim interconnection service agreement with CMM and an April 25, 2002 effective date for the interconnection service agreement with CBI, as agreed to by the parties. Copies of this filing were served upon each of the parties to the agreements and the state regulatory commissions within the PJM region.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: July 9, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16573 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1460–002]

PPL Electric Utilities Corporation; Notice of Filing

June 25, 2002.

Take notice that on June 20, 2002, PPL Electric Utilities Corporation (PPL Electric) filed a second supplement to its April 1, 2002 filing in this docket. This supplement consists of a copy of PPL Electric's Rate Schedule FERC No. 116 designated in accordance with Order No. 614.

PPL Electric states that a copy of this filing has been provided to Metropolitan Edison Company and to the Pennsylvania Public Utility Commission.

Any person desiring to intervene or to protest this filing should file Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: July 11, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16553 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1461–002]

PPL Electric Utilities Corporation; Notice of Filing

June 25, 2002.

Take notice that on June 20, 2002, PPL Electric Utilities Corporation (PPL Electric) filed a second supplement to its April 1, 2002 filing in this docket. The supplement consists of a copy of PPL Electric's Rate Schedule FERC No. 116designated in accordance with Order No. 614.

PPL Electric states that a copy of this filing has been provided to Metropolitan Edison Company and to the Pennsylvania Public Utility Commission.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: July 11, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16554 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1462–002]

PPL Electric Utilities Corporation; Notice of Filing

June 25, 2002.

Take notice that on June 20, 2002, PPL Electric Utilities Corporation (PPL Electric) filed a second supplement to its April 1, 2002 filing in this docket. The supplement consists of a copy of PPL Electric's Rate Schedule FERC No. 117 designated in accordance with Order No. 614.

PPL Electric states that a copy of this filing has been provided to Pennsylvania Electric Company and to the Pennsylvania Public Utility Commission.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: July 11, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16555 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–75–000]

South Carolina Electric & Gas Company; Notice of Filing

June 21, 2002.

Take notice that on June 13, 2002, South Carolina Electric & Gas Company (SCE&G) tendered for filing with the Federal Energy Regulatory Commission (Commission), an application for authorization under section 203 of the Federal Power Act for sale of certain assets.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: July 8, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16560 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2113–000]

Southern California Edison Company; Notice of Filing

June 21, 2002.

Take notice that on June 18, 2002, Southern California Edison Company (SCE) tendered for filing a RMS Agreement between SCE and Cabazon Wind Partners, LLC (Cabazon). SCE respectfully requests the RMS Agreement become effective upon 30 days after a Commission order accepting the agreement for filing.

The RMS Agreement sets forth terms and conditions intended to maintain the reliable operation of the Western Interconnection through the generator's commitment to comply with certain reliability standards.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Cabazon.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: July 9, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16571 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2114–000]

Southern California Edison Company; Notice of Filing

June 21, 2002.

Take notice that on June 18, 2002, Southern California Edison Company (SCE) submitted a Letter Agreement between SCE and the Industry Urban Development Agency (Industry). The Letter Agreement provides for engineering, design, and preparation of specifications necessary for SCE to install interconnection facilities in order to commence Distribution Service to Industry.

Copies this filing were served upon the Public Utilities Commission of the State of California and Industry.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: July 9, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16572 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–389–000]

Williams Gas Pipelines Central, Inc.; Notice of Application

June 26, 2002.

Take notice that on June 24, 2002, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP02–389–000 , for permission and approval pursuant to section 7(b) of the Natural Gas Act (NGA) to abandon certain pipeline facilities in Johnson County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for 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 (call (202) 208–2222 for assistance).

Specifically, Williams proposes to abandon in place approximately 3.9 miles of 16-inch pipeline (known as Line XQ) in Johnson County. It is stated that the proposed abandonment is part of Williams' ongoing maintenance plan and is being abandoned because of its age and high maintenance costs. It is asserted that no customers will lose service as a result of the abandonment and that the customers receiving service at 4 active domestic taps along this segment of pipeline will either be relocated and connected to Williams' Line XE 26-inch parallel line or converted to service from Greeley Gas, a local distribution company. It is explained that the estimated cost associated with the proposed abandonment is $250,000.

Any questions regarding this amendment should be directed to David N. Roberts, Manager of Certificates and Tariffs, Texas Gas Transmission Corporation, P. O. Box 20008, Owensboro, Kentucky 42304, at (270) 688–6712.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before July 8, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed

project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, 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.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16610 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2049–001]

Wisconsin Electric Power Company; Notice of Filing

June 21, 2002.

Take notice that on June 18, 2002, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing an amended Service Agreement No. 1 under Rate Schedule FERC No. 110 which removes the ''confidential'' header on the originally-filed service agreement. Wisconsin Electric requests that this Service Agreement become effective May 15, 2002.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: July 9, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16569 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2116–000]

Xcel Energy Services, Inc.; Notice of Filing

June 21, 2002.

Take notice that on June 19, 2002, Xcel Energy Services, Inc. (XES), on behalf of Northern States Power Company and Northern States Power Company (Wisconsin) (collectively, NSP), submitted for filing a Form of Service Agreement with Consumers Energy Company d/b/a Consumers Energy Traders (Consumers), which is in accordance with NSP's Rate Schedule for Market-Based Power Sales (NSP FERC Electric Tariff, Original Volume No. 6).

XES requests that this agreement become effective on May 3, 2002.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: July 10, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16574 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2117–000, et al.]

Progress Energy Inc., et al.; Electric Rate and Corporate Regulation Filings

June 25, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Progress Energy Inc., on Behalf of Progress Ventures, Inc.

[Docket No. ER02–2117–000]

Take notice that on June 19, 2002, Progress Ventures, Inc. (Progress Ventures) tendered for filing an executed Service Agreement between Progress Ventures and the following eligible buyer, North Carolina Electric Membership Corporation. Service to this eligible buyer will be in accordance with the terms and conditions of Progress Ventures Market-Based Rates Tariff, FERC Electric Tariff No. 1.

Progress Ventures requests an effective date of June 1, 2002 for this Service Agreement. Copies of the filing were served upon the North Carolina Utilities Commission, the South Carolina Public Service Commission, the Florida Public Service Commission and the Georgia Public Service Commission.

Comment Date: July 10, 2002.

2. Progress Energy Inc., on Behalf of Progress Ventures, Inc.

[Docket No. ER02–2118–000]

Take notice that on June 19, 2002, Progress Ventures, Inc. (Progress Ventures) tendered for filing an executed Service Agreement between Progress Ventures and the following eligible buyer, Cincinnati Gas & Electric Company. Service to this eligible buyer will be in accordance with the terms and conditions of Progress Ventures Market-Based Rates Tariff, FERC Electric Tariff No. 1.

Progress Ventures requests an effective date of June 1, 2002 for this Service Agreement. Copies of the filing were served upon the North Carolina Utilities Commission, the South Carolina Public Service Commission, the Florida Public Service Commission and the Georgia Public Service Commission.

Comment Date: July 10, 2002.

3. Southern California Edison Company

[Docket No. ER02–2119–000]

Take notice that on June 19, 2002, Southern California Edison Company (SCE) tendered for filing a revised rate sheet to the Interconnection Facilities Agreement (Interconnection Agreement) between SCE and Wildflower Energy LP (Wildflower). The revised rate sheet reflects an update of the cost estimates for the interconnection facilities that are utilized by Wildflower to interconnect its generating facility to SCE's electrical system.

SCE respectfully requests that the revised sheet become effective on August 18, 2002. Copies of this filing were served upon the Public Utilities Commission of the State of California and Wildflower.

Comment Date: July 10, 2002.

4. FPLE Rhode Island State Energy, L.P.

[Docket No. ER02–2120–000]

Take notice that on June 19, 2002, FPLE Rhode Island State Energy, L.P. tendered for filing an application for authorization to sell energy, capacity and ancillary services at market-based rates pursuant to section 205 of the Federal Power Act.

Comment Date: July 10, 2002.

5. Exelon Generation Company, LLC

[Docket No. ER02–2121–000]

Take notice that on June 19, 2002, Exelon Generation Company, LLC (Exelon Generation), submitted for filing a power sales service agreement between Exelon Generation and Central Illinois Light Company, under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff Original Volume No. 2

Comment Date: July 10, 2002.

6. KeySpan-Glenwood Energy Center LLC

[Docket No. ER02–2122–000]

Take notice that on June 19, 2002, KeySpan-Glenwood Energy Center LLC (Glenwood) submitted for filing for informational purposes pursuant to section 205 of the Federal Power Act an executed umbrella service agreement establishing the Long Island Lighting Company d/b/a LIPA, through its agent KeySpan Energy Trading Services, LLC as a customer under Glenwood's market-based rate tariff. Glenwood requests an effective date of May 24, 2002 for the service agreement.

Comment Date: July 10, 2002.

7. Entergy Services, Inc.

[Docket No. ER02–2123–000]

Take notice that on June 19, 2002, Entergy Services, Inc., (Entergy Services) on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., tendered for filing a Service Agreement for Network Integration Transmission Service and a Network Operating Agreement between Entergy Services and the City of North Little Rock, Arkansas.

Comment Date: July 10, 2002.

8. Cross-Sound Cable Company, LLC

[Docket No. ER02–2124–000]

Take notice that on June 19, 2002, Cross-Sound Cable Company, LLC (CSC LLC) tendered for filing an executed Interconnection Agreement between CSC LLC and the Long Island Power Authority. CSC LLC requests an effective date of July 1, 2002.

Comment Date: July 10, 2002.

9. PJM Interconnection, L.L.C

[Docket No. ER02–2125–000]

Take notice that on June 19, 2002, PJM Interconnection, L.L.C. (PJM), tendered for filing the following executed agreements: (I) One umbrella agreement for network integration transmission service under state required retail access programs for USP&G (Pennsylvania), Ltd. (USP&G) (ii) one umbrella agreement for short-term firm point-to-point transmission service for USP&G; and (iii) one umbrella agreement for non-firm point-to-point transmission service for USP&G.

PJM requested a waiver of the Commission's notice regulations to permit the effective date of May 20, 2002 for the agreements, the date that the agreements were executed. Copies of this filing were served upon USP&G, as well as the state utility regulatory commissions within the PJM region.

Comment Date: July 10, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.,

Deputy Secretary.

[FR Doc. 02–16559 Filed 6–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Project Nos. 2525–051, et al.]

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 26, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Change in Project Boundaries.

b. *Project Nos:* 2525–051, 2546–068, 2560–047, 2522–074, and 2595–065.

c. *Date Filed:* June 17, 2002.

d. *Applicant:* Wisconsin Public Service Corporation (WPSC).

e. *Name of Project:* Caldron Falls, Sandstone Rapids, Potato Rapids, Johnson Falls, and High Falls.

f. *Location:* The projects are located on the Peshtigo River, in Marinette and Oconto Counties, Wisconsin. The Caldron Falls Project occupies 640 acres of federal lands, all of which are within the Nicolet National Forest. In addition, a total of about 10 acres of federal lands (consisting of islands in the Peshtigo River) is owned and managed by the U.S. Bureau of Land Management within the boundaries of the High Falls, Sandstone Rapids, and Potato Rapids Projects.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a), 825(r) and 799 and 801.

h. *Applicant Contact:* Greg Egtvedt, Wisconsin Public Service Corporation, P.O. Box 19002, Green Bay, WI 54307–9002, (920) 433–5713.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Jean Potvin at (202) 219–0022, or e-mail address: *jean.potvin@ferc.gov*.

j. *Deadline for filing comments and or motions:* July 31, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426. Please include the project numbers (P–2525–051, 2546–068, 2560–047, 2522–074, and 2595–065) on any comments or motions filed.

k. *Description of Request:* WPSC is requesting Commission approval to amend the project licenses to change the project boundaries to remove project lands: (1) That were conveyed to the Wisconsin Department of Natural Resources (WDNR) pursuant to the Commission's December 20, 2001 Order (Phase I); (2) that will be conveyed to the WDNR in the future; and (3) that WPSC intends to use for development purposes. On those lands WPSC intends to remove from the projects for development, it will grant an easement to WDNR for 100-foot shoreline buffer strip that will remain in the projects' boundaries and open to the public for certain recreational activities.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may 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.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. 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 at *http://www.ferc.gov* under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16613 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 26, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application to Amend License to remove unnecessary property from within the project boundary.

b. *Project No:* 2686–029.

c. *Date Filed:* June 4, 2002.

d. *Applicant:* Duke Power.

e. *Name of Project:* West Fork Hydroelectric Project.

f. *Location:* The project is located on the West Fork of the Tuckasegee River in Jackson County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C 791(a), 825(r) and §§ 799 and 801.

h. *Applicant Contact:* Mr. Jeff G. Lineberger, Manager of Hydro Licensing, Duke Power, 526 South Church Street, P.O. Box 1006, Charlotte, NC 28201–1006 Tel: (704) 382–5942.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Jake Tung at (202) 219–2663 or by e-mail at *hong.tung@ferc.fed.us.*

j. *Deadline for filing comments and/or motions:* July 29, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (2686–029) on any comments or motions filed.

k. *Description of Filing:* Duke Power proposes to remove unnecessary property from within the project boundary and clarify project boundaries containing access roads and other minor administrative changes.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. 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.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR

''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. 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 at *http://www.ferc.gov* under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16615 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 26, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application to Amend License to remove unnecessary property from within the project boundary.

b. *Project No:* 2692–030.

c. *Date Filed:* June 4, 2002.

d. *Applicant:* Duke Power.

e. *Name of Project:* Nantahala Hydroelectric Project.

f. *Location:* The project is located on the Nantahala River, Dick Creek, and White Oak Creek in Clay and Macon Counties, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a) 825(r) and §§ 799 and 801.

h. *Applicant Contact:* Mr. Jeff G. Lineberger, Manager of Hydro Licensing, Duke Power, 526 South Church Street, P.O. Box 1006, Charlotte, NC 28201–1006 Tel: (704) 382–5942.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Jake Tung at (202) 219–2663 or by e-mail at *hong.tung@ferc.fed.us*.

j. *Deadline for filing comments and/or motions:* July 29, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC 20426. Please include the project number (2692–030) on any comments or motions filed.

k. *Description of Filing:* Duke Power proposes to remove unnecessary property from within the project boundary and clarify project boundaries containing access roads and other minor administrative changes.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. 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.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. 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 at *http://www.ferc.gov* under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16616 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application of License and Soliciting Comments, Motions To Intervene, and Protests

June 26, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application to Amend License to remove unnecessary property from within the project boundary.

b. *Project No:* 2698–030.

c. *Date Filed:* June 4, 2002.

d. *Applicant:* Duke Power.

e. *Name of Project:* East Fork Hydroelectric Project.

f. *Location:* The project is located on the East Fork of the Tuckasegee River in Jackson County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Jeff G. Lineberger, Manager of Hydro Licensing, Duke Power, 526 South Church Street, P.O. Box 1006, Charlotte, NC 28201–1006 Tel: (704) 382–5942.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Jake Tung at (202) 219–2663 or by e-mail at *hong.tung@ferc.fed.us*.

j. *Deadline for filing comments and/or motions:* July 29, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

Please include the project number (2698–030) on any comments or motions filed.

k. *Description of Filing:* Duke Power proposes to remove unnecessary property from within the project boundary and clarify project boundaries containing access roads and other minor administrative changes.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. 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.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. 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 at *http://www.ferc.gov* under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16617 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

June 26, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12180–000.

c. *Date filed:* June 4, 2002.

d. *Applicant:* Wills Creek Hydro, LLC.

e. *Name and Location of Project:* The Wills Creek Hydroelectric Project would be located on Wills Creek in Coshocton County, Ohio. The project would utilize the U.S. Army Corps of Engineers' existing Wills Creek Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. *FERC Contact:* James Hunter, (202) 219–2839.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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.

Please include the project number (P–12180–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the existing Wills Creek Dam and Reservoir, would consist of: (1) a proposed 100-foot-long, 8-foot-diameter steel penstock, (2) a proposed powerhouse containing one generating unit with an installed capacity of 1.5 megawatts, (3) a proposed two-mile-long, 15-kV transmission line, and (4) appurtenant facilities. The project would have an average annual generation of 9.2 gigawatthours.

k. 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 g. above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be

filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16619 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

June 26, 2002.

a. *Type of Application:* Original Major License.

b. *Project No.:* P–12187–000.

c. *Date Filed:* June 3, 2002.

d. *Applicant:* Price Dam Partnership, Limited.

e. *Name of Project:* Price Dam Hydroelectric Project.

f. *Location:* On the Mississippi River, in the city of Alton, Wood River Township, Madison County, Illinois. The project would be constructed on the U.S. Corps of Engineers (Corps) Melvin Price Locks & Dam and the nearby Illinois shoreline of the Mississippi River and would affect 7.8 acres of federal lands (including federal Corps property between Piers 1 to 11 at the dam and a portion of the Illinois shoreline for the transmission line).

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* James B. Price, W.V. Hydro, Inc., P.O. Box 903, Gatlinburg, TN 37738, (865) 436–0402, or *jimprice@atlantic.net*.

i. *FERC Contact:* Lee Emery (202) 219–2778 or *lee.emery@FERC.fed.us*.

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. *Deadline for filing additional study requests and requests for cooperating agency status:* July 30, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an 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.

Additional study requests and requests for cooperating agency status 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 (*http://www.ferc.gov*) under the ''e-Filing'' link.

l. This application is not ready for environmental analysis at this time.

m. *Description of Project:* The proposed Price Dam Project would use the Melvin Price Locks & Dam and reservoir, and would consist of the following facilities: (1) 192 portable, turbine/generator units grouped in six steel modules 108.9 feet long by 26.2 feet wide by 44.0 feet high, (a) each module contains 32 turbine/generator sets (two horizontal rows of 16 units each) installed in six stoplog slots on adjacent piers upstream from the nine existing Taintor gate bays in the dam, and (b) each turbine/generator unit includes a 550 kilowatt bulb-type generator, a fixed-blade propeller turbine, and a single draft tube for each two turbine/generating units; (2) six flexible power cables, each connecting the six, 32 turbine/generator sets to six 7.2 kilovolt (kV) transformer and breaker sets on an adjacent pier; (3) lifting access columns at the end of each module; (4) six air-operated spillway gates, 7 feet high by 96 feet long, installed on top of each module with each gate containing an inflatable rubber bladder; (5) a hallway housing the station service transformer, motor control center, and control system; (8) a slave terminal at the lockmaster's office and a control station located on the dam superstructure; (9) a 6.9-kV/138-kV step-up transformer located on a platform on the dam axis at elevation 479 feet National Geodetic Vertical Datum; (10) a mobile, 1,000 metric ton crane with an auxiliary crane riding on top of the module crane; these cranes would lower and raise the power modules and operate the trash rake; (11) a fish bypass on each module; (12) a trashrack assembly with a two-inch clear spacing between the bars, and a crane-operated trash rake; (13) a 500-kilowatt generator; (14) a 0.9-mile-long, 138-kV transmission line connecting the project power to the Mississippi Substation of Ameren, Incorporated; (15) an auxiliary building; and (16) appurtenant facilities.

The average annual generation is estimated to be 319,000 megawatt-hours. All generated power would be sold to a local utility connected to the grid.

n. With this notice, we are initiating consultation with the *ILLINOIS HISTORIC PRESERVATION OFFICER (SHPO),* as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. A copy of the application is on file with the Commission and is 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.

p. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later July 30, 2002, and serve a copy of the request on the applicant.

q. *Procedural schedule:* 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 of NEPA Scoping (unless scoping has already occurred)

Notice of application is ready for environmental analysis

Notice of the availability of the draft NEPA document

Notice of the availability of the final NEPA document

Order issuing the Commission's decision on the application

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16620 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–335–000]

ANR Pipeline Company; Notice of Technical Conference

June 26, 2002.

In the Commission's order issued on May 31, 2002,[1] the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Thursday, July 18, 2002, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16622 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–155–000]

Gulf South Pipeline Company, L.P.; Notice of Site Visit

June 26, 2002.

On July 11, 2002, the staff of the Office of Energy Projects (OEP) will conduct a pre-certification site visit of the proposed Magnolia Gas Storage Facility and associated pipeline facilities in Assumption Parish, Louisiana. Representatives of Gulf South Pipeline Company, L.P. will accompany OEP staff.

All interested parties may attend. Those planning to attend must provide their own transportation. Contact the Commission's Office of External Affairs at 1–866–208–FERC if you are interested in attending the visit.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16607 Filed 6–1–02; 8:45 am]

BILLING CODE 6717–01–P

[1] *ANR Pipeline Company,* 99 FERC ¶ 61,232 (2002).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2699–001, 2019–017 and 11563–002–California]

Utica Power Authority, Northern California Power Agency; Notice of Intention to Hold a Public Meeting for Discussion of the Environmental Assessment for the Upper Utica, Utica, and Angels Projects

June 26, 2002.

On May 29, 2002, the Commission staff mailed an Environmental Assessment (EA) for the Upper Utica, Utica, and Angels Projects to resource and land management agencies, and interested organization and individuals.

The EA was noticed in the **Federal Register** on June 4, 2002 (Vol. 67, Number 107), and comments are due July 29, 2002. The EA was prepared by Commission staff, with the U.S. Forest Service as a cooperating agency. The Upper Utica, Utica, and Angels Projects are located on the North Fork Stanislaus River, Silver Creek, Mill Creek, and Angels Creek in Alpine, Calaveras, and Tuolumne Counties, California, partially within the Stanislaus National Forest. The EA contains our analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A public meeting, which will be recorded by an official stenographer, is scheduled on Tuesday, July 9, from 7:30 p.m. to 9 p.m. at Bret Harte High School, 354 Murphys Grade Road, Angels Camp, California. At this meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments regarding the EA for the Commission's public record.

For further information, please contact Timothy Welch at (202) 219–2666, *timothy.welch@ferc.gov*, Federal Energy Regulatory Commission, Office of Energy Projects, 888 First St. NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16618 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2000–036]

New York Power Authority; Notice Modifying a Restricted Service List for Comments on a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

June 26, 2002.

On April 14, 2000, the Federal Energy Regulatory Commission (Commission) issued a notice for the St. Lawrence-FDR Power Project proposing to establish a restricted service list for the purpose of developing and executing a Programmatic Agreement (PA) for managing properties included in or eligible for inclusion in the National Register of Historic Places. On June 5, 2000, the restricted service list was modified to include the Department of the Interior (Interior). On August 2, 2001, the restricted service list was modified to: (1) Change the address for Mr. Thomas Tatham; (2) change the contact for the Saint Regis Mohawk Tribe; (3) change the contact for Interior; and (4) delete Mr. Robert Dean. The St. Lawrence-FDR Power Project is located on the St. Lawrence River, in St. Lawrence County, New York. The New York Power Authority is the licensee.

Rule 2010 of the Commission's Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established. The following changes to the existing restricted service list are noted.

The contact for the Bureau of Indian Affairs has changed. Delete ''Ms. Malka Pattison'' and replace with ''Dr. James Kardatzke''.

As a result of these changes, the revised final restricted service list, for the purpose of commenting on the PA for the St. Lawrence-FDR Power Project, is as follows:

Dr. Robert Kuhn, NY Office of Parks, Recreation, and Historic Preservation, Peebles Island, P.O. Box 189, Waterford, NY 12188–0189

William Slade, New York Power Authority, 123 Main Street, White Plains, NY 10601

Kevin Mendik, National Park Service, 15 State Street, Boston, MA 02109

Dr. James Kardatzke, Eastern Region Office, Bureau of Indian Affairs, 711 Stewarts Ferry Pike, Nashville, TN 37214

Salli Benedict, Henry Lickers, Mohawk Council of Akwesasne, P.O. Box 579, Cornwall, Ontario K6H 5T3

David Blaha, Environmental Resources Management, 2666 Riva Road, Suite 200, Annapolis, MD 21401

Brian Skidders, Mohawk Nation Council of Chiefs, Box 366, Rooseveltown, NY 13683

Dr. Laura Henley Dean, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW, Washington, DC 20004

Thomas Tatham, New York Power Authority, 123 Main Street, White Plains, NY 10601

Judith M. Stolfo, Department of the Interior, Office of the Regional Solicitor, One Gateway Center, Suite 612, Newton, MA 02458–2802

Francis Boots, THPO, Saint Regis Mohawk Tribe, 412 State Route 37, Hogansburg, NY 13655

Maxine Cole, Akwesasne Task Force on the Environment, P.O. Box 992, Hogansburg, NY 13655

James Teitt, Environmental Resources Management, 355 East Campus View Blvd, Suite 250, Columbus, OH 43235

Kimberly Owens, Department of the Interior, 1849 C Street, NW, Washington, DC 20240

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16612 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2010.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2634–007]

GNE, LLC.; Notice of Final Restricted Service List for Comments on a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

June 26, 2002.

On October 1, 2001, the Federal Energy Regulatory Commission (Commission) issued a notice for the Storage Project (FERC No. 2634–007) proposing to establish a restricted service list for the purpose of developing and executing a Programmatic Agreement (PA) for managing properties included in or eligible for inclusion in the National Register of Historic Places. On November 21, 2001, and December 11, 2001, the Commission issued notices modifying the restricted service list for the purpose of revising the participates. The Storage project is located in Piscataquis and Somerset Counties in Maine. GNE, LLC. is the licensee.

Rule 2010 of the Commission's Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established. The following changes to the existing restricted service list are noted.

Delete ''Brian R. Stetson, Manager of Environmental Affairs, Great Northern Paper, Inc., 1 Katahdin Ave., Millinocket, Maine 04462–1373''.

Add ''Jeffery M. Martin, General Manager, GNE, LLC, 1024 Central Street, Millinocket, Maine 04462''.

As a result of these changes, the final restricted service list for purposes of commenting on the PA, for Project No. P–2634 is as follows:

Dr. Laura Henley Dean, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.

Earle G. Shettleworth, Jr., State Historic Preservation Officer, Maine Historic Preservation Commission, 55 Capitol Street, 65 State House Station, Augusta, Maine 04333.

Jeffery M. Martin, General Manager, GNE, LLC, 1024 Central Street, Millinocket, Maine 04462.

Gregory W. Sample, Drummond Woodsum & MacMahon, 245 Commercial Street, P.O. Box 9781, Portland, Maine 04104–5081.

Land and Water Associates, 9 Union Street, Hallowell, Maine 04347.

M. Kirstin Rohrer, Office of the Solicitor, MS–6456, 1849 C St., NW., Washington, DC 20240.

Judith M. Stolfo, Office of the Regional Solicitor, One Gateway Center, Suite 612, Newton, Massachusetts 02458–02802.

[1] 18 CFR 385.2010.

Barry Dana, Chief, Penobscot Indian Nation, River Road; Indian Island, Old Town, Maine 04468.
Franklin Keel, Bureau of Indian Affairs, Eastern Regional Office, 711 Stewarts Ferry Pike, Nashville, Tennessee 37214.
Donald Soctomah, Passamaquoddy Tribe, P.O. Box 301, Princeton, Maine 04668.
Kevin R. Mendik, National Park Service, Northeast Field Area, 15 State Street, Boston, Massachusetts 02109.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–16614 Filed 7–1–02; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7240–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Exclusion Determinations for New Non-road Spark-ignited Engines at and Below 19 Kilowatts, New Non-road Compression-ignited Engines, New Marine Engines, and New On-road Heavy Duty Engines: OMB Control Number 2060–0395, expiration date 6/30/2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 1, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1852.02 and OMB Control No. 2060–0395, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by E-Mail at *auby.susan@epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1852.02. For technical questions about the ICR contact: Nydia Yanira Reyes-Morales, Office of Transportation and Air Quality, by phone at (202) 564–9264, or by E-Mail at *reyes-morales.nydia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Title: Exclusion Determinations for New Non-road Spark-ignited Engines at and Below 19 Kilowatts, New Non-road Compression-ignited Engines, New Marine Engines, and New On-road Heavy Duty Engines, OMB Control Number 2060–0395, EPA ICR Number 1852.02, expiration date 6/30/2002. This is a request for extension of a currently approved collection.

Abstract: Some types of engines are excluded from compliance with current regulations. A manufacturer may make an exclusion determination by itself; however, manufacturers and importers may routinely request EPA to make such determination to ensure that their determination does not differ from EPA's. Only needed information such as engine type, horsepower rating, intended usage, etc., is requested to make an exclusion determination.

Responses to this collection are voluntary. The information is collected by the Engine Programs Group, Certification and Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation. Confidentiality to proprietary information is granted in accordance with the Freedom of Information Act, EPA regulations at 40 CFR part 2, and class determinations issued by EPA's Office of General Counsel.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 3/08/2002; no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average seven hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Engine manufacturers, equipment manufacturers and importers.

Estimated Number of Respondents: 12.

Frequency of Response: On Occasion.

Estimated Total Annual Hour Burden: 69 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $116.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1852.02 and OMB Control No. 2060–0395 in any correspondence.

Dated: June 24, 2002.

Oscar Morales,
Director, Collection Strategies Division.
[FR Doc. 02–16645 Filed 7–1–02; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7240–3]

NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Final Replacement Standards and Phase II)—Notice of Data Availability

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice of data availability.

SUMMARY: This notice of data availability (NODA) presents for public comment the data bases the Environmental Protection Agency plans to use to propose National Emission Standards for Hazardous Air Pollutants (NESHAP) for hazardous waste burning combustors (incinerators, cement kilns, lightweight aggregate kilns, industrial and commercial/institutional boilers, process heaters, and hydrochloric acid production furnaces). We are providing this opportunity for comment to ensure that the data bases used to establish the

standards are as accurate and complete as possible.

DATES: Comments must be submitted by August 16, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. If you wish to comment on this NODA, you must send an original and two copies of the comments referencing Docket Number RCRA–2002–0019 to: RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002; or, (2) if using special delivery, such as overnight express service: RIC, Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. You may also submit comments electronically following the directions in the **SUPPLEMENTARY INFORMATION** section below.

You may view the data bases in the RIC. The RIC is open from 9 am to 4 pm Monday through Friday, excluding Federal holidays. To review docket materials, we recommend that you make an appointment by calling 703–603–9230. You may copy up to 100 pages from any regulatory document at no charge. Additional copies cost $ 0.15 per page. For information on accessing an electronic copy of the data bases, *see* the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Hotline is open Monday–Friday, 9 am to 6 pm, Eastern Standard Time. For more information on specific aspects of this NODA, contact Frank Behan at 703–308–8476, or *behan.frank@epa.gov,* or write him at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Acronyms Used in this Notice

APCD—Air pollution control device
BH—Baghouse
BIF—Boiler and industrial furnaces
CAA—Clean Air Act
CFR—Code of Federal Regulations
D/F—dioxins and furans
EPA—United States Environmental Protection Agency
ESP—Electrostatic precipitator
FR—**Federal Register**
HAP—Hazardous air pollutant
HCl—Hydrochloric acid
HWC—Hazardous waste combustor
LVM—Low Volatile Metals
MACT—Maximum achievable control technology
NESHAP—National emission standards for hazardous air pollutants
NODA—Notice of data availability
PM—Particulate matter
RCRA—Resource Conservation and Recovery Act
SVM—Semivolatile Metals

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I. General Information

A. How Can I Get Copies Of The Data Bases?

1. The Docket

EPA has established an official public docket for this action under Docket ID RCRA–2002–0019. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the address above.

2. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public

docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

3. Obtaining the Data Bases Electronically from the HWC Web Site

The data bases can be obtained either as described above, or by downloading from the EPA HWC site on the Internet. If you want to download the data bases over the Internet, you can do so from our ''HWC MACT'' Web site: *http://www.epa.gov/hwcmact.* Please consult the web page for specific instructions on how to download the data bases. Do not, however, submit comments to this web address. Instead, follow the instructions provided below.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

1. EPA Dockets

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. RCRA–2002–0019. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

2. E-mail

Comments may be sent by electronic mail (e-mail) to *rcra-docket@epa.gov,* Attention Docket ID No. RCRA–2002–0019. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

3. Disk or CD ROM

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

C. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S.EPA, 1200 Pennsylvania Avenue NW., Washington, DC 20460, Attention Docket ID No. RCRA–2002–0019. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. 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 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 your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. What Is the Purpose of this NODA?

This NODA affects owners and operators of hazardous waste burning incinerators, cement kilns, lightweight aggregate kilns, industrial and institutional/commercial boilers, process heaters, and hydrochloric acid production furnaces. We are providing this NODA to request comment on data bases that we will use to develop proposed standards under Section 112(d) (*i.e.,* MACT standards) for these source categories and subcategories.

We view publication of this NODA as a critical component of our quality assurance program that we are using to ensure and maximize the quality, objectivity, utility, and integrity of information that we plan to use in our future MACT rule making. Section 515 of the Treasury and General Government Appropriations Act for

FY2001 (Pub. L. 106–554) directed OMB to issue government-wide information quality guidelines. The OMB guidelines were first issued on September 28, 2001. Pursuant to those guidelines EPA is developing its own guidelines. EPA's information quality guideline development program can be found on the World Wide Web at this URL: *http://www.epa.gov/oei/qualityguidelines.* One of the important components of EPA's draft Information Quality Guidelines is to provide the public with an opportunity and vehicle for correcting any errors that might be present in data and information that the agency is using in its decision-making. This NODA provides such an opportunity.

III. Are You Affected by this Notice?

We anticipate that we will develop revised MACT standards for hazardous waste burning incinerators, cement kilns, and lightweight aggregate kilns, as defined at 40 CFR 63.1201(a), and that are currently subject to MACT standards at 40 CFR part 63, subpart EEE.

We also plan to develop MACT standards for boilers, as defined at 40 CFR 260.10, that burn hazardous waste as defined at 40 CFR part 261. This definition of boiler includes devices used in industry as process heaters. These boilers are currently subject to regulation under 40 CFR part 266, subpart H, which is commonly referred to as the Boiler and Industrial Furnace (BIF) rule.

Please note that the MACT standards for hazardous waste burning boilers and process heaters would apply to boilers that are currently exempt from certain BIF emission standards under § 266.109 (Low Risk Waste Exemption) and § 266.110 (Waiver of DRE Trial Burn for Boilers). We anticipate, however, that we will propose that boilers currently exempt from part 266, Subpart H, because they qualify for the Small Quantity On-Site Burner Exemption, would not be subject to the MACT standards that we are developing for boilers that burn hazardous waste. Instead, we anticipate proposing that those boilers would be subject to MACT standards the Agency is developing for industrial and institutional/commercial boilers, and process heaters, that do not (otherwise) burn hazardous waste. Those boilers would be subject to MACT standards for boilers and process heaters that do not burn hazardous waste because their nonhazardous waste fuels will dictate the types and concentrations of HAP emissions rather than the de minimis quantities of hazardous waste fuel that they burn. The MACT standards for industrial and institutional/commercial boilers and process heaters that do not burn hazardous waste are scheduled to be proposed in late 2002.

Finally, we are also developing MACT standards for HCl production furnaces that burn hazardous waste. These furnaces are a type of halogen acid furnace included within the definition of ''industrial furnace'' defined at § 260.10 and are currently regulated under 40 CFR part 266, subpart H.

We do not anticipate proposing MACT standards for hazardous waste burning sulfur recovery furnaces. These industrial furnaces are subject to the BIF rule if they burn hazardous waste other than spent sulfuric acid either for energy recovery or to recover sulfur values. We do not believe MACT standards are warranted for these sources because available emissions data indicate that emissions of hazardous air pollutants are very low. In addition, the Agency has not listed these furnaces as a category of major sources. *See* 57 FR 31576, July 16, 1992. Sulfur recovery furnaces burning hazardous waste other than spent sulfuric acid would remain subject to the BIF rule.

IV. What Led Up to This NODA?

Congress amended the Clean Air Act (CAA) in 1990 to require that hazardous air pollutants be controlled by technology-based standards—standards based on the technical capabilities of control strategies for the emitting industry in question, with further controls required later if significant risk remains after imposition of the technology-based standards. These standards would apply to the HWCs discussed in this notice.

On September 30, 1999, we promulgated standards (referred to as the ''Phase I'' rule, 64 FR 52828) to control emissions of hazardous air pollutants from incinerators, cement kilns and lightweight aggregate kilns that burn hazardous wastes. These emission standards created a technology-based national cap for hazardous air pollutant emissions, assuring that combustion of hazardous waste in these devices is properly controlled. Additionally, the rule satisfied our obligation under the Resource Conservation and Recovery Act (RCRA) to ensure that hazardous waste combustion is conducted in a manner protective of human health and the environment. By using both CAA and RCRA authorities in a coordinated fashion, we consolidated regulatory control of hazardous waste combustion into a single set of regulations, thereby minimizing the potential for conflicting or duplicative federal requirements.

A number of parties, representing interests of both industrial sources and of the environmental community, sought judicial review of the rule. On July 24, 2001, the United States Court of Appeals for the District of Columbia Circuit (the Court) granted the Sierra Club's petition for review and vacated the challenged portions of the rule. However, the Court invited us (or any of the parties to the proceeding) to file a motion to delay issuance of its mandate to request either that the current Phase I standards remain in place or that we be allowed reasonable time to develop interim standards.

On October 19, 2001, after several months of negotiation, we, together with all other petitioners that challenged the hazardous waste combustor emission standards, filed a joint motion asking the Court to stay the issuance of its mandate for four months to allow us time to develop interim standards, and the Court granted this request. In the joint motion, we agreed to take several actions. First, we agreed to issue a one-year extension to the compliance date of September 30, 2002; on December 6, 2001 we published a final rule to extend for one year the compliance date for Phase I sources (66 FR 63313). Second, we committed to (1) publish an interim rule with revised emission standards; and, (2) finalize several compliance and implementation amendments to the rule. These interim standards and compliance and implementation amendments were promulgated on February 13 and 14, 2002 (67 FR 6792 and 67 FR 6968). The interim standards replace the vacated standards temporarily, until we finalize replacement standards that comply with the Court's mandate. Finally, we agreed to issue these final replacement standards that fully comply with the Court's opinion by June 14, 2005.

Also, in this rulemaking, we are developing MACT standards for hazardous waste burning industrial and institutional/commercial boilers, process heaters, and hydrochloric acid production furnaces producing acid from hazardous wastes. These sources are referred to as Phase II sources because the MACT standards for these sources were originally scheduled to be promulgated after the Phase I source MACT standards were finalized.

V. What Data Are Included in This Notice?

We are requesting comment on six separate data bases that compile information on the following source categories or subcategories: incinerators,

cement kilns, lightweight aggregate kilns, coal-fired boilers, liquid-fuel boilers, and hydrochloric acid production furnaces. Each data base summarizes emissions data and ancillary information on HWCs source category or subcategory that we extracted from available test reports. Many of the source test reports were prepared as part of the compliance process for the current RCRA standards. Ancillary information in the data bases includes general facility information, air pollution control device operating information, composition and feedrate data for the hazardous waste, fossil fuels, and raw materials, combustion gas condition, and stack-related information.

This NODA is an invitation to comment on the data bases that we will use to develop MACT standards for HWCs. As discussed below, some of the data bases have been noticed, in part, for comment previously, and some have been updated since they were last publicly available. We encourage owners and operators of HWCs to review our data bases to ensure that they are as accurate and complete as possible, and to provide corrections and additions in the form of comments to this notice. If you find errors, please submit the pages from the test report that document the missing or incorrect results and the cover page of the test report as reference. We encourage comment only on the accuracy and completeness of the data bases at this time. We do not seek nor will we use or respond to comments on how to use the data bases to identify MACT standards. Rather, we will publish and seek comment on a MACT standard-setting approach and all other aspects of the NESHAP rulemaking in a future notice of proposed rulemaking.

We gathered the emissions data and ancillary information for the data bases from test reports submitted by these sources to EPA Regional Offices or State agencies. The test reports may include certifications of compliance reports, trial burn reports, annual performance test reports, mini-burns, and risk burn reports. Below we summarize our efforts to collect the test results that comprise the data bases.

We first compiled a data base for hazardous waste burning incinerators, cement kilns and lightweight aggregate kilns (*i.e.,* the Phase I data base) to support the April 1996 proposed Maximum Achievable Control Technology (MACT) standards for those source categories (61 FR 17358, April 19, 1996). We received additional test reports and comments on errors in the data base during the public comment period of the proposed rule. The revised Phase I data base was subsequently published in the **Federal Register** for public comment (62 FR 960, January 7, 1997). The data base was again revised based on these comments. We used this data base to develop the Phase I MACT standards promulgated on September 30, 1999 (64 FR 52828).

Following vacature of the challenged Phase I standards and promulgation of the interim MACT standards in February 2002, we initiated an effort with EPA Regional Offices and State agencies to update the data base. We focused on collecting compliance testing documents from Phase I sources for which we had no information, obtaining results from more recent testing conducted since 1997, and updating the universe of operating hazardous waste combustors. In total, we obtained an additional 110 test reports during our 2002 data collection effort.

The current data bases for the Phase I source categories included in today's NODA contain test results for over 100 incinerators, 25 cement kilns, and 9 lightweight aggregate kilns. In many cases, especially for cement and lightweight aggregate kilns, the data bases contain test reports from multiple testing campaigns. For example, our data bases contain test results for a cement kiln source for the years 1992, 1995, and 1998.

The data base for Phase II combustors—industrial boilers, commercial/institutional boilers, process heaters, and HCl production furnaces—was compiled in 1999. In developing that data base, we collected the most recent test report available for each source that included test results under compliance test operating conditions. However, this most recent test report may have also included data used for other purposes (*e.g.,* risk burn), which we also included in the data base. In nearly all instances, the dates of the test reports collected were either 1998 or 1999. In June 2000 we published in the **Federal Register** the Phase II data base for comment (65 FR 39581, June 27, 2000).

We have not collected additional emissions data for Phase II sources. We have, however, updated the Phase II data base to address comments we received to the June 27, 2000 NODA. We also revised the universe of sources by removing those sources that are no longer burning hazardous waste. In addition, we updated some of the comment fields. Therefore, if your facility has a HWC originally included in the Phase II rulemaking, it is important that you review the current data for your facility, even if you reviewed the Phase II data base when it was originally noticed.[1] Section VII of today's notice describes the new data comment fields for the Phase II sources. The data bases for the Phase II sources comprise compliance test results for 114 industrial boilers, 11 process heaters, and 16 HC1 production furnaces.[2]

VI. What Data Handling Decisions Did We Make and What Are the Data Gaps?

In this section, we describe the data handling protocol used during development of the data bases. We also identify additional information that we would like to have and encourage owners and operators to submit such information as available.

A. Data from Sources No Longer Burning Hazardous Waste Are Excluded

The data bases do not include information from sources no longer burning hazardous waste. If we learned that a source had stopped burning hazardous waste and is undergoing, or has indicated to regulatory officials its plan to begin, RCRA closure procedures, then we did not obtain a copy of that source's test report. Although such data may or may not indicate the capabilities of control equipment in general, we conclude that the data from currently operating combustors are adequate to develop standards under Section 112(d).

We identified several sources that are no longer burning hazardous waste and removed their emissions data and related information from the data bases. We encourage owners and operators of hazardous waste combustors to review our list of operating combustors to ensure it is accurate.

B. How Are Nondetect Data Handled?

We assume that analytes in feedstreams or emissions reported as not detected are present at one-half the detection limit. This is consistent with how we handled nondetect measurements in the September 1999 MACT rule for Phase I sources (66 FR at 52844) and in the data base associated with the June 2000 NODA for Phase II sources. All measurements reported as not detected are identified as such in the data bases.

C. Missing Source Description Information

Some test reports omitted source description information. For example,

[1] See ''Hazardous Waste Combustor Data Base Report for Phase I and II Sources,'' June, 2002, for our response to comments received on the June 27, 2002 NODA.

[2] We are not aware of any commercial/institutional boilers that burn hazardous waste.

some of the boiler descriptions are incomplete. A report might simply say the source is a boiler, but not whether it is a watertube or firetube boiler. In other cases, we were unable to determine what emission control equipment, if any, is installed on the source. Because we may use these data to classify and group the data when identifying MACT standards, we encourage owners and operators to provide any such missing source description information as a comment to this notice.

D. Use of Metals Extrapolation, Interpolation and Surrogates

In some cases, extrapolation or interpolation of metals test data may have been used to develop operating limits (*e.g.,* metals feed rate limits). Extrapolation means setting limits outside the bounds (above or below) of test results, and interpolation means setting operating limits between the bounds of the test results. As we discuss in Section VII below, we need to know whether the emissions data and feedrates represent a snapshot of normal emissions or whether they represent the highest emissions the source has determined it would emit under a mode of operation. Given that subsequent extrapolation and interpolation of the metals data in the test reports may change the classification of the metals data in the data bases, we encourage owners and operators to identify and provide information on test results in the data bases that have been extrapolated and interpolated.

Another situation that may impact the classification of the metals data is the use of surrogates. For example, a source may have spiked lead, but not cadmium, during the test with the intent to use the system removal efficiency of lead to calculate a feedrate limit for cadmium. In this case, our data bases may not classify properly the feedrate of cadmium. We encourage owners and operators to identify and provide information on test results where metal surrogates were used.

VII. What Are the New Data Comment Fields?

We have added several data comment fields to the data bases since they were published for public comment. Because we may use these data comment fields to classify and group the data when establishing the MACT standards, we encourage owners or operators to review these data comment fields to determine if our designations are accurate.

The new data comment fields that are particularly important pertain to: (1) Classification of the design or operation of the source to enable us to consider establishing MACT standards for subcategories of a source category; (2) classification of emissions data as to whether the data represent the highest emissions a source could be expected to achieve or normal emissions; and (3) characterization of sootblowing operations during emissions testing for boilers.[3]

A. What Information Do We Need to Consider Subcategorization Options?

It may be appropriate to establish different MACT standards for subcategories of a source category if the types or concentration of uncontrolled emissions of hazardous air pollutants are significantly different for a subset of that category because of the design or operation of the sources. An example is our determination that incinerators with wet emission control devices and equipped with waste heat recovery boilers can have much higher D/F emissions than incinerators with wet emission control devices but without heat recovery boilers.[4]

We have evaluated each of the source categories—hazardous waste burning incinerators, cement kilns, lightweight aggregate kilns, boilers, and HCl production furnaces—and identified information that we may need to classify each source to consider subcategorization. In the table below, we list the classifications and describe the terms for purposes of this rulemaking effort. We encourage owners and operators to review the classifications for their sources in the data bases to ensure they are accurate.

TABLE 1.—CLASSIFICATION OF SOURCES TO CONSIDER SUBCATEGORIES

Source category/classification	Description
Incinerators:	
Waste heat boiler	Equipped with a waste heat recovery boiler.
Liquid injection incinerator	Feeds only pumpable feedstreams that are atomized into the combustion chamber through the burner nozzles.
Mixed waste incinerator	Feeds low level radioactive waste.
Dry APCD	Equipped with a dry emissions control device (e.g., ESP or BH) as the initial control device.
Cement kilns:	
Short kiln	Equipped with a precalciner, in-line raw mill, and by-pass duct.
Boilers:	
Pulverized coal-fired	Burns pulverized coal in suspension.
Stoker coal-fired	Burns lump coal on a grate.
Liquid fuel boiler	Burns liquid (i.e., pumpable and atomized) or liquid and gaseous fuels only.
HCl production furnaces:	
Waste heat boiler	Equipped with a waste heat recovery boiler.

B. How Will We Distinguish Between Worst-Case and Normal Emissions?[5]

The data bases comprise emissions data from tests conducted for various

[3] Unless specified otherwise, the term ''boiler'' means industrial and commercial/institutional boilers, and process heaters.

[4] See USEPA ''Final Technical Support Document for HWC MACT Standards, vol. III: Selection of MACT Standards and Technologies,'' July, 1999, p. 3–3.

[5] Please note that we did not conduct a worst-case versus normal analysis for DRE or CO/HC data. Under current RCRA regulations, all sources are required to operate under good combustion conditions by complying with emission limits on CO/HC. All sources are also required to comply with operating limits that ensure compliance with a 99.99% DRE requirement. We do not believe that emissions of organic HAPs will be lowered

Continued

purposes, including compliance testing (*i.e.,* RCRA trial burns or Certification of Compliance tests), risk burns (*i.e.,* emissions testing to generate emissions data to perform site-specific risk assessments), annual performance testing, and research testing. Therefore, some emissions data represent the highest emissions the source is allowed to emit (*i.e.,* worst-case emissions), some data represent normal operating conditions and emissions, and some data represent operating conditions that are neither normal nor worst case, *i.e.,* they represent operating conditions (and emissions) that are in between normal and worst case. We may choose to consider whether the emissions data are ''worst-case'' or ''normal'' to consider emissions variability appropriately in establishing achievable MACT floor[6] emission levels. The methodology that we use to establish the MACT floor emission levels may well be influenced by the nature of the emissions data that are used. For example, we may choose to estimate or account for variability in different ways depending on whether the data set we use contains worst-case emission data, data within the range of normal emissions, or a mix of normal and worst case emissions.

Hazardous waste combustors generally emit worst-case emissions during RCRA compliance testing while demonstrating compliance with emission standards. For real-time compliance assurance, sources are required to establish limits on particular operating parameters where the limits are derived from operations during compliance testing. Thus, the emission levels achieved during these compliance tests are the highest emission levels a source is allowed to emit. To ensure that these operating limits do not impede normal operations, sources generally take measures to operate during compliance testing under conditions that are worse than the range of normal operations. For example, sources often feed ash, metals, and chlorine at higher than normal levels (*e.g.,* by spiking the waste feed) to maximize the feedrate, and they often detune the APCDs to minimize collection efficiency. By designing the compliance test to generate emissions higher than the normal range of emissions, sources can establish operating limits that will not impede normal operations while accounting for emissions variability covered by variation in the feedrate of metals or chlorine, for example.

The data bases also include normal emissions data. Sources will sometimes measure emissions of a pollutant during a compliance test even though the test is not designed to establish operating limits for that pollutant (*i.e.,* it is not a compliance test for the pollutant). An example is a trial burn where a lightweight aggregate kiln measures emissions of all RCRA metals, but uses the Tier I metals feedrate limit (rather than the Tier III emissions limit) to comply with the Hg emission standard. Other examples of emissions data that are within the range of normal emissions are annual performance tests that some sources are required to conduct under State regulations, or risk burns. Both of these types of tests are generally performed under normal operating conditions.

Other emissions tests may generate emissions in-between normal and worst-case. An example is a compliance test designed to demonstrate compliance with the particulate matter standard where: (1) The APCD is detuned to achieve worst-case emissions; and (2) the source measures Pb and Cd emissions even though it elects to comply with feedrate limits for those metals and, thus, does not spike those metals. We would conclude that Pb and Cd emissions are in between normal and worst-case emissions because, although emissions of the metals are likely to be higher than normal because the APCD is detuned, emissions are not likely to be worst-case because the source did not use the test to demonstrate compliance with emission standards for the metals (and so did not spike the metals).

To identify normal and worst-case emissions data, we classify emissions data for each pollutant (*i.e.*, D/F, Hg, PM, SVM, LVM, and HCl/Cl2) for each test condition as worst-case (WC);[7] normal (N); in between (IB); unknown (U); or not applicable (NA).[8] We encourage owners and operators to review our classification of their data to ensure that we have applied the terms, as we define them, appropriately, to the information provided for each test condition in the various data fields (*e.g.*, APCD; Spiking; Comments; Condition Description, BIF Tier). Please note that these classifications apply on a pollutant-by-pollutant basis. For example, some pollutants measured during a test condition may be classified as representing worst-case emissions for those pollutants, while other pollutants measured during that test condition may be classified as representing normal emissions.

1. How Do We Define Worst-Case Data?

a. *Boilers and HCl Production Furnaces.* As discussed above, the data bases for boilers and HCl production furnaces are comprised of all test conditions run during the most recent compliance test campaign for which data are available.[9] For the metals, total chlorine, and particulate matter standards, we define the worst-case test condition for a pollutant as the test condition with the highest emissions of that pollutant meeting any of these criteria: (1) A test condition where the feedrate of the pollutant (*i.e.,* metal, chlorine, or ash) is maximized by spiking or other means (*e.g.,* feeding waste with atypically high concentrations of the pollutant); or (2) a test condition that is used to demonstrate compliance under Tier III of the BIF rule for the pollutant; or (3) a test condition with higher emissions of the pollutant under operating conditions that would not have been classified as worst case as discussed above.[10] Test conditions meeting the third criterion are classified WC HE (*i.e.,* worst-case, highest emissions) to clarify that the test condition is worst-case because it has the highest emissions for the test campaign even though its operating conditions would not have suggested that emissions would be worst-case.

It may be helpful to present some examples of how the worst-case definition works. If a metal were spiked during a compliance test, but the source complied with the Tier I feedrate limits

significantly by operating at lower CO/HC levels or higher DRE levels.

[6] The term ''floor'' refer to the minimum emission standard required pursuant to section 112 of the CAA.

[7] The worst-case (WC) classification is further qualified for some test conditions as ''worst-case, highest emissions'' (WC HE), as discussed in the text.

[8] NA means the Normal Vs Wors-Case classification is not applicable.

[9] Although we intended to collect test reports from the most recent compliance test campaign, we conclude that for some sources the most recent test reports are for other than compliance tests. For example, for some sources, we apparently have emissions data only for a risk burn representing normal emissions, rather than worst-case emissions under a compliance test.

[10] For PM, the definition of worst-case is more inclusive. If the test report for one or more test conditions in a test campaign indicates that the test is a trial burn or certification of compliance test, we assume that one test condition represents worse-case PM emissions (unless the test report explicitly states otherwise) even if the test report(s) does not explicitly indicate that ask was spiked during the test. This interpretation is appropriate because a source must document compliance with the PM standard by emissions testing. Sources do not have the option of complying with an ash feedrate option (such as the Tier 1 feedrate limits for metals and chlorine) in lie of emissions testing. Consequently, we presume the PM emissions were maximized during one of the compliance tests (*e.g.,* by detuning the APCD; feeding high ash content wastes) event though ask spiking may not be specified.

under the BIF rule for that metal, we nonetheless classified the test condition as worst-case for that metal (if there were no other test conditions with higher emissions). We reasoned that the source was operating under worst-case conditions during the test, but elected to comply with the Tier I feedrate limits because they were less stringent (*i.e.*, higher) than the feedrate levels during the compliance test. As another example, for a few boilers, emissions could be higher during a risk burn (conducted under conditions that appear to represent other than worst case conditions for that pollutant) than a compliance test. In these cases, we assumed the boiler was operating within its operating limits and classified the test condition as worst-case, highest emissions (WC HE) for that pollutant. This approach ensures that we use available emissions data representing the range of performance of the source to identify the MACT floor.

For dioxin/furan emissions, the worst-case classification is related primarily to whether the source uses a wet or no APCD versus a dry APCD. For liquid fuel boilers [11] equipped with an electrostatic precipitator (ESP) or baghouse (BH), we define the worst-case test condition as: (1) The test condition where the inlet temperature to the ESP or BH is maximized (*e.g.,* during a worst-case metals emissions test); or (2) a test condition with higher emissions of the pollutant under operating conditions that would not meet the criteria under (1) above. The test condition where gas temperatures are maximized at the inlet to the ESP or BH should represent worst-case D/F emissions because D/F emissions for sources operated under good combustion conditions (*e.g.,* the BIF requirement to operate at carbon monoxide levels below 100 ppmv) are primarily a function of the temperature of the dry particulate matter control device. D/F formation increases exponentially as the gas inlet temperature increases.[12]

We considered this approach for coal-fired boilers,[13] but determined that factors other than gas temperature at the inlet to the ESP or BH appear to have the dominant effect on D/F emissions. For example, we have D/F emissions data for two coal-fired boilers, both of which operated the ESP at approximately 500°F. At that temperature, D/F emissions could be expected to be significant if surface-catalyzed formation reactions are the dominant factor affecting emissions. But, D/F emissions from those two boilers were essentially zero—0.00 and 0.04 ng TEQ/dscm. We conclude that there are other, unquantifiable factors that affect D/F emissions from coal-fired boilers. Sulfur is known to inhibit D/F formation, and we suspect that the sulfur in the coal is a major factor affecting D/F emissions.

Given that we cannot objectively identify a worst-case test condition for D/F emissions from coal-fired boilers, we conclude that the worst-case vs normal classification is not applicable and classify the D/F emissions data as NA. For purposes of assessing variability of emissions in identifying a MACT floor level, however, we would consider the data to be snapshots of normal emissions.

We had similar issues when classifying D/F emissions from liquid fuel boilers with wet or no APCDs, and HCl production furnaces, all of which have wet emission control systems. For sources with wet APCDs,[14] D/F formation in the emission control device is inhibited because the gas is cooled and because particulate matter is continuously flushed from the control device rather than being held on a surface (*e.g.,* of an ESP plate or BH bag) where particle surface reactions can form D/F. Because we cannot objectively define worst-case conditions for D/F formation for liquid fuel boilers with wet or no APCDs, we conclude that the worst-case vs normal classification is not applicable (as designated by NA). As with the coal-fired boiler D/F data, however, we would consider the data to be snapshots of normal emissions for purposes of assessing variability of emissions in identifying a MACT floor level.

b. *Incinerators, Cement Kilns, and Lightweight Aggregate Kilns.* As discussed above, the data bases for incinerators, cement kilns, and lightweight aggregate kilns are comprised of all available test conditions. The data bases include test conditions from the most recent test campaign as well as older test campaigns. We use the same definition of worst-case test condition as we use for boilers and HCl production furnaces, as we describe below, except that we apply the definition to the test conditions within each test campaign. For example, assume we have data for a source from three test campaigns run over a period of 10 years. We looked at each test campaign individually and identified the worst-case test condition for each pollutant, if any,[15] for each test campaign.

For the metals, total chlorine, and particulate matter standards, we define the worst-case test condition for a pollutant as the test condition with the highest emissions of that pollutant meeting any of these criteria: (1) A test condition where the feedrate of the pollutant (*i.e.,* metal, chlorine, or ash) is maximized by spiking or other means (*e.g.,* feeding waste with atypically high concentrations of the pollutant) or where the emission control device is detuned; or (2) a test condition that a cement or lightweight aggregate kiln used to demonstrate compliance under Tier III of the BIF rule for the pollutant, or that an incinerator used to comply with Tier III of the risk assessment guidance; [16] or (3) a test condition with higher emissions of the pollutant under any operating conditions, provided that another test condition during the test campaign would have met the worst-case definition under (1) or (2) above.[17] As discussed for boilers and HCl production furnaces, test conditions meeting the third criterion are classified WC–HE (*i.e.,* worst-case, highest emissions) to clarify that the test condition is worst-case because it has the highest emissions for the test campaign even though its operating conditions would not have suggested that emissions would be worst-case.

For the D/F standards, we use the same classifications that we used for liquid fuel boilers. For incinerators with wet control systems, a worst-case versus normal classification of D/F emissions is not applicable. For incinerators and kilns equipped with an ESP or BH, we define the worst-case test condition as: (1) The test condition where the inlet temperature to the ESP or BH is maximized (*e.g.,* during a worst-case

[11] That is, boilers that burn liquid or liquid and gaseous fuels only.

[12] See USEPA. ''Final Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards and Technologies,'' July 1999, Chapter 3.

[13] Coal-fired boilers are boilers that burn hazardous waste as a supplemented fuel with coal.

[14] An emission control system comprised of an initial wet control device followed by an ESP or BH would qualify as a wet system. The initial wet device would quench the gas temperature to minimize D/F formation. Conversely, an emission control system comprised of an initial dry control device followed by a wet device (*e.g.,* for HCl control) would not be classified as a wet APCD for purposes of this subcategorization. D/F may be formed in the dry control device before the temperature of the gas is quenched in the wet device below the optimum range for D/F formation.

[15] If a test campaign were comprised of two risk burn test conditions, neither of the test conditions may meet the definition of worst-case.

[16] USEPA, ''Guidance on Metals and Hydrogen Chloride Controls for Hazardous Waste Incinerators,'' December 29, 1988 (Volume IV of the Hazardous Waste Incineration Guidance Series).

[17] This proviso simply precludes classifying as worst-case the highest normal test condition in a test campaign comprised of only ormal test conditions.

metals emissions test); or (2) a test condition with higher emissions of the pollutant under operating conditions that would not meet the criteria under (1) above.

2. How Do We Define the Normal, In Between, Unknown, and Not Applicable Classifications? [18]

We classify emissions data as normal for a pollutant if the available information indicates that the test was run under operating conditions that would reflect normal operations. For example, we classify risk burns (*i.e.,* emissions testing to generate emissions data to perform site-specific risk assessments) as normal for all pollutants when available information indicates the operating conditions were normal.

We classified a test condition as ''in between'' (IB) for a pollutant if the test condition was a compliance test (*i.e.,* trial burn or certification of compliance test) for the pollutant but there was another test condition (*i.e.,* WC or WC HE) with higher emissions.

We classified a test condition as ''unknown'' (U) if available information was incomplete to classify the test condition. For each ''unknown'' classification, we indicate the information we need to classify the test condition. We encourage owners and operators to provide the information and supporting documentation.

We discuss above how we applied the ''not applicable'' (NA) classification to D/F data for sources equipped with a wet or no APCD and D/F data for coal-fired boilers. We also applied the NA classification to the following situations:

(1) Tests conducted prior to modifications to the APCD, because emissions data prior to an APCS retrofit may not be representative of current operations;

(2) Miniburns, research tests, demonstration tests, because these types of tests are generally used to determine emissions under modes of operation that may not be representative of normal or worst-case operations;

(3) Baseline tests, because emissions when not burning hazardous waste are not relevant to establishing a MACT standard for hazardous waste combustors;

(4) Tests where not all metals in the SVM or LVM group were measured, because SVM and LVM emissions cannot be classified as worst-case or normal if emissions data are not available from the test for both lead and cadmium for SVM, and for arsenic, beryllium, and chromium for LVM; [19] and

(5) Tests where a PM run exceeding the RCRA emission standard, because, if a PM run failed the 0.08 gr/dscf RCRA standard, the test failed to demonstrate compliance with the RCRA standards and the test could not be used to establish operating limits.

C. What Classifications Do We Use to Address Sootblowing by Boilers?

Some boilers blow soot periodically to clean the steam tubes to improve the energy efficiency of the boiler. During sootblowing, emissions of PM and metals can increase substantially. To account for the impact of sootblowing on average emissions during RCRA compliance testing, we advised owners and operators to blow soot during one of the three test runs whereby the potential buildup of metals and PM would reflect the buildup over a normal operating cycle.[20] We also provided a formula for calculating average emissions accounting for the frequency and duration of sootblowing operations.

Some boilers did not blow soot during testing, some were silent on whether they blew soot, some blew soot and used the averaging formula, and some blew soot and calculated average emissions as the arithmetic average of the three test runs. So that we can understand how each source handled sootblowing and determine how best to account for sootblowing in developing the MACT standards, we encourage owners and operators to review the sootblowing classification we assign to their source to determine if it is accurate. We have added a sootblowing status data field to the data base that indicates: (1) The sootblowing run (*i.e.,* R1, R2, or R3); or (2) ''No'', indicating the boiler does not blow soot during normal operations; or (3) ''U'' (*i.e.,* unknown), indicating that we do not know whether the boiler blows soot during normal operations or whether the boiler blew soot during testing, and, if so, during which run. For test conditions classified ''U'', we encourage owners and operators to clarify whether the boiler blows soot during normal operations, and whether the boiler blew soot during the test condition (and, if so, during which run).

Dated: June 20, 2002.

Elizabeth A. Cotsworth,

Director, Office of Solid Waste.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7238–7]

Public Notice of Final NPDES General Permits for Facilities/Operations That Generate, Treat, and/or Use/Dispose of Sewage Sludge by Means of Land Application, Landfill, and Surface Disposal in EPA Region VIII

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of NPDES general permits.

SUMMARY: Region VIII of EPA is hereby giving notice of its issuance of the National Pollutant Discharge Elimination System (NPDES) general permits for facilities or operations that generate, treat, and/or use/dispose of sewage sludge by means of land application, landfill, and surface disposal in the States of CO, MT, ND, and WY and in Indian country, as defined at 18 U.S.C. 1151, in the States of CO, MT, ND, SD, WY and UT (except for the Goshute Indian Reservation and the Navajo Indian Reservation). The effective date of the general permits is August 16, 2002.

The NPDES permit numbers and the areas covered by each general permit are listed below.

State	Permit No.	Area covered by the general permit
Colorado	COG650000	State of Colorado except for Federal Facilities and Indian country
	COG651000	Indian country within the State of Colorado and the portions of the Ute Mountain Indian Reservation located within the States of New Mexico and Utah.

[18] Please note,a s discussed above, the Normal and In Between classifications can be trumped by the ''worst-case highest emissions: (WC HE) classification, if in fact, emissions during these test conditions are higher than emissions during a test condition that would otherwise be classified as worst-case.

[19] Plase note that, for some source categories where there are substantial emissions data for only lead or only chromium during a test condition, we classified the lead-only or chromium-only data by worse-case vs normal. In addition, we did not apply the NA classification to LVM emissions data if only beryllium emissions data were missing. This is because beryllium emissions are virtually always substantially lower than either arsenic or chromium emissions, and thus, do not contribute substantially to LVM emissions.

[20] See USEP, ''Technical Implementation Document for EPA's Boiler and Industrial Furnance Regulations,'' March 1992, p. 5–14.

State	Permit No.	Area covered by the general permit
	COG652000	Federal Facilities in the State of Colorado, except those located in Indian country, which are covered under permit COG51000.
Montana	MTG650000	State of Montana except for Indian country.
	MTG651000	Indian country within the State of Montana.
North Dakota	NDG650000	State of North Dakota except for Indian country.
	NDG651000	Indian country within the State of North Dakota (except for Indian country located within the former boundaries of the Lake Traverse Indian Reservation, which are covered under permit SDG651000) and that portion of the Standing Rock Indian Reservation located within the State of South Dakota.
South Dakota	SDG651000	Indian country within the State of South Dakota (except for the Standing Rock Indian Reservation, which is covered under permit NDG651000, that portion of the Pine Ridge Indian Reservation located within the State of Nebraska, and Indian country located within the State of North Dakota within the former boundaries of the Lake Traverse Indian Reservation).
Utah	UTG651000	Indian country within the State of Utah except for the Ute Mountain Indian Reservation (which is covered under permit COG651000), the Goshute Indian Reservation, and the Navajo Indian Reservation.
Wyoming	WYG650000	State of Wyoming except for Indian country.
	WYG651000	Indian country within the State of Wyoming.

Coverage under the general permits may be for one of the following three categories: Category 1—Facilities/operations that generate and/or partially treat sewage sludge, but do not use/dispose of sewage sludge; Category 2—Facilities/operations that use/dispose of sewage sludge and may also generate and/or treat sewage sludge; and Category 3—Wastewater lagoon systems that need to land apply sewage sludge on an occasional, restricted basis. Coverage under the general permit will be limited to one of the three categories, but coverage may be granted to one or more subcategories under Category 2. In applying for coverage under the general permit, the applicant will be required to specify under which category or subcategory(s) coverage is being requested. However, the permit issuing authority will have the final determination as to which category or subcategory(s) the coverage will be granted. Facilities or operations that incinerate sewage sludge are not eligible for coverage under these general permits and must apply for an individual permit. The requirements in the permit for the use/disposal of sewage sludge are based primarily on 40 CFR 503.

The deadlines for applying for coverage under the general permits are given in the permits and the Fact Sheet. For most facilities/operations, the deadline is 90 days after the effective date of the permit. Wastewater lagoon systems that are not using/disposing of sewage sludge do not need to apply for permit coverage unless notified by the permit issuing authority.

DATES: The general permits become effective on August 16, 2002 and will expire five years from that date. For appeal purposes, the 120 day time period for appeal to the U.S. Federal Courts will begin August 16, 2002.

ADDRESSES: The public record is located at EPA Region 8, and is available upon written request. Requests for copies of the public record, including a complete copy of response to comments, a list of changes made from the draft permit to the final permit, the general permit, and the fact sheet for the general permit, should be addressed to William Kennedy,: NPDES PERMITS TEAM (8P–W–P); U.S. EPA, REGION VIII; 999 18TH STREET, SUITE 300; DENVER, CO 80202–2466 or telephone (303) 312–6285. Copies of the general permit, fact sheet, response to comments, and a list of changes from the draft permit to the final permit may also be downloaded from the EPA Region VIII web page at *http://www.epa.gov/region08/water/wastewater/biohome/biohome.html.* Please allow approximately one week after this notice for documents to be posted on the web page.

FOR FURTHER INFORMATION CONTACT: Questions regarding the specific permit requirements may be directed to Bob Brobst, telephone (303) 312–6129 or E-mail at *brobst.bob@epa.gov.*

SUPPLEMENTARY INFORMATION: Region VIII proposed and solicited comments on the general permits at 66 FR 793 (January 4, 2001). In addition, notices and copies of the draft general permit and Fact Sheet were sent to most publicly owned treatment works in Region VIII that would likely have to apply for coverage under the general permit. Comments were received from six facilities/operations that generate, treat, and/or use/dispose of sewage sludge. The comments covered a wide range of issues. Many of the issues were addressed in the final permit. The response to comments is included as part of the public record. Also, the public record includes a list of the changes made from the draft permit to the final permit. The U.S. Fish and Wildlife Service did not have any comments.

The States of South Dakota and Utah have been authorized as the permit authority for sewage sludge, therefore general permits will be issued only for Indian country in those States. The general permit for Indian country in Utah does not include the portions of the Goshute Indian Reservation and the Navajo Indian Reservation in Utah because the permitting activities for these reservations are done by Region IX of EPA. The State of Colorado has not been authorized as the permit authority for Federal facilities. Therefore, a separate general permit is being issued for Federal facilities in Colorado that are not located in Indian country.

On June 21, 2000 and September 21, 2000, U.S. District Judge Donald W. Molloy issued orders stating that until all necessary total maximum daily loads under section 303(d) of the Clean Water Act are established for a particular water quality limited segment, the EPA is not to issue any new permits or increase permitted discharges under the NPDES program. (See *Friends of the Wild Swan, Inc.* v. *EPA,* 130 F. Supp. 2nd 1199 (D. Mont. 2000); 130 F. Supp 2nd 1204 (D. Mont. 2000)) EPA finds that the issuance of these general permits does not conflict with this order, because (1) the permits do not authorize any point source discharges into waters of the United States and (2) as discussed under the ''Protection of Public Health and The Environment'' section of the Fact Sheet, the use and/or disposal of sewage sludge in compliance with the conditions of these permits is not likely to have any adverse effect on any waterbody in Montana that has been listed under section 303(d) of the Clean Water Act.

Since these permits do not involve discharges to waters of the United States, certification under section 401(a)(1) of the Clean Water Act is not necessary for the issuance of these permits and certification was not requested.

Appeal of Permit

Any interested person may appeal the ''NPDES General Permit for Facilities/Operations That Generate, Treat, Use/Dispose of Sewage Sludge By Means of Land Application, Landfill, and Surface Disposal'' in the Federal Court of Appeals in accordance with section 509(b)(1) of the Clean Water Act. This appeal must be filed within 120 days of the effective date of the permit. Persons affected by a general NPDES permit may not challenge the conditions of the permit as a right of further EPA proceedings. Instead, they may either challenge the permit in court or apply for an individual permit and then request a formal hearing on the issuance or denial on an individual permit.

Executive Order 12866: Under Executive Order 12866 (58 FR 51735 (Oct. 4, 1993)), the EPA must determine whether its regulatory actions are ''significant'' and therefore subject to review by the OMB. The EPA has determined that the issuance of these general permits 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.

Paperwork Reduction Act: EPA has reviewed the requirements imposed on regulated facilities in these general permits under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of these permits have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

Regulatory Flexibility Act (RFA): The RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements of 5 U.S.C. 553(b) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The permits issued today, however, are not a ''rule'' subject to the requirements of 5 U.S.C. 553(b) and are therefore not subject to the RFA.

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 tribal, state, and local governments and the private sector. ''Regulatory actions'' are defined as ''rules'' subject to the RFA. The permits issued today are not ''rules'' subject to the RFA; therefore, they are not subject to the requirements of the UMRA.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: June 19, 2002.

Kerrigan G. Clough,

Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance, Region VIII.

[FR Doc. 02–16272 Filed 7–1–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1422–DR]

Arizona; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arizona (FEMA–1422–DR), dated June 25, 2002, and related determinations.

EFFECTIVE DATE: June 25, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 25, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Arizona resulting from wildfires beginning on June 18, 2002, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Arizona.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance limited to debris removal (Category A), roads and bridges (Category C), and buildings and equipment (Category E), in the designated areas, and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Individual and Family Grant program will be limited to 75 percent of the total eligible costs. Additional categories of assistance under the Public Assistance program may be provided at a later date, if warranted.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Scott Wells of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Arizona to have been affected adversely by this declared major disaster:

Apache and Navajo Counties and the Fort Apache Indian Reservation for Individual Assistance.

Apache and Navajo Counties for debris removal (Category A), roads and bridges (Category C), and buildings and equipment (Category E) under the Public Assistance program.

All counties and Indian Reservations within the State of Arizona are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–16600 Filed 7–1–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1419–DR]

Minnesota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Minnesota, (FEMA–1419–DR), dated June 14, 2002, and related determinations.

EFFECTIVE DATE: June 24, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Minnesota is hereby amended to include Public Assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 14, 2002:

Becker, Beltrami, Clay, Pennington, and Polk Counties for Public Assistance.

Roseau County for Public Assistance (already designated for Individual Assistance).

Koochiching, Lake of the Woods, Mahnomen, Marshall, Norman, and Red Lake Counties for Individual and Public Assistance.

Kittson County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–16599 Filed 7–1–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 16, 2002.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Employee Stock Ownership Plan Trust of Port Financial Corp., Brighton, Massachusetts, to acquire voting shares of Port Financial Corporation, Brighton, Massachusetts, and thereby indirectly acquire voting shares of Cambridgeport Bank, Cambridge, Massachusetts.

2. Mystic Financial, Inc. Employee Stock Ownership Plan & Trust, Medford, Massachusetts; to acquire voting shares of Mystic Financial, Inc., Medford, Massachusetts and thereby indirectly acquire voting shares of Medford Co-Operative Bank, Medford, Massachusetts.

Board of Governors of the Federal Reserve System, June 26, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–16582 Filed 7–1–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 26, 2002.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. TCF Financial Corporation, Wayzata, Minnesota; to acquire 9.99 percent of the voting shares of MainStreet Bank Shares, Inc., Martinsville, Virginia, and thereby indirectly acquire voting shares of Smith River Community Bank, N.A., Martinsville, Virginia, and Franklin County Community Bank, N.A., Rocky Mount, Virginia, a *de novo* bank.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Prosperity Bancshares, Inc., Houston, Texas; to merge with Paradigm Bancorporation, Inc., Houston, Texas, and thereby indirectly acquire Paradigm Delaware Bancorporation, Inc., Dover, Delaware, and its subsidiary Paradigm Bank Texas, Houston, Texas.

Board of Governors of the Federal Reserve System, June 26, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–16583 Filed 7–1–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or

assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 26, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. BB&T Corporation, Winston-Salem, North Carolina; to acquire 100 percent of the voting shares of Regional Financial Corporation, Tallahassee, Florida, and thereby indirectly acquire voting shares of First South Bank, Tallahassee, Florida, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, June 26, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–16581 Filed 7–1–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–02–66]

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) 498–1210.

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. CDC is requesting an emergency clearance from the Office of Management and Budget (OMB) to collect data under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS D–24, Atlanta, GA 30333. Written comments should be received within 14 days of this notice. OMB is expected to act on the request of CDC within 21 days of publication of this notice.

Proposed Project

Notification of Possession of a Select Agent—New—Office of the Director, Office of Health and Safety (OD/OHS), Centers for Disease Control and Prevention (CDC). Section 202(a) of the Public Health Security and Bioterrorism Preparedness Response Act of 2002 (Public Law 107–188) requires that all persons in possession of a Select Agent notify the Secretary of Health and Human Services by September 10, 2002.

The Secretary of Health and Human Services has designated the CDC as the agency responsible for collecting this information. CDC is specifying that facilities, rather than persons, who possess a Select Agent shall notify CDC by completing the Application for Notice of Possession of a Select Agent. For the purposes of completing this application, a facility should be considered as a single geographic site, such as a building or complex of buildings at a single mailing address. Each facility should designate a responsible facility official (RFO) to complete this form. It is the responsibility of the RFO to ensure management oversight of this notification requirement. The RFO should be either a safety officer, a senior management official of the facility, or both, who has been authorized by the facility to complete and submit this application. The RFO should not be an individual who actually possesses, uses, or transfers such agents or toxins.

In order to complete the application, the RFO will need to inventory its facility and consult with others (*e.g.,* principal investigators) as necessary to obtain the information required for this application. The RFO must review and sign the application and will be the point of contact if CDC has questions concerning the application or other matters related to the Public Law. Facilities that do not possess a listed biological agent or toxin are required to complete the declaration of non-possession and submit the form.

Facilities that possess listed biological agents and/or toxins that are a threat to public health must submit their notification form to the Centers for Disease Control and Prevention (CDC), Office of Health and Safety, 1600 Clifton Road, MS A13, Atlanta, GA 30333. Facilities that possess listed biological agents that are deemed a threat to animal health or animal products are required to submit their form to the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), Veterinary Services, National Center for Import-Export, Products Program, 4700 Riverdale Road, Unit 40, Riverdale, MD 20737. Facilities that possess listed biological agents and/or toxins that are deemed a threat to both public health and animal health and animal products are required to submit their form to both CDC and APHIS. There is no cost to respondents except their time to complete the notification form.

Respondents	Number of Respondents	Number of responses/respondent	Avg. burden/response (in hours)	Total burden (in hours)
Facilities that do not possess listed biological agents and/or toxins	95,400	1	10/60	15,900

Respondents	Number of Respondents	Number of responses/respondent	Avg. burden/response (in hours)	Total burden (in hours)
Facilities that possess listed biological agents and/or toxins	94,600	1	2	189,200
Total				205,100

Dated: June 26, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–16674 Filed 7–1–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Science Advisory Board to the National Center for Toxicological Research; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Science Advisory Board (SAB) to the National Center for Toxicological Research (NCTR).

General Function of the Committee: The Board advises the Director, NCTR, on establishing, implementing, and evaluating the research programs that assist the Commissioner of Food and Drugs in fulfilling his regulatory responsibilities. The Board provides an extra agency review in ensuring that the research programs at NCTR are scientifically sound and pertinent.

Date and Time: The meeting will be held on August 8, 2002, from 1 p.m. to 5 p.m. and August 9, 2002, from 8 a.m. to 1 p.m.

Location: NCTR, Building #12, Conference Center, 3900 NCTR Dr., Jefferson, AR 72079.

Contact Person: Leonard M. Schechtman, NCTR (HFT–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6696, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12559. Please call the Information Line for up-to-date information on this meeting.

Agenda: The Board will be presented with a draft report on the evaluation of the Division of Chemistry. The draft report is the product of a site visit team that conducted an onsite review of the Division in January. Division staffers will provide a preliminary response to the issues raised and recommendations made. The NCTR Director will provide a Center update and discuss the development of five newly established centers of excellence at the NCTR. These are the: Functional Genomics Center, Structural Genomics Center, Toxicoinformatics Center, Hepatotoxicity Center, and Phototoxicity Center. The Directors of each of these Centers will provide a presentation on the development and future of their respective center. A proposal presented to the Board at the June 2001 meeting regarding the establishment of a subcommittee on scientific opportunities to improve regulatory science through collaborations with external stakeholders will be revisited. The Board will receive an update on activities of an existing subcommittee with a similar focus (Advisory Committee for Pharmaceutical Science, Nonclinical Studies Subcommittee).

Procedure: On August 8, 2002, from 1 p.m. to 5 p.m., and August 9, 2002, from 8 a.m. to 12 noon, the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 31, 2002. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon, on August 9, 2002. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 31, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations. On August 9, 2002, from 12 noon to 1 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). This portion of the meeting will be closed to permit discussion of information concerning individuals associated with the research programs at NCTR.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Leonard M. Schechtman at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 24, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–16588 Filed 7–1–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (''the Program''), as required by section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States

Court of Federal Claims, 717 Madison Place, NW., Washington, DC 20005, (202) 219–9657. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8A–46, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by HRSA on January 2, 2002, through March 29, 2002.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

(a) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by'' one of the vaccines referred to in the Table, or

(b) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading ''For Further Information Contact''), with a copy to HRSA addressed to Director, Division of Vaccine Injury Compensation, Office of Special Programs, 5600 Fishers Lane, Room 8A–46, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Graham Parker on behalf of Keenan Parker, Boston, Massachusetts, Court of Federal Claims Number 02–0002V
2. Barbara Bishop Sufian, New York, New York, Court of Federal Claims Number 02–0003V
3. Sarah and Jonathan Nash on behalf of Laura Nash, Braintree, Massachusetts, Court of Federal Claims Number 02–0004V
4. Denise Kretz on behalf of Robert Kretz, Quincy, Massachusetts, Court of Federal Claims Number 02–0006V
5. Joann and Vadim Mostovoy on behalf of Victor Jared Mostovoy, New York, New York, Court of Federal Claims Number 02–0010V
6. Desiree Juraniec on behalf of Cassidy Juraniec, Boston, Massachusetts, Court of Federal Claims Number 02–0014V
7. Tammy J. Brown, New Hartford, Connecticut, Court of Federal Claims Number 02–0015V
8. Kerry Shafer on behalf of Keegan Shafer, Boston, Massachusetts, Court of Federal Claims Number 02–0027V
9. Alexandria Cannell on behalf of Isabelle Cannell, Boston, Massachusetts, Court of Federal Claims Number 02–0028V
10. Ernest Kramer on behalf of Christopher Kramer, Boston, Massachusetts, Court of Federal Claims Number 02–0032V
11. Phillip R. Lujan, Glendale, California, Court of Federal Claims Number 02–0034V
12. Donna McKinley on behalf of Antonio Francisco Saavedra, Nashua, New Hampshire, Court of Federal Claims Number 02–0039V
13. Eugene A. Martinez on behalf of Brad Martinez, Deceased, Orlando Beach, Florida, Court of Federal Claims Number 02–0040V
14. Sarah and Billy Sprock on behalf of Brandon Sprock, Sheldon, Iowa, Court of Federal Claims Number 02–0044V
15. Janice and Marc Lehner on behalf of Erin Pauline Lehner, Derry, New Hampshire, Court of Federal Claims Number 02–0046V
16. Sheryl Schwartz on behalf of Alec Schwartz, Fairfax, Virginia, Court of Federal Claims Number 02–0048V
17. Amy and Dennis Colannino on behalf of Adam Colannino, Vienna, Virginia, Court of Federal Claims Number 02–0049V
18. Heather Waller on behalf of Kaitlyn Waller, Vienna, Virginia, Court of Federal Claims Number 02–0050V
19. Carol Kessler on behalf of Mikaela Kessler, Vienna, Virginia, Court of Federal Claims Number 02–0051V
20. David Russell on behalf of Lauren Russell, Vienna, Virginia, Court of Federal Claims Number 02–0052V
21. Laurie and Richard Coppersmith on behalf of Laurel Coppersmith, Mayfield Heights, Ohio, Court of Federal Claims Number 02–0058V
22. Heidi and Scott Billings on behalf of Matthew Billings, West Buxton, Maine, Court of Federal Claims Number 02–0065V
23. Kim Waldele on behalf of Gabriella Waldele, Boston, Massachusetts, Court of Federal Claims Number 02–0067V
24. Gail Cahill on behalf of Christian Velez, Vienna, Virginia, Court of Federal Claims Number 02–0072V
25. Kathleen Hall on behalf of Zechariah Hall, Baldwinsville, New York, Court of Federal Claims Number 02–0073V
26. Alicia Booker on behalf of Kia Janae Cobbs, Houston, Texas, Court of Federal Claims Number 02–0075V
27. Marianne and Shawn Look on behalf of Camden S. Look, Commerce

Township, Michigan, Court of Federal Claims Number 02–0076V
28. Melissa and Devin Jones on behalf of Emma Jones, Liberty, Missouri, Court of Federal Claims Number 02–0080V
29. Joyce and Maurice Robinson on behalf of Maurice L. Robinson, Frederick, Maryland, Court of Federal Claims Number 02–0086V
30. Sue Anna Harwood, Corpus Christi, Texas, Court of Federal Claims Number 02–0087V
31. Kristiana Wienken on behalf of Jonathan Wienken, Vienna, Virginia, Court of Federal Claims Number 02–0090V
32. Michele Hailey on behalf of Tyler Hailey, Vienna, Virginia, Court of Federal Claims Number 02–0091V
33. Leandra and Todd Hanson on behalf of Joel Hanson, Vienna, Virginia, Court of Federal Claims Number 02–0092V
34. Deborah Smith on behalf of Ryan Christopher Smith, Yuma, Arizona, Court of Federal Claims Number 02–0093V
35. Bethany Britton on behalf of Piers Britton, Vienna, Virginia, Court of Federal Claims Number 02–0094V
36. Tami and Wayne Fuesel on behalf of Jessica Marie Fuesel, Vienna, Virginia, Court of Federal Claims Number 02–0095V
37. Gena D. Ankle, Miami, Florida, Court of Federal Claims Number 02–0097V
38. Gary Kompothecras on behalf of Sara Alice Kompothecras, Vienna, Virginia, Court of Federal Claims Number 02–0110V
39. Yolanda Medina on behalf of Elliott Quinones, Freehold, New Jersey, Court of Federal Claims Number 02–0111V
40. Claudia Dennis on behalf of Joseph Dennis, Boston, Massachusetts, Court of Federal Claims Number 02–0112V
41. Nicole and Ken Schweisthal on behalf of Michael Schweisthal, Naperville, Illinois, Court of Federal Claims Number 02–0113V
42. Brenda Tibbs on behalf of Randy Boyle, Vienna, Virginia, Court of Federal Claims Number 02–0114V
43. Cynthia Ruybal Morgan, Colorado Springs, Colorado, Court of Federal Claims Number 02–0120V
44. Lanita and Russell Cunningham on behalf of Ashley Cunningham Youngstown, Ohio, Court of Federal Claims Number 02–0124V
45. Joanne McCormack on behalf of Colin McCormack, Milwaukee, Wisconsin, Court of Federal Claims Number 02–0129V
46. Kathy Rhodomoyer on behalf of Raymond Rhodomoyer, Boston, Massachusetts, Court of Federal Claims Number 02–0130V
47. Marianne and Andrew Baker on behalf of Brendan Baker, Kalamazoo, Michigan, Court of Federal Claims Number 02–0138V
48. Dennis Jeffers on behalf of Mary Jane Jeffers, Fort Bragg, North Carolina, Court of Federal Claims Number 02–0143V
49. Teri Bickley on behalf of Olivia Bickley, Vienna, Virginia, Court of Federal Claims Number 02–0145V
50. Elizabeth and Louis Carnevale on behalf of Joseph M. Carnevale, Vienna, Virginia, Court of Federal Claims Number 02–0146V
51. Ann Heinke and David McCoy on behalf of Timothy Dean McCoy, Loveland, Colorado, Court of Federal Claims Number 02–0152V
52. Mieko Hester on behalf of Joseph Rodriguez, Jr., Boston, Massachusetts, Court of Federal Claims Number 02–0154V
53. Catina Haverlock on behalf of Adam Haverlock, Boston, Massachusetts, Court of Federal Claims Number 02–0155V
54. Gina Manderfeld, Laramie, Wyoming, Court of Federal Claims Number 02–0156V
55. Daniel Baggio on behalf of Giordano P. Baggio, Boston, Massachusetts, Court of Federal Claims Number 02–0157V
56. Daniel Baggio on behalf of Daniel B. Baggio, Boston, Massachusetts, Court of Federal Claims Number 02–0158V
57. Linda Mallam on behalf of Jonathan Mallam, Boston, Massachusetts, Court of Federal Claims Number 02–0159V
58. Beth Rosenberg on behalf of Jackson Rubin, Boston, Massachusetts, Court of Federal Claims Number 02–0160V
59. Bonnie and Alan Shelton on behalf of Casey Jordan Shelton, Vienna, Virginia, Court of Federal Claims Number 02–0161V
60. Christina DeLong, Vienna, Virginia, Court of Federal Claims Number 02–0162V
61. Laura Gibson on behalf of Riley T. Gibson, Jr., Vienna, Virginia, Court of Federal Claims Number 02–0163V
62. Frederick Snipes on behalf of Kaylin D. Snipes, Vienna, Virginia, Court of Federal Claims Number 02–0164V
63. Deborah and Ronald Elliott on behalf of Makayla Morgan Elliott, Granville, Ohio, Court of Federal Claims Number 02–0172V
64. Kelley and Jim O'Clair on behalf of Michael O'Clair, Manchester, New Hampshire, Court of Federal Claims Number 02–0181V
65. Shannon and William Vessels on behalf of Joshua Vessels, Manchester, New Hampshire, Court of Federal Claims Number 02–0182V
66. Lynn Joyce Thompson on behalf of Alexander Martin Burris, Deceased, Carlsbad, New Mexico, Court of Federal Claims Number 02–0183V
67. Leslee Maust on behalf of Nathan Maust, Boston, Massachusetts, Court of Federal Claims Number 02–0184V
68. Suzanne Monez, Columbus, Ohio, Court of Federal Claims Number, 02–0185V
69. Paul Lambert and Alice Mese on behalf of Katie Nicole Lambert, Deceased, Slidell, Louisiana, Court of Federal Claims Number 02–0189V
70. LaTonya and Samuel Williams on behalf of Brandon Williams, Pensacola, Florida, Court of Federal Claims Number 02–0191V
71. Linda Stott, Wrentham, Massachusetts, Court of Federal Claims Number 02–0192V
72. Jennifer and Dan Conaway on behalf of Matthew Conaway, Vienna, Virginia, Court of Federal Claims Number 02–0193V
73. Tammy Jose on behalf of Emelita Jose, Summerville, South Carolina, Court of Federal Claims Number 02–0194V
74. JoAnn Goodman on behalf of Russell L. Goodman, Alexandria, Virginia, Court of Federal Claims Number 02–0201V
75. Katina Eubanks on behalf of Kaitlyn L. Eubanks, Alexandria, Virginia, Court of Federal Claims Number 02–0202V
76. Theodore J. Dayharsh, Vienna, Virginia, Court of Federal Claims Number 02–0203V
77. Lisa Salom on behalf of Jaime Michael Salom, Vienna, Virginia, Court of Federal Claims Number 02–0204V
78. Kathleen and Timothy Begley on behalf of Liam Begley, Newburyport, Massachusetts, Court of Federal Claims Number 02–0206V
79. Dorothy Verdon on behalf of Robert Verdon, Nashua, New Hampshire, Court of Federal Claims Number 02–0208V
80. Michael Jones and Christan Basile-Jones on behalf of Michael P. Jones, Kennebunk, Maine, Court of Federal Claims Number 02–0209V
81. Dawn O'Neill on behalf of John P. O'Neill III, Nashua, New Hampshire, Court of Federal Claims Number 02–0210V
82. Janet Cardillo on behalf of Grace Cardillo, Boston, Massachusetts, Court of Federal Claims Number 02–0211V
83. Susanne and Michael Conroy on behalf of Rylie Veronica Conroy, Waverly, Virginia, Court of Federal Claims Number 02–0212V
84. Angela Robinson on behalf of Brittany Robinson, Panama City,

Florida, Court of Federal Claims Number 02–0218V
85. Andrea and Jose Valle on behalf of Justice Valle, Miami, Florida, Court of Federal Claims Number 02–0220V
86. Michele Kupersmith on behalf of Samuel Kupersmith, Boston, Massachusetts, Court of Federal Claims Number 02–0221V
87. Caroline Payne on behalf of Andie Grace Payne, Boston, Massachusetts, Court of Federal Claims Number 02–0222V
88. Douglas Kelley on behalf of Ryan Kelley, Boston, Massachusetts, Court of Federal Claims Number 02–0223V
89. Kristin and Gordon Welch on behalf of Corey Welch, Bedford, New Hampshire, Court of Federal Claims Number 02–0224V
90. Linda Reid on behalf of Anthony Reid, Vienna, Virginia, Court of Federal Claims Number 02–0226V
91. Linda Reid on behalf of Alexis Reid, Vienna, Virginia, Court of Federal Claims Number 02–0227V
92. Patricia Cramer on behalf of Karli Cramer, Mays Landing, New Jersey, Court of Federal Claims Number 02–0228V
93. Michael Chmura on behalf of Evan Chmura, Cambridge, Massachusetts, Court of Federal Claims Number 02–0229V
94. Michele Frazier on behalf of Anna Schuppenhauer, Jamestown, New York, Court of Federal Claims Number 02–0233V
95. Kellie and Ron Miller on behalf of Avery Hope Miller, Elizabethtown, Kentucky, Court of Federal Claims Number 02–0235V
96. Dale Denault and Charlene Gillenwater on behalf of Destiny Denault, Lewistown, Pennsylvania, Court of Federal Claims Number 02–0236V
97. Margaret and Greg Wilson on behalf of William Mitchell Wilson, Lexington, Kentucky, Court of Federal Claims Number 02–0239V
98. Brenda and Charles Gerard on behalf of Joseph James Gerard, Maplewood, Minnesota, Court of Federal Claims Number 02–0242V
99. Tracie and Louis Kiefer on behalf of Joseph August Kiefer, Raleigh, North Carolina, Court of Federal Claims Number 02–0243V
100. Shirley J. Nelson on behalf of Jennifer Ashley Ray, Cleveland, Ohio, Court of Federal Claims Number 02–0244V
101. Drena and Keith Travis on behalf of Keith Antonio Travis, Chicago, Illinois, Court of Federal Claims Number 02–0245V
102. Samantha and Travis Warren on behalf of Travis Gabriel Warren, Houston, Texas, Court of Federal Claims Number 02–0247V

Dated: June 24, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 02–16591 Filed 7–1–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: May 2002

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of May 2002, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusions is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
ABDULLAH, AHMAD OMAR ORANGE, VA	06/20/2002
BIRTHFIELD, INEZ O JACKSON, MS	06/20/2002
BRYANT, LESTER JACKSON, MS	06/20/2002
BUTLER, PAUL G JR THREE RIVERS, TX	06/20/2002
CARTER, MELODY J ST ROBERT, MO	06/20/2002
CAUDILL, WILLIAM A SOMERSET, KY	06/20/2002
COCHRAN, GERALD DENOREH BASTROP, TX	06/20/2002
DAGLIYAN, ARTHUR GLENDALE, CA	06/20/2002
DANIELS, EVANGELINE V WILSON, NC	06/20/2002
EXPRESS TRANSPORTATION INC MILWAUKEE, WI	06/20/2002
FLEITES, MIRELLA D HIALEAH, FL	06/20/2002
FREEMAN–METZGER, BARBARA WHITING, IA	06/20/2002
GARCIA, RAMON ROGER HIALEAH, FL	06/20/2002
GONZALEZ, SANDRA LOMA LINDA, CA	06/20/2002
GUERRA, LAZARO MIAMI, FL	04/10/2001
GUERRA, MARIA MIAMI BEACH, FL	04/10/2001
GUTIERREZ, DULCE M HIALEAH, FL	06/20/2002
HAMBRIGHT, BOBBY F JR MILWAUKEE, WI	06/20/2002
HARRIS, THOMAS D POTEAU, OK	06/20/2002
HERITAGE OB/GYN AHOSKIE, NC	06/20/2002
HERRERA, JUAN FIDENCIO BASTROP, TX	06/20/2002
IBRAHIM, ELHAFIZ MOHAMMED WINSTON, NC	06/20/2002
LARA, MANUEL J AUSTIN, TX	06/20/2002
LEON, ANGELA MIAMI, FL	06/20/2002
MANCEWICZ & WHITE, D D S, P C KENTWOOD, MI	06/20/2002
MANGIARELLI, KIM CANANDAIGUA, NY	06/20/2002
MARES, DANIEL ALBERTO MIAMI, FL	06/20/2002
MCCREA, TERRI L ATLANTA, GA	06/20/2002
MUKHATOVA, LARISA VAN NUYS, CA	06/20/2002
NOVAK, THOMAS V MONGTOMERY, AL	06/20/2002
OUDIN, JAMES CHARLES LAKEWOOD, CA	06/20/2002
PATTERSON, EDDIE PAUL PASADENA, CA	06/20/2002
PAZO, LAZARA HIALEAH, FL	06/20/2002
PEREZ, RENE HIALEAH, FL	06/20/2002
POK, MALACCA SHAFTER, CA	06/20/2002
RICHSTONE, GEOFFREY FORT DIX, NJ	06/20/2002
RODRIGUEZ, IRMA COOKIE FT WORTH, TX	06/20/2002
RODWELL, DINO ELLICOTT CITY, MD	06/20/2002
ROWAN, VICTORIA SAN DIMAS, CA	06/20/2002
SANCHEZ, ISABEL MIRAMAR, FL	04/10/2001
SHACKELFORD, DAN J ATLANTA, GA	06/20/2002
SHALETT, HAROLD CHATTANOOGA, TN	06/20/2002
SMITH, DEBBIE KAY TRUMANN, AR	06/20/2002
STANLEY, JAMES R.	06/20/2002

Subject city, state	Effective date
FORT DIX, NJ	
STEVENS, CINDY CARMICHAEL, CA	06/20/2002
TAUKEIAHO, SIONE W VALLEY CITY, UT	06/20/2002
TELGHEDER, MARGARET SPIERDOWIS MONTVALE, NJ	06/20/2002
TEXIERA, PATRICIA A LOWELL, MA	06/20/2002
THOMPSON, BRODERICK THREE RIVERS, TX	06/20/2002
TIMALI, SATAALEVAO DIANE SALT LAKE CITY, UT	06/20/2002
TRUMANN PARAMEDIC, INC TRUMANN, AR	06/20/2002
URIBE, FABIOLA MIAMI, FL	06/20/2002
WADLEY, ROGER LEON WILBURTON, OK	06/20/2002
WHEAT, PRISCILLA POPLARVILLE, MS	06/20/2002
WOODARD, CLARENCE W FORREST CITY, AR	06/20/2002
FELONY CONVICTION FOR HEALTH CARE FRAUD	
BIEGANOWSKI, VICTOR J EL PASO, TX	06/20/2002
BINION, MAGDA DANBURY, CT	06/20/2002
BOSTON, SAMUEL LILLINGTON, NC	06/20/2002
FARINA, RICHARD J CHURCHVILLE, PA	06/20/2002
FIFER, KIM ANITA LEXINGTON, KY	06/20/2002
GONZALEZ, MICHAEL B ORLANDO, FL	06/20/2002
JENKINS, GARLAND LEE CACHE, OK	06/20/2002
FELONY CONTROL SUBSTANCE CONVICTION	
CABEZA, ILIANA COLEMAN, FL	06/20/2002
DINOZZI, DAVID ANTHONY BATAVIA, OH	06/20/2002
GRANT, ALICE R FORT WORTH, TX	06/20/2002
HAYES, BARBARA ANN MAINEVILLE, OH	06/20/2002
HUNTER, CHRISTOPHER W SOMERVILLE, NJ	06/20/2002
MINOR, JIMMIE T ELLIJAY, GA	06/20/2002
TESTERMAN, AMY TALBOTT SUTHERLIN, VA	06/20/2002
WHITING, JOAN MYRTLE INNES POCTATELLO, ID	06/20/2002
PATIENT ABUSE/NEGLECT CONVICTIONS	
ARMER, JANICE A SCHENECTADY, NY	06/20/2002
ASLANYAN, ROMELA GLENDALE, CA	06/20/2002
BAKER, THOMAS P HERRIN, IL	06/20/2002
CORTEZ, SYLVIA OXNARD, CA	06/20/2002
DAROSETT, SHAWN LEE BUENA VISTA, CO	06/20/2002
GILES, EDITH MARIE DAVENPORT, IA	06/20/2002
HALL, ALLISON GELENE BETHEL, MO	06/20/2002
HARTFORD, SALLY MARIE TOLEDO, OH	06/20/2002
LATNIK, TINA M S EUCLID, OH	06/20/2002
LEECH, DARLENE E GUILFORD, NY	06/20/2002
LOVE, KATHY M DELAWARE, AR	06/20/2002
LYLES, LINDA L O'FALLON, IL	06/20/2002
MIER–GASILOS, VICKY EWA BEACH, HI	06/20/2002
PFEIFER, ROCKELLE R WAUKESHA, WI	06/20/2002
PUCKETT, JAMISON HAMILTON, OH	06/20/2002
RODRIQUEZ, CHARLES HUNTSVILLE, TX	06/20/2002
SCHYVINCK, TAMMY L EDGERTON, WI	06/20/2002
SINGLETON, PAMELA L CHARDON, OH	06/20/2002
STOFFELS, JUDITH C ALBANY, NY	06/20/2002
SULKOWSKI, ALICJA VALATIE, NY	06/20/2002
TETRO, ERIC W MURRAY, UT	06/20/2002
WALKER, VENICE UNIVERSITY PARK, IL	06/20/2002
CONVICTION FOR HEALTH CARE FRAUD	
BITKER, CAROLYNN JOY PARK RAPIDS, MN	06/20/2002
BURGESS, COLLETTE SUMTER, SC	06/20/2002
COLE–SEYDLER, VALERIE BALLSTON SPA, NY	06/20/2002
DALESKE, PATTI JO ELDORA, IA	06/20/2002
JANOWSKI, MARLEA VERA IOWA FALLS, IA	06/20/2002
KAPLAN, ROBERT A STATEN ISLAND, NY	06/20/2002
LICENSE REVOCATION/SUSPENSION/ SURRENDERED	
ANDREWS, KRISTA MARIE WINNSBORO, TX	06/20/2002
APOTHEKER, LESLIE DEBRA FORT LAUDERDALE, FL	06/20/2002
BARNES, DEBRAH S JACKSON, TN	06/20/2002
BOEZI, DONNA M E GREENWICH, RI	06/20/2002
BOONE, LESLIE TRENTON, NJ	06/20/2002
BRADEN, MARK STEPHEN CHICO, CA	06/20/2002
BRODIEN, LORIE LITTLETON, NH	06/20/2002
BULGER, PATRICE A BAYVILLE, NJ	06/20/2002
BULK, MARY K RICHMOND, MO	06/20/2002
BURGESS, KIMBERLY A ARLINGTON, TX	06/20/2002
CAREY, DENNIS L GROVEPORT, OH	06/20/2002
CASPER, CINDY D CAROL STREAM, IL	06/20/2002
CHAMNESS, BARBARA ANN TAYLORVILLE, IL	06/20/2002
CHIN, SANG IL LOS ANGELES, CA	06/20/2002
CLARK, BENJAMIN D AURORA, CO	06/20/2002
CLARK, SANDRA A NEWPORT BEACH, CA	06/20/2002
COHEN, SCOTT EDWARD CINCINNATI, OH	06/20/2002
COLLINS, ANTHONY WAYNE GONZALES, LA	06/20/2002
CONLEY, BRENDA CAROLYN TURNER COVINGTON, KY	06/20/2002
DAIGLE, FRANCES A F DENISON, TX	06/20/2002
DAVIS, BRENDA RIDER FOLEY, AL	06/20/2002
DENT, AMY ENTERPRISE, AL	06/20/2002
DESSOURCES, MARLENE HOLBROOK, MA	06/20/2002
DEUTCHMAN, RALPH F STAMFORD, CT	06/20/2002
DINGANKAR, HRISHIKESH S DETROIT, MI	06/20/2002
DIX, JOSEPH TIMOTHY LOS ANGELES, CA	06/20/2002
DIXON, DEBORAH D NASHVILLE, TN	06/20/2002
DRUMHELLER, GREGORY SCOTT ROYAL PALM BCH, FL	06/20/2002
ELDRIDGE, MONTE EUGENE LAKEWOOD, CO	06/20/2002
ELLIOTT, CAROLYN ANN COTTONWOOD, AL	06/20/2002
ESKRIDGE, SONYA MARIE IRVING, TX	06/20/2002
EYDINOV, BORIS CHESTNUT HILL, MA	06/20/2002
FIELDS, EVA A ROSS ASHLAND, KY	06/20/2002
FITZPATRICK, PATRICIA A BURNHAM, ME	06/20/2002
FORTIN, MICHAEL S GOWANDA, NY	06/20/2002
GASIOROWSKI, ELIZABETH E PHOENIX, AZ	06/20/2002
GRIFFIN, GERALD T CRANSTON, RI	06/20/2002
GUSTAFSON, CHRISTINE M ATLANTA, GA	06/20/2002
HARRISON, BETTY GREENVILLE, MS	06/20/2002
HENDRICKSON, BRIAN EDWIN MINNEAPOLIS, MN	06/20/2002
HESS, JOHN ALBUQUERQUE, NM	06/20/2002
HICKS, ALESIA JANINE CORDOVA, AL	06/20/2002
HOUCK, GREGORY MILES THOUSAND OAKS, CA	06/20/2002
HOWELL, ANNA R	06/20/2002

Subject city, state	Effective date
EL PASO, TX	
HUBBARD, CAROLYN K ..... GREELEY, CO	06/20/2002
HUNTON, CLARA M ..... NORWAY, ME	06/20/2002
HUTSON–MONTOYA, ROBIN KANSAS CITY, MO	06/20/2002
JACKSON, JAMES ..... DALLAS, TX	06/20/2002
JACKSON, BONNIE LYNNE .... GRAFTON, ND	06/20/2002
JERMYN, KATHLEEN ..... HADDON HGTS, NJ	06/20/2002
JOHNSON, DONNA G ..... BARRE, VT	06/20/2002
JOHNSON, PATRICIA ..... PHILADELPHIA, MS	06/20/2002
JONES, EVELYN FISHER ..... MONTGOMERY, AL	06/20/2002
KARAS, RHONDA ..... ALBUQUERQUE, NM	06/20/2002
KEENEY, SUSAN L ..... COLCHESTER, VT	06/20/2002
KEETH, WALTER E ..... PUEBLO, CO	06/20/2002
KILEN, DOUGLAS ASTOR ..... SUPERIOR, WI	06/20/2002
KUMN, PATRICIA JAMISON ... POPLARVILLE, MS	06/20/2002
LANDRY, BRYNN ..... WILLIAMSTOWN, VT	06/20/2002
LEONARD, ROBERT ..... CLOVERDALE, CA	06/20/2002
LIEBERMAN, BRUCE IRWIN .. LEAWOOD, KS	06/20/2002
LILLISTON, PAULINE FRANCES ..... TANGIER, VA	06/20/2002
LISS, DANA JOY ..... MIAMISBURG, OH	06/20/2002
LOVELESS, LISA ..... PICAYUNE, MS	06/20/2002
MAGUIRE, PATRICIA JANE .... HOPKINS, MN	06/20/2002
MAJOR, WILLIAM C ..... NINILCHIK, AK	06/20/2002
MARES, MICHELLE R ..... MT ZION, IL	06/20/2002
MATONIS, LANA MARIE ..... PHOENIX, AZ	06/20/2002
MCFADDEN, THOMAS C ..... LOUISVILLE, KY	06/20/2002
MELGOZA, CHRISTELLA SUE TUCSON, AZ	06/20/2002
MEREDITH, GEORGE M ..... VIRGINIA BCH, VA	06/20/2002
MERVINE, DOROTHY LANTZ CRESSON, PA	06/20/2002
MILLER, LEIGH A ..... CHICAGO, IL	06/20/2002
MIZE, SHERIECE ..... LAS CRUCES, NM	06/20/2002
MOIR, MARILYN ..... CLARINGTON, PA	06/20/2002
MOORE, DAPHINE MATTOX .. HAZEL GREEN, AL	06/20/2002
MORRIS, ANTHONY DWAYNE SUMITON, AL	06/20/2002
MORRIS, BRIAN J ..... BUSY, KY	06/20/2002
MYERS, DEBRA LEE ..... VIDOR, TX	06/20/2002
NESTER, RONNIE L ..... GLENDALE, AZ	06/20/2002
NORDLING, DEBRA S ..... WESTPORT, CT	06/20/2002
OGIN, GARY ARTHUR ..... ENGLEWOOD, CO	06/20/2002
PAWLOSKI, PATRICIA LABRECK ..... PEORIA, AZ	06/20/2002
POPE, LANCE W ..... OAK BLUFFS, MA	06/20/2002
QUARLES, KRISTI GAIL ..... CIMARRON, NM	06/20/2002
RAYMOND, DANA ALLEN ..... SAN ANTONIO, TX	06/20/2002
RESCIGNO, ELIZABETH A ..... EAST HAVEN, CT	06/20/2002
RICCIARDI, JUDE ..... N BERGEN, NJ	06/20/2002
RICHARD, CINDI LYNN ..... POLLOK, TX	06/20/2002
RICHARDSON, TAD EDWIN ... PHOENIX, AZ	06/20/2002
RICHARDSON, STEPHEN RALPH ..... FRESNO, CA	06/02/2002
ROUSE, DEBORAH RENA ..... PINE BLUFF, AR	06/20/2002
ROWAN, HERBERT PAUL ..... WATERFORD, MI	06/20/2002
RUDLOFF, SHARON M ..... TUCSON, AZ	06/20/2002
SALO, STEVEN MARTIN ..... CONNEAUT, OH	06/20/2002
SCHRANER, BOBBIE ..... TAYLORSVILLE, MS	06/20/2002
SEDERWALL, GINA M ..... KINGSTON, TN	06/20/2002
SHAH, SURESH B ..... SMITHTOWN, NY	06/20/2002
SHAW, SUZEN ..... TUCSON, AZ	06/20/2002
SHERRILL, DONALD C ..... ORANGE CITY, FL	06/20/2002
SIGNORINE, LOUIS A ..... GILFORD, NH	06/20/2002
SILBERMAN, DAVID J ..... ANDOVER, MA	06/20/2002
SIMPSON, LIZZIE MARIE ..... GOODWATER, AL	06/20/2002
SISK, DONNA J ..... E PRAIRIE, MO	06/20/2002
SMITH, DARWIN LEON ..... MUSKEGON, MI	06/20/2002
SMITH, RHONDA ANN ..... HOYT LAKES, MN	06/20/2002
SMITH, JANICE SUE ..... FORT WAYNE, IN	06/20/2002
SMITH, SHARON LYNN ..... MEXIA, TX	06/20/2002
SMUTZ, HALLY ROCHELLE ... FORT WORTH, TX	06/20/2002
STEINBERG, JONATHAN M ... COMSTOCK, NY	06/20/2002
STRAHAN, RONALD W ..... LOS ANGELES, CA	06/20/2002
SWANSON, SUZANNE FAE .... GRAND ISLAND, NE	06/20/2002
TOMLINSON, PATRICIA MARIE ..... JUNCTION, TX	06/20/2002
ULRICH, CANDACE M ..... CAPE GIRARDEAU, MO	06/20/2002
VALDEZ, KENNETH ..... SAN LEANDRO, CA	06/20/2002
WALKER, SHARON KAY ..... LINCOLN, NE	06/20/2002
WEBB, KENNETH RANDLE .... FORT WORTH, TX	06/20/2002
WHITE, CONNIE M ..... PAYSON, AZ	06/20/2002
WHOBREY, LAURA ..... GULFPORT, FL	06/20/2002
WILLIAMS, RAMONA VELMARIE ..... PHOENIX, AZ	06/20/2002
WILLIAMS, CYNTHIA R ..... MANTACHIE, MS	06/20/2002
WILSON, RUTHEL W ..... KERRVILLE, TX	06/20/2002
WILSON, CYNTHIA PRETRICE ..... MONTGOMERY, AL	06/20/2002
WILSON, NANCY M ..... GLENDALE HGTS, IL	06/20/2002
WOOD, MARINA F ..... PLAINFIELD, IL	06/20/2002
WYATT, EMILY JEAN ..... ALPINE, AL	06/20/2002
ZENGOTITA, HIRAM E ..... ANDOVER, MA	06/20/2002
FEDERAL/STATE EXCLUSION/ SUSPENSION	
CARLOCK, JENNIFER MARIE ST LOUIS, MO	06/20/2002
ESTEY, RAYMOND GRANT .... SHINGLE SPRINGS, CA	06/20/2002
GEROV, SEMEN ..... LOS ANGELES, CA	06/20/2002
LEE VERN HOME HEALTH SVC INC ..... ST LOUIS, MO	06/20/2002
LEVINE, MARK ALLEN ..... CINCINNATI, OH	06/20/2002
WIGGINS, CHARLES T ..... BIRMINGHAM, AL	06/20/2002
OWNED/CONTROLLED BY CONVICTED ENTITIES	
NORWELL FAMILY CHIRO-PRACTIC ..... NORWELL, MA	06/20/2002
THERESA K MILLER FAMILY ELIZABETHTOWN, KY	06/20/2002

Dated: June 4, 2002.

Calvin Anderson, Jr.,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 02–16217 Filed 7–1–02; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

The President's New Freedom Commission on Mental Health; Notice of Meeting

Pursuant to Executive Order 13263, notice is hereby given of a meeting of the President's New Freedom Commission on Mental Health in July 2002.

The meeting will be open and will consider how to accomplish the Commission's mandate to conduct a comprehensive study of the United States mental health service delivery system and to make recommendations on improving the delivery of public and private mental health services for adults and children. Among other things, it will receive testimony from interested parties, establish issue priorities and develop a work plan.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Additional information and a roster of Commission members may be obtained from the contact whose name and telephone number is listed below.

Committee Name: The President's New Freedom Commission on Mental Health.

Meeting Date/Time: Open: July 17, 2002, 5 p.m. to 6:30 p.m.; Open: July 18, 2002, 8:30 a.m. to 5 p.m.; Open: July 19, 2002, 8:30 a.m. to 3 p.m.

Place: Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

Contact: Claire Heffernan, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 13C–26, Rockville, MD 20857. Telephone: (301) 443–1545; Fax: (301) 480–1554 and e-mail: *Cheffern@samhsa.gov*

Dated: June 28, 2002.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health, Services Administration.

[FR Doc. 02–16733 Filed 7–1–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Associated Environmental Assessment for the Detroit River International Wildlife Refuge, Wayne and Monroe Counties, MI

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a Comprehensive Conservation Plan and associated Environmental Assessment for the Detroit Rivers International Wildlife Refuge.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to prepare a Comprehensive Conservation Plan and an associated Environmental Assessment for the Detroit River International Wildlife Refuge located in Wayne and Monroe Counties, Michigan. The Service is furnishing this notice in compliance with Service Comprehensive Conservation Plan policy and the National Environmental Policy Act and implementing regulations to achieve the following:

(1) Advise other agencies and the public of our intentions;

(2) Obtain suggestions and information on the scope of issues, opportunities, and concerns for inclusion in the Comprehensive Conservation Plan and Environmental Assessment; and

(3) Solicit information from the public about archaeological sites, buildings and structures, historic places, cemeteries, and traditional use sites that could influence decisions about management of the Refuge.

DATES: Beginning in late June 2002, the Service will solicit information from the public via public open house events, workshops, focus groups, and written comments. Special mailings, newspaper articles, radio announcements, and the Service's web site *http://midwest.fws.gov/planning/detroitrivertop.htm* will inform people of the times and places of public involvement opportunities.

FOR FURTHER INFORMATION CONTACT: Address comments and requests for additional information to: Gary Muehlenhardt, NWRS–AP, U.S. Fish and Wildlife Service, 1 Federal Drive, Fort Snelling, Minnesota 55111–5406. Email: *gary—muehlenhardt@fws.gov.* Telephone: 1–800–247–1247 extension 5477.

SUPPLEMENTARY INFORMATION: It is Service policy to have all lands within the National Wildlife Refuge System managed in accordance with an approved Comprehensive Conservation Plan. The Comprehensive Conservation Plan will guide management decisions and identify refuge goals, objectives, and strategies for achieving refuge purposes. The public is encouraged to participate in the planning process. The Comprehensive Conservation Plan will provide other agencies and the public with a clear understanding of the desired future conditions of the Refuge and how the Service will implement management strategies.

The Detroit River International Wildlife Refuge (Refuge) was established by Public Law 107–91 on December 21, 2002 and is the first international wildlife refuge in North America. The Refuge will conserve, protect and restore habitat for 29 species of waterfowl, 65 kinds of fish and 300 species of migratory birds along the lower Detroit River in Michigan and Canada. The authorized refuge boundary includes islands, coastal wetlands, marshes, shoals and riverfront lands along 18 miles of the Lower Detroit River.

The Refuge establishing act included Mud Island and Grassy Islands, lands already managed by the Service as Wyandotte National Wildlife Refuge (394 acres). The Act created an ''acquisition'' boundary for the refuge, called for partnerships with Canada and local communities, and directed the Service to ''conduct a study of fish and wildlife habitat and aquatic and terrestrial communities of the north reach of the Detroit River'' for potential inclusion in the Refuge, and to report back to Congress in 18 months. To meet this obligation, the Service will be developing a Comprehensive Conservation Plan for the new Refuge.

Dated: June 3, 2002.

William F. Hartwig,

Regional Director.

[FR Doc. 02–16576 Filed 7–1–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Battle of Midway National Memorial Advisory Committee; Meeting Notice

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Battle of Midway National Memorial Advisory Committee will hold its third meeting by teleconference on Thursday, July 11,

2002, from 2 p.m. to 4 p.m. Eastern Daylight Savings Time. During this teleconference, the committee will review existing monuments to the Battle of Midway located on Midway Atoll, discuss current standards for any new memorials to be placed on the atoll and make recommendations for acceptance or revision of those standards, and review a proposal to erect a joint Japanese-American monument on Midway.

DATES: July 11, 2002, 2 p.m. to 4 p.m. Eastern Standard Time.

ADDRESSES: U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, Virginia, room 205 or by teleconference.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the meeting or who wishes to submit oral or written comments should contact Barbara Maxfield, External Affairs Chief for the Fish and Wildlife Service's Pacific Islands Office, Box 50088, Honolulu, HI 96850; telephone (808) 541–2749; fax (808) 541–2756 no later than July 8, 2002. You may obtain copies of the draft meeting agenda from the same source.

SUPPLEMENTARY INFORMATION: As directed by Congress, the Secretary of the Interior established the Battle of Midway National Memorial Advisory Committee to facilitate development of a strategy for the dedication and management of this National Memorial. Members of the public are welcome to participate in any of its meetings.

Members of the public in the Washington, DC, area may attend the meeting in person in the U.S. Fish and Wildlife Service's Washington Office at 4401 N. Fairfax Drive, Arlington, Virginia, in room 205. Members of the public may also participate by teleconference, however, teleconference lines are limited. Please call Barbara Maxfield (808) 541–2749 if you are interested in participating in the call and to obtain the dial-in number. Seating in room 205 of the Fish and Wildlife Service's Arlington Square office is limited and is available on a first come, first served basis.

We will distribute written comments submitted to the Fish and Wildlife Service at the Honolulu address above to committee members prior to the meeting if we receive them in sufficient time to allow distribution. We will provide an opportunity for oral comments from the public during this teleconference meeting as well.

Dated: June 14, 2002.

Jerry F. Leinecke,

Project Leader, Hawaiian and Pacific Islands National Wildlife Refuge Complex.

[FR Doc. 02–16679 Filed 6–27–02; 4:15 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–030–02–1610–DE–24–1A]

Grand Staircase-Escalante National Monument Advisory Committee; Notice of Intent To Establish and Call for Nominations

AGENCY: Bureau of Land Management (BLM), Grand Staircase-Escalante National Monument, Kanab, Utah.

ACTION: Notice of intent to establish and call for nominations for the Grand Staircase-Escalante National Monument Advisory Committee under the provisions of the Approved Management Plan for the Grand Staircase-Escalante National Monument (February 2000).

SUMMARY: BLM is publishing this notice under Section 9(a)(2) of the Federal Advisory Committee Act. Pursuant to the Approved Management Plan for the Grand Staircase-Escalante National Monument (February 2000), BLM gives notice that the Secretary of the Interior intends to establish the Grand Staircase-Escalante National Monument Advisory Committee (Committee). The notice requests the public to submit nominations for membership on the Committee. The Committee is necessary to advise the Secretary and BLM on resource management issues associated with the Grand Staircase-Escalante National Monument.

DATES: Submit a completed nomination form and nomination letters to the address listed below no later than August 1, 2002.

ADDRESSES: Send nominations to: Monument Manager, Grand Staircase-Escalante National Monument, Bureau of Land Management, 190 E. Center St., Kanab, Utah 84741.

FOR FURTHER INFORMATION CONTACT: David Hunsaker, Acting Monument Manager, (435) 644–4300, or the following web site *www.ut.blm.gov/monument.*

SUPPLEMENTARY INFORMATION: Any individual or organization may nominate one or more persons to serve on the Grand Staircase-Escalante National Monument Advisory Committee. Individuals may nominate themselves for Committee membership. You may obtain nomination forms from the Grand Staircase-Escalante National Monument Office or download the application from the Internet site (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**, above). To make a nomination, you must submit a completed nomination form, letters of reference from the represented interests or organizations, as well as any other information that speaks to the nominee's qualifications, to the Grand Staircase-Escalante National Monument. You may make nominations for the following categories of interest:

(1) A member with expertise in archaeology, to represent the archaeological community;

(2) A member with expertise in paleontology, to represent the paleontological community;

(3) A member with expertise in geology, to represent the geological community;

(4) A member with expertise in botany, to represent the botanical community;

(5) A member with expertise in wildlife biology, to represent the wildlife biological community;

(6) A member with expertise in history, to represent the historical community;

(7) A member with expertise in social science, to represent the social science community;

(8) A member with expertise in systems ecology, to represent the systems ecology community;

(9) An elected official from Garfield County, to represent the interests of county residents;

(10) An elected official from Kane County, to represent the interests of county residents;

(11) A representative of State or tribal government;

(12) An educator, to represent the educational community;

(13) A representative of the environmental community;

(14) An outfitter and guide operating within the Monument, to represent commercial recreation activities in the Monument;

(15) A livestock grazing permittee operating within the Monument, to represent grazing interests.

The specific category the nominee would be representing should be identified in the letter of nomination and in the nomination form. The State Director, BLM Utah, and Monument Manager will review the nomination forms and letters of reference. The State Director shall confer with the Governor of the State of Utah on potential nominations. The Director, Bureau of Land Management will then forward

recommended nominations to the Secretary of the Interior who has responsibility for making the appointments.

The purpose of the Grand Staircase-Escalante National Monument Advisory Committee is to advise the Bureau of Land Management on the management of the Grand Staircase-Escalante National Monument. Each member will be a person who, as a result of training and experience, has knowledge or special expertise which qualifies him or her to provide advice from among the categories of interest listed above.

Members will serve without monetary compensation, but will be reimbursed for travel and per diem expenses at current rates for Government employees. The Committee will meet at least twice a year. Additional meetings may be called by the Designated Federal Official.

Dated: June 3, 2002.

Sally Wisely,

Utah State Director.

[FR Doc. 02–16578 Filed 7–1–02; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 25, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or e-mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **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 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 submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Extension of a currently approved collection.

Title: Labor Condition Application and Requirements for Employers Using Nonimmigrants on H–1B Visas.

OMB Number: 1205–0310.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local, or Tribal Government.

Type of Response: Reporting and Recordkeeping.

Frequency: On occasion.

Number of Respondents: 70,000.

Requirement	Responses	Average reponses time (hours)	Annual hours
Labor Condition Applications—20 CFR 655.760	275,000	1.00	275,000
Documentation of Corporate Identity—20 CFR 655.760	1,000	0.50	500
Determination of H–1B Dependency—20 CFR 655.736	400	0.50	200
Retaining Copies of H–1B Petitions and Extensions—20 CFR 655.736	3,500	0.05	175
List of Exempt H–1B Employees in Public Access File—20 CFR 655.737(e)(1)	1,600	0.25	400
Record of Assurances of Non-Displacement of U.S. Workers at Second Employer's Worksite— 20 CFR 655.738(e)	7,500	0.17	1,250
Offers of Employment to Displaced U.S. Workers—20 CFR 655.738(e)	75	0.50	38
Documentation of U.S. Worker Recruitment—20 CFR 655.739(i)	10,000	0.33	3,333
Documentation of Fringe Benefits—20 CFR 655.731(b)	7,000	0.25	1,750
Documentation of Fringe Benefits (Multi-national Employers—20 CFR 655.731(b)	17,500	0.08	1,458
Wage Recordkeeping Requirements Applicable to Employers of H–1B Non-immigrants—20 CAR 655.731(b)	10,500	2.50	26,250
Information Form Alleging Violations (WH–4)	200	0.33	67
Totals	334,275	.....	310,421

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Under the Immigration and Nationality Act, employers seeking to employ Nonimmigrants on H–1B Visas in specialty occupations are required to file a labor condition application with and receive certification from the Department of Labor before the Immigration and Nationalization service may approve an H–1B petition.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–16597 Filed 7–1–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Furnishing Documents to the Secretary of Labor on Request Under ERISA Section 104(a)(6)

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and other federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data is 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.

By this notice, the Department is soliciting comments concerning the information collection provisions of regulations pertaining to section 104(a)(6) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). Under the statute, and regulatory provisions codified at 29 CFR 2520.104a–8, the administrator of an employee benefit plan subject to part 1 of Title I of ERISA is required to furnish the Secretary of Labor with certain documents relating to the plan upon request. A copy of the information collection request (ICR) can be obtained by contacting the office shown in the addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the addresses section on or before September 3, 2002.

ADDRESSES: Interested parties are invited to submit written comments regarding the information collection request and burden estimates to: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

The Taxpayer Relief Act of 1997 (TRA 97) eliminated the ERISA requirement that employee benefit plan administrators file with the Department copies of the summary plan descriptions and summaries of material modifications that are required to be furnished to plan participants and beneficiaries. TRA 97 added paragraph (6) to section 104(a) of ERISA which provides that the administrator of any employee benefit plan subject to Part 1 of Title I of ERISA is required to furnish to the Secretary of Labor, on request, any documents related to the employee benefit plan. Prior to the TRA 97 amendments, ERISA provided that certain documents be filed with the Department of Labor to ensure that plan participants and beneficiaries would have a means to obtain the documents without requesting them from the plan administrator. With the elimination of the filing requirement, the new section 104(a)(6) provision authorizes the Department to obtain documents on behalf of plan participants and beneficiaries. The Department issued final implementing guidance with respect to the requirement to provide these documents on January 7, 2002 (67 FR 772). The ICR relating to responding to these requests was approved following publication of the proposed rule on August 5, 1999 (64 FR 42797). This approval will expire on October 31, 2002.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected;
- 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.

III. Current Actions

The Pension and Welfare Benefits Administration is requesting an extension of the currently approved ICR pertaining to Furnishing Documents to the Secretary of Labor under ERISA section 104(a)(6). The Department is not proposing or implementing changes to the regulation or the existing ICR at this time. A summary of the ICR and current burden estimates follows:

Type of Review: Extension of a currently approved collection.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Furnishing Documents to the Secretary of Labor on Request under ERISA.

OMB Number: 1210–0112.

Frequency: On occasion.

Affected Public: Individuals or households; business or other for-profit; Not-for-profit institutions.

Total Respondents: 1,000.

Total Responses: 1,000.

Estimated Total Burden Hours: 95.

Estimated Total Burden Cost: $4,100.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

Dated: June 26, 2002.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 02–16598 Filed 7–1–02; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on Education and Training and Plan Fiduciaries Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group assigned by the Advisory Council on Employee Welfare and Pension Benefit Plans to study the issue of educating and training plan fiduciaries will hold an open public meeting on Wednesday, July 17, 2002, in Room N–5437 A–C, U.S. Department of Labor Building, 200 Constitution Avenue NW., Washington, DC 20210. The purpose of the Working Group is to study means by which the Labor Department could effectively promote and improve the education and training of employee benefit plan fiduciaries with regard to their fiduciary duties under ERISA.

The purpose of the open meeting, which will run from 9 a.m. to approximately 4:30 p.m. with a one-hour lunch break at noon, is for Working Group members to hold an organizational meeting, at which the group's goals for study will be outlined and the group will hear testimony from invited witnesses. Norman Stein, law professor at the University of Alabama at Tuscaloosa, is the new working group chair, and Robert Patrician, a senior research economist for the Communications Workers of America, Washington, DC, is the vice chair.

Members of the public are encouraged to file a written statement pertaining to the topic by sending 20 copies on or before July 9, 2002, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by July 9, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 9.

Signed at Washington, DC, this 25th day of June 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 02–16592 Filed 7–1–02; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on Orphan Plans; Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Thursday, July 18, 2002, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study orphan plans, which are plans abandoned by all plan fiduciaries designated to manage and operate the plans and their assets. Without a plan sponsor or fudiciary, participants and beneficiaries cannot receive pension distributions or make inquiries about their benefits.

The session will take place in Room N–5437 A–C, U.S. Department of Labor Building, Second and Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 9:30 a.m. to approximately 4 p.m., is for working group members to organize their goals for study of these plans and to hear testimony on the issue. Catherine Heron, Senior Vice President, Fund Business Management Group, Capital Research and Management in Los Angeles, Calif., is the Working Group chair, and David Wray, President of the Profit Sharing/401(k) Council of Chicago, Ill., is the vice chair.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before July 9, 2002, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by July 9, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 9.

Signed at Washington, DC, this 25th day of June, 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 02–16593 Filed 7–1–02; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on Electronic Reporting; Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the employee Retirement Income Security Act of 1974 of (ERISA), 29 U.S.C. 1142, a public meeting will be held Friday, July 19, 2002, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study electronic reporting. The purpose of the working group is to identify and prioritize opportunities for DOL to leverage the use of information technology to improve delivery of plan information from and delivery of information and services to its key stakeholders, including plan participants and beneficiaries, plan sponsors, auditors, investment advisors and the general public.

The session will take place in Room N–5437 A–C, U.S. Department of labor Building, 200 Constitution Avenue, NW, Washington, DC 20210. The purpose of the open meeting, which will run from 9:30 a.m. to approximately 1 p.m., is for working group members to outline the group's goals for study at this organizational meeting and to hear from select witnesses on the issue. Working Group chair is Evelyn F. Adams, Business Segment Executive, IBM Global Services, Gaithersburg, MD., and vice chair is Timothy J. Mahota, General

Counsel, Integral Development, Mountain View, Calif.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before July 9, 2002, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of labor, Room N–5677, 200 Constitution Avenue, NW, Washington DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by July 9, at the address indicate in this notice.

Organizations or individuals may also submit statement for the record without testifying. Twenty (20) copies so such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 9.

Signed at Washington, DC., this 25 day of June 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 02–16594 Filed 7–1–02; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

118th Full Meeting of the Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 118th open meeting of the full Advisory Council on Employee Welfare and Pension Benefit Plans will be held Friday, July 19, 2002, in Conference Room N–5437 A–C, U.S. Department of Labor Building, 200 Constitution Avenue, NW, Washington, DC 20210.

The purpose of the meeting, which will begin at 2 p.m. and end at approximately 3:30 p.m., is for members to be updated on activities of the Pension and Welfare Benefits Administration and for chairs of this year's working groups to provide progress reports on their individual study topics.

Members of the public are encouraged to file a written statement pertaining to any topics the Council may be studying during 2001 by submitting 20 copies on before July 9, 2002 to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by July 9 at the address indicated.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 9, 2002.

Signed at Washington, DC, this 25 day of June, 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 02–16595 Filed 7–1–02; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

June 28, 2002.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given the National Council on the Humanities will meet in Washington, DC on July 18–19, 2002.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on July 18–19, 2002, will not be open to the public pursuant to subsections (c)(4), (c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the session on July 18, 2002 will be as follows:

Committee Meetings

(Open to the Public)

Policy Discussion
9:30–10:30 a.m.
- Education Programs—Room M–07
- Federal/State Partnership—Room 507
- Preservation and Access/Challenge Grants—Room 415
- Public Programs—Room 426
- Research Programs—Room 315

(Closed to the Public)

Discussion of specific grant applications and programs before the Council
10:30 a.m. until Adjourned
- Education Programs—Room M–07
- Federal/State Partnership—Room 507
- Preservation and Access/Challenge Grants—Room 415
- Public Programs—Room 426
- Research Programs—Room 315

2–3:30 p.m.
- Jefferson Lecture and National Humanities Medals Committee—Room 507

The morning session on July 19, 2002 will convene at 9 a.m., in the 1st Floor Council Room M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

Minutes of the Previous Meeting
Reports

A. Introductory Remarks
A. Staff Report
B. Congressional Report
D. Reports on Policy and General Matters
1. Overview
2. Research Programs
3. Education Programs
4. Preservation and Access/Challenge Grants
5. Public Programs

6. Federal/State Partnership
7. Jefferson Lecture/National Humanities Medals

The remainder of the proposed meeting will be given to the consideration of specific applications and closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Ms. Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, or by calling (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Heather Gottry,

Acting Advisory Committee Management Officer.

[FR Doc. 02–16650 Filed 7–1–02; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* July 11, 2002.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for History Museums, Historical Organizations and Historical Sites, submitted to the Office of Challenge Grants at the May 1, 2002 deadline.

2. *Date:* July 16, 2002.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Colleges, Universities and Other Educational Programs, submitted to the Office of Challenge Grants at the May 1, 2002 deadline.

3. *Date:* July 23, 2002.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Colleges and Universities, submitted to the Office of Challenge Grants at the May 1, 2002 deadline.

4. *Date:* July 25, 2002.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Art Museums and Cultural Organizations, submitted to the Office of Challenge Grants at the May 1, 2002 deadline.

5. *Date:* July 30, 2002.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Public Programming Institutions, submitted to the Office of Challenge Grants at the May 1, 2002 deadline.

Heather Gottry,

Acting Advisory Committee Management Officer.

[FR Doc. 02–16652 Filed 7–1–02; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 67 FR 8562 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register.**

ADDRESSES: Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW. Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to splimpto@nsf.gov. Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send email to *splimpto@nsf.gov.*

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: NSF Surveys to Measure Customer Service Satisfaction.

OMB Control No.: 3145–0157.

Proposed Project: On September 11, 1993, President Clinton issued Executive Order 12862, ''Setting Customer Service Standards,'' which calls for Federal agencies to provide service that matches or exceeds the best service available in the private sector. Section 1(b) of that order requires agencies to ''survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.'' The National Science Foundation (NSF) has an ongoing need to collect information from its customer community (primarily individuals and organizations engaged in science and engineering research and education) about the quality and kind of services it provides and use that information to help improve agency operations and services.

Use of the Information:

Estimate of Burden: The burden on the public will change according to the needs of each individual customer satisfaction survey; however, each survey is estimated to take approximately 10 minutes per response. Based on past experience with these surveys, we estimate 30,000 respondents, for an aggregate total of 5,000 hours.

Respondents: Will vary among individuals or households; business or other for-profit; not-for-profit institutions; farms; federal government; state, local or tribal governments.

Estimated Number of Responses per Survey: This will vary by survey.

Frequency of Responses: Once.

Dated: June 27, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–16649 Filed 7–1–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic Phenomena

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on July 17–18, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, July 17, 2002—8:30 a.m. until the conclusion of business

Thursday, July 18, 2002—8:30 a.m. until the conclusion of business

The Subcommittee will continue its review of the NRC Office of Nuclear Regulatory Research (RES) draft Regulatory Guide, DG–1120, ''Transient and Accident Analysis Methods''. The Subcommittee will also discuss the status of the RES experimental program pertaining to subcooled flow boiling phenomena. 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 Designated Federal Official 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 and other interested persons regarding this review.

Further information regarding topics to be discussed, 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 Designated Federal Official, Mr. Paul A. Boehnert (telephone 301–415–8065) between 7:30 a.m. and 5 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda that may have occurred.

Dated: June 24, 2002.

Sher Bahadur,

Associate Director for Technical Support.

[FR Doc. 02–16638 Filed 7–1–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision to a guide in its Regulatory Guide Series. Regulatory Guides are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

This draft guide, temporarily identified by its task number, DG–3022 (which should be mentioned in all correspondence concerning this draft guide), is Proposed Revision 1 of Regulatory Guide 3.69, ''Topical Guidelines for the Licensing Support Network.'' This draft guide is being developed to provide guidance acceptable to the NRC staff on the scope of documentary material that should be included in the Licensing Support Network, which is an electronic information system that is being designed and implemented to provide for the entry of and access to potentially relevant licensing information for a geologic repository for high-level radioactive waste.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by September 30, 2002.

Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page at *http://www.nrc.gov/reading-rm/doc-collections/reg-guides/fuels-materials/draft-index.html.* This site provides the ability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking web site, contact

Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV.* For information about the draft guide and the related documents, contact Mr. Jeffrey A. Ciocco at (301)415–6391; e-mail *JAC3@NRC.GOV.*

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4205; fax (301) 415–3548; email *PDR@NRC>GOV.* Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by e-mail to <*DISTRIBUTION@NRC.GOV*>; or by fax to (301)415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 19th day of June 2002.

For the Nuclear Regulatory Commission.

Mabel F. Lee,

Director, Program Management, Policy Development and Analysis Staff, Office of Nuclear Regulatory Research.

[FR Doc. 02–16637 Filed 7–1–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Pam Shivery, Director, Washington Service Center, Employment Service (202) 606–1015.

SUPPLEMENTARY INFORMATION: Individual authorities established under Schedule C between May 1, 2002, and May 31, 2002, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule C

The following Schedule C authorities were established during May 2002:

Department of Agriculture

Confidential Assistant to the Administrator, Farm Service Agency and Commodity Credit Corporation. Effective May 8, 2002.

Special Assistant to the Administrator, Foreign Agricultural Service. Effective May 15, 2002.

Special Assistant to the Administrator, Rural Business-Cooperative Service. Effective May 17, 2002.

Special Assistant to the Administrator, Rural Business-Cooperative Service. Effective May 23, 2002.

Special Assistant to the Administrator, Risk Management Agency. Effective May 23, 2002.

Department of Commerce

Chief of Protocol to the Chief of Staff. Effective May 28, 2002.

Director, Congressional and Public Affairs to the Under Secretary for Export Administration, Bureau of Industry and Security. Effective May 29, 2002.

Deputy Press Secretary to the Assistant to the Secretary and Director of Policy and Strategic Planning. Effective May 30, 2002.

Special Assistant to the Assistant Secretary and Director General, United States and Foreign Commercial Service. Effective May 31, 2002.

Department of Defense

Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective May 6, 2002.

Special Policy Advisor to the Under Secretary of Defense (Policy). Effective May 15, 2002.

Staff Specialist to the Under Secretary of Defense, Acquisition, Technology and Logistics. Effective May 16, 2002.

Coordinator of Reserve Integration to the Principal Deputy Assistant Secretary of Defense (Reserve Affairs). Effective May 17, 2002.

Staff Assistant to the Deputy Assistant Secretary of Defense (near East/South Asia). Effective May 17, 2002.

Defense Fellow to the Special Assistant to the Secretary of Defense (White House Liaison). Effective May 21, 2002.

Department of Education

Special Assistant to the Chief of Staff. Effective May 9, 2002.

Deputy Chief of Staff for Operations to the Chief of Staff. Effective May 9, 2002.

Deputy Assistant Secretary for Regional Services to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective May 16, 2002.

Confidential Assistant to the Chief of Staff. Effective May 20, 2002.

Secretary's Regional Representative, Region IV, Atlanta, Georgia to the Deputy Assistant Secretary for Regional Services. Effective May 20, 2002.

Confidential Assistant to the Director, White House Initiative on Hispanic Education. Effective May 21, 2002.

Confidential Assistant to the Director, Faith-Based and Community Initiatives Center. Effective May 22, 2002.

Special Assistant to the Director, White House Initiatives on Hispanic Education. Effective May 22, 2002.

Director, White House Initiative on Hispanic Education to the Secretary of Education. Effective May 24, 2002.

Confidential Assistant to the Director, White House Initiative on Tribal Colleges and Universities. Effective May 24, 2002.

Special Assistant to the Director, White House Initiatives on Tribal Colleges and Universities. Effective May 24, 2002.

Special Assistant to the Chief of Staff. Effective May 24, 2002.

Confidential Assistant to the Director, Faith Based and Community Initiatives Center. Effective May 24, 2002.

Confidential Assistant to the Director, Faith-Based and Community Initiatives Center. Effective May 24, 2002.

Special Assistant to the Director, White House Initiatives on Hispanic Education. Effective May 24, 2002.

Confidential Assistant to the Director, White House Initiative on Hispanic Education. Effective May 24, 2002.

Confidential Assistant to the Director, White House Initiative on Hispanic Education. Effective May 24, 2002.

Confidential Assistant to the Chief of Staff. Effective May 24, 2002.

Executive Assistant to the Assistant Secretary for Postsecondary Education. Effective May 28, 2002.

Department of Energy

Senior Policy Advisor to the Chief Financial Officer/Director, Office of Management Budget and Evaluation. Effective May 1, 2002.

Deputy Assistant Secretary for National Security to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 1, 2002.

Deputy Assistant Secretary for Energy Policy to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 1, 2002.

Deputy Director of Advance for Operations to the Director, Office of Scheduling and Advance. Effective May 1, 2002.

Congressional Liaison Officer to the Deputy Assistant Secretary for Environment and Science. Effective May 6, 2002.

Intergovernmental Liaison Officer to the Deputy Assistant Secretary for Intergovernmental and External Affairs. Effective May 16, 2002.

Senior Advisor, Congressional and Intergovernmental Affairs to the Director, Office of Science. Effective May 17, 2002.

Senior Advisor to the Assistant Secretary for Environmental Management. Effective May 21, 2002.

Special Assistant to the Deputy Assistant Secretary for Policy, Planning and Budget. Effective May 23, 2002.

Associate Deputy Assistant Secretary to the Deputy Assistant Secretary for Energy Policy. Effective May 24, 2002.

Senior Policy Advisor to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 31, 2002.

Department of Health and Human Services

Executive Director, President's Commission of HIV/AIDS to the Assistant Secretary for Health. Effective May 22, 2002.

Department of Housing and Urban Development

Staff Assistant to the Assistant Secretary for Public and Indian Housing. Effective May 6, 2002.

Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective May 8, 2002.

Staff Assistant to the Assistant Secretary for Community Planning and Development. Effective May 8, 2002.

Senior Counsel to the Deputy to the Chief of Staff for Policy and Programs. Effective May 9, 2002.

Special Assistant to the Assistant Secretary for Public Affairs. Effective May 10, 2002.

Special Projects Officer to the Regional Administrator, New York, New York. Effective May 10, 2002.

Administrator of The Manufactured Housing Programs to the Assistant Secretary for Housing. Effective May 20, 2002.

Regional Director to the Assistant Deputy Secretary for Field Policy and Management. Effective May 22, 2002.

Department of the Interior

Special Assistant for Communications to the Assistant Secretary, Indian Affairs. Effective May 17, 2002.

Department of Justice

Research Assistant to the Director, Office of Public Affairs. Effective May 3, 2002.

Deputy Director to the Director, Office of Intergovernmental Affairs. Effective May 6, 2002.

Secretary (OA) to the United States Attorney, Eastern District of Michigan. Effective May 7, 2002.

Secretary (OA) to the United States Attorney, District of Wichita, Kansas. Effective May 30, 2002.

Special Assistant to the Deputy Administrator, Drug Enforcement Administration. Effective May 30, 2002.

Department of Labor

Staff Assistant to the Chief of Staff. Effective May 6, 2002.

Research Assistant to the Assistant Secretary, Office of Congressional and Intergovernmental Relations. Effective May 8, 2002.

Staff Assistant to the Director, 21st Century Workforce. Effective May 16, 2002.

Staff Assistant to the Director, Women's Bureau. Effective May 20, 2002.

Special Assistant to the Assistant Secretary for Policy. Effective May 20, 2002.

Special Assistant to the Deputy Assistant Secretary for Disability Employment Policy. Effective May 20, 2002.

Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 23, 2002.

Special Assistant to the Deputy Assistant Secretary for Disability Employment Policy. Effective May 24, 2002.

Associate Deputy Secretary to the Deputy Secretary of Labor. Effective May 24, 2002.

Special Assistant to the Assistant Secretary for Public Affairs. Effective May 29, 2002.

Secretary's Representative, Chicago, Illinois to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 29, 2002.

Department of State

Foreign Affairs Officer to the Coordinator for Counter-Terrorism. Effective May 7, 2002.

Program Officer to the Deputy Assistant Secretary, Bureau of Public Affairs. Effective May 7, 2002.

Special Assistant to the Assistant Secretary for Resource Management. Effective May 16, 2002.

Foreign Affairs Officer to the Assistant Secretary for Public Affairs. Effective May 17, 2002.

Special Assistant to the Deputy Assistant Secretary, China. Effective May 17, 2002.

Senior Technical Advisor to the Coordinator, Office of International and Information Programs. Effective May 23, 2002.

Public Affairs Specialist to the Assistant Secretary for Public Affairs. Effective May 28, 2002.

Staff Assistant to the Deputy Secretary of State. Effective May 31, 2002.

Department of Transportation

Special Assistant to the Administrator, Federal Highway Administration. Effective May 1, 2002.

Assistant for Policy to the Secretary of Transportation. Effective May 1, 2002.

Special Assistant to the Assistant to the Secretary of Director of Public Affairs. Effective May 1, 2002.

Speechwriter to the Assistant Director for Speechwriting. Effective May 1, 2002.

Speechwriter to the Assistant Director of Speechwriting. Effective May 1, 2002.

Special Assistant to the Chief Counsel. Effective May 2, 2002.

Special Assistant to the Assistant Secretary for Aviation and International Affairs. Effective May 20, 2002.

Special Assistant to the Administrator, National Highway Traffic Safety Administration. Effective May 21, 2002.

White House Liaison to the Chief of Staff. Effective May 24, 2002.

Director, Office of Congressional and Public Affairs to the Maritime Administrator. Effective May 29, 2002.

Environmental Protection Agency

Associate Assistant Administrator to the Assistant Administrator for Solid Waste and Emergency Response. Effective May 2, 2002.

Senior Counsel to the Associate Administrator for Congressional and Intergovernmental Relations. Effective May 14, 2002.

Special Assistant to the General Counsel. Effective May 15, 2002.

Federal Emergency Management Agency

Special Assistant to the Director for Administration/White House Liaison. Effective May 6, 2002.

Federal Housing Finance Board

Special Assistant to the Chairman. Effective May 15, 2002.

General Services Administration

Senior Advisor to the Regional Administrator, Great Lakes Region. Effective May 10, 2002.

Chief Technology Officer to the Associate Administrator for Communications. Effective May 30, 2002.

Office of Management and Budget

Public Affairs Specialist to the Associate Director for Communications. Effective May 10, 2002.

Deputy General Counsel to the General Counsel. Effective May 30, 2002.

Office of Personnel Management

Coordinator, Public Liaison and Constituent Services to the Director, Office of Communications. Effective May 2, 2002.

Deputy Director, Office of Communications to the Director, Office of Communications. Effective May 17, 2002.

Confidential Assistant/Scheduler to the Chief of Staff. Effective May 23, 2002.

Office of Science and Technology Policy

Executive Director, President's Council of Advisors on Science and Technology and Counsel to the Director, Office of Science and Technology Policy. Effective May 9, 2002.

Securities and Exchange Commission

Director of Legislative Affairs to the Director of Communications. Effective May 24, 2002.

Small Business Administration

Staff Assistant to the Administrator, Small Business Administration. Effective May 8, 2002.

Regional Administrator to the Administrator, Region IV, Atlanta, Georgia. Effective May 31, 2002.

Social Security Administration

Special Assistant to the Deputy Commissioner for Legislation and Congressional Affairs. Effective May 15, 2002.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–16468 Filed 6–28–02; 8:45 am]

BILLING CODE 6325–38–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25640; 812–11986]

Eaton Vance Income Fund of Boston, et al.; Notice of Application

June 26, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under (i) section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 18(f) and 21(b) of the Act, (ii) section 12(d)(1)(J) of the Act for an exemption from section 12(d)(1) of the Act, (iii) sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(3) of the Act, and (iv) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint arrangements.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain registered investment companies to participate in a joint lending and borrowing facility.

APPLICANTS: Eaton Vance Income Fund of Boston, Eaton Vance Senior Income Trust, Eaton Vance Advisers Senior Floating Rate Fund, Eaton Vance Prime Rate Reserves, EV Classic Senior Floating-Rate Fund, Eaton Vance Institutional Senior Floating-Rate Fund, Eaton Vance Growth Trust, Eaton Vance Investment Trust, Eaton Vance Municipals Trust, Eaton Vance Municipals Trust II, Eaton Vance Mutual Funds Trust, Eaton Vance Series Trust, Eaton Vance Special Investment Trust, Eaton Vance Variable Trust, Asian Small Companies Portfolio, Growth Portfolio, Greater China Growth Portfolio, Information Age Portfolio, Worldwide Health Sciences Portfolio, California Limited Maturity Municipals Portfolio, Florida Limited Maturity Municipals Portfolio, Massachusetts Limited Maturity Municipals Portfolio, National Limited Maturity Municipals Portfolio, New Jersey Limited Maturity Municipals Portfolio, New York Limited Maturity Municipals Portfolio, Ohio Limited Maturity Municipals Portfolio, Pennsylvania Limited Maturity Municipals Portfolio, Alabama Municipals Portfolio, Arizona Municipals Portfolio, Arkansas Municipals Portfolio, California Municipals Portfolio, Colorado Municipals Portfolio, Connecticut Municipals Portfolio, Florida Municipals Portfolio, Georgia Municipals Portfolio, Kentucky Municipals Portfolio, Louisiana Municipals Portfolio, Maryland Municipals Portfolio, Massachusetts Municipals Portfolio, Michigan Municipals Portfolio, Minnesota Municipals Portfolio, Mississippi Municipals Portfolio, Missouri Municipals Portfolio, National Municipals Portfolio, New Jersey Municipals Portfolio, New York Municipals Portfolio, North Carolina Municipals Portfolio, Ohio Municipals Portfolio, Oregon Municipals Portfolio, Pennsylvania Municipals Portfolio, Rhode Island Municipals Portfolio, South Carolina Municipals Portfolio, Tennessee Municipals Portfolio, Virginia Municipals Portfolio, West Virginia Municipals Portfolio, Florida Insured Municipals Portfolio, Hawaii Municipals Portfolio, High Yield Municipals Portfolio, Kansas Municipals Portfolio, Cash Management Portfolio, Government Obligations Portfolio, High Income Portfolio, Tax-Managed Growth Portfolio, Strategic Income Portfolio, Emerging Markets Portfolio, South Asia Portfolio, Growth & Income Portfolio, Special Equities Portfolio, Utilities Portfolio, Senior Debt Portfolio, Floating Rate Portfolio, Tax-Managed Emerging Growth Portfolio, Tax-Managed International Growth Portfolio, Tax-Managed Value Portfolio, Boston Income Portfolio, Capital Appreciation Portfolio, Investment Grade Income Portfolio, Small-Cap Portfolio, Large-Cap Growth Portfolio, Small Company Growth Portfolio, Tax-Managed Mid-Cap Stock Portfolio, Tax-Managed Small-Cap Value Portfolio, Capital Growth Portfolio, Small Cap Value Portfolio, Tax-Managed Mid-Cap Core Portfolio, U.S. Core Growth Portfolio, Investor Portfolio, or series thereof (collectively, the ''Eaton Vance Funds''), Eaton Vance Management, Lloyd George Investment Management (Bermuda) Limited, Lloyd George Management (Hong Kong) Limited, and Boston Management & Research, and any entity controlling, controlled by, or under common control with Eaton Vance Management (collectively, the ''Adviser''), and any other registered management investment company that is part of the same group of investment companies as the Eaton Vance Funds that is advised by the Adviser, now or in the future (together with the Eaton Vance Funds, the ''Funds'').[1]

FILING DATES: The application was filed on February 18, 2000, and amended on June 24, 2002.

[1] All investment companies that currently intend to rely on the order are named as applicants. Any other existing or future Fund that will rely on the order will comply with the terms and conditions of the application.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 22, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW, Washington, DC 20549–0609. Applicants, 225 State Street, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Karen L. Goldstein, Senior Counsel, at (202) 942–0646, or Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each Eaton Vance Fund, except Eaton Vance Senior Income Trust and Senior Debt Portfolio, is registered under the Act as an open-end management investment company (''Open-End Funds''). Eaton Vance Senior Income Trust and Senior Debt Portfolio are registered under the Act as closed-end management investment companies (''Closed-End Funds''). Each Eaton Vance Fund is organized as a Massachusetts or a New York business trust. Each Eaton Vance Adviser is registered under the Investment Advisers Act of 1940 and serves as investment adviser to the Funds.

2. Some Funds may lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term instruments. Other Funds may borrow money from banks for temporary purposes to satisfy redemption requests, cover unanticipated cash shortfalls such as a ''trade fail'' in which cash payment for a security sold by a Fund has been delayed, or to cover cash short falls resulting from delays in trade settlement. Currently, the Funds have credit arrangements with their custodian (i.e., overdraft protection), as well as committed lines of credit with a bank syndicate for temporary cash needs.

3. If the Funds were to borrow money under their current arrangements or under other credit arrangements with a bank, the Funds would pay interest on the borrowed cash at a rate which would be significantly higher than the rate that would be earned by other (non-borrowing) Funds on investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants believe this differential represents the bank's profit for serving as a middleman between a borrower and lender. Other bank loan arrangements, such as committed lines of credit, would require the Funds to pay substantial commitment fees in addition to the interest rate to be paid by the borrowing Fund.

4. Applicants request an order that would permit the Funds to enter into lending agreements (''Interfund Lending Agreements'') under which the Funds would lend money directly to and borrow money directly from each other through a credit facility for temporary purposes (''Interfund Loan''). Applicants believe that the proposed credit facility would substantially reduce the Open-End Funds' potential borrowing costs and enhance the Funds' ability to earn higher rates of interest on short-term lendings. Although the proposed credit facility would substantially reduce the Open-End Funds' need to borrow from banks, the Funds would retain committed lines of credit or other borrowing arrangements with banks. The Funds also would continue to maintain overdraft protection currently provided by their custodian. Applicants state that Closed-End Funds will participate in the credit facility exclusively as lenders.

5. Applicants anticipate that the credit facility would provide a borrowing Open-End Fund with significant savings when the cash position of the Fund is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and the Funds have insufficient cash on hand to satisfy such redemptions. When the Open-End Funds liquidate portfolio securities to meet redemption requests, which normally are effected within one to three days, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also propose using the credit facility when a sale of securities fails due to circumstances such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if the Fund has undertaken to purchase a security with the proceeds from securities sold. When the Fund experiences a cash shortfall due to a sales fail, the custodian typically extends temporary credit to cover the shortfall and the Fund incurs overdraft charges. Alternatively, the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity without incurring custodian overdraft or other charges.

7. While borrowing arrangements with banks will continue to be available to cover unanticipated redemptions, sales fails and delayed settlements, under the proposed credit facility a borrowing Open-End Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in short-term reserves or repurchase agreements. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

8. The interest rate charged to the Funds on any Interfund Loan (the ''Interfund Loan Rate'') would be the average of the ''Repo Rate'' and the ''Bank Loan Rate'', each as defined below. The Repo Rate for any day would be the highest rate available from investments in overnight repurchase agreements. The Bank Loan Rate for any day would be calculated by the Cash Management Team (defined below) each day an Interfund Loan is made according to a formula established by the Fund's Board of Trustees (the ''Board'') designed to approximate the lowest interest rate at which bank short-term loans would be available to the Funds. The formula would be based upon a publicly available rate (e.g., Federal Funds plus 25 basis points) and would vary with this rate so as to reflect changing bank loan rates. Each Fund's Board periodically would review the continuing appropriateness of using the publicly available rate, as well as the relationship between the Bank Loan

Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund's Board.

9. The credit facility would be administered by money market investment professionals employed by the Global Treasury Group at Investors Bank & Trust Company (''IBT'') and supervised by members of the Funds'' treasurer's office (collectively, the ''Cash Management Team''). IBT also serves as custodian for each Fund. Under the proposed credit facility, the portfolio managers for each participating Fund may provide standing instructions to participate daily as a borrower or lender. The Cash Management Team on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodian. Once it had determined the aggregate amount of cash available for loans and borrowing demand, the Cash Management Team would allocate loans among borrowing Funds without any further communication from portfolio managers. Applicants expect far more available uninvested cash each day than borrowing demand. After the Cash Management Team has allocated cash for Interfund Loans, the Adviser will invest any remaining cash in accordance with the standing instructions from portfolio managers or return remaining amounts for investment to the Funds. Money market Funds typically would not participate as borrowers because they rarely need to borrow cash to meet redemptions.

10. The Cash Management Team would allocate borrowing demand and cash available for lending among the Funds on what the Cash Management Team believed to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction. The method of allocation and related administrative procedures would be approved by each Fund's Board including a majority of trustees who are not ''interested persons'' of the Fund, as defined in section 2(a)(19) of the Act (''Independent Trustees''), to ensure that both borrowing and lending Funds participate on an equitable basis.

11. Through information provided by IBT, the Adviser would (i) monitor the interest rates charged and the other terms and conditions of the loans, (ii) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations, (iii) ensure equitable treatment of each Fund, and (iv) make quarterly reports to the Board concerning any transactions by the Funds under the credit facility and the interest rates charged.

12. The Adviser would supervise the credit facility as part of its duties under existing advisory contracts with each Fund and would receive no additional fee as compensation for its services. IBT would administer the day-to-day operations of the credit facility and receive no additional compensation for its services. IBT may collect standard pricing, recordkeeping, bookkeeping and accounting fees applicable to lending transactions, including transactions effected through the credit facility. Fees would be no higher than those applicable for comparable bank transactions.

13. Applicants state that IBT will be performing a ministerial role under the daily supervision of the Adviser. Applicants further state that in conjunction with establishment of the credit facility, IBT will also provide certain cash management services and instruments to address liquidity needs the Funds may encounter from time to time. Applicants state that cash management services provided by IBT will only be employed after any interfund lending needs have been satisfied. Applicants believe that any financial benefits received by IBT for its provision of the cash management alternatives to the Funds will be quantifiable and transparent both to the Adviser and to the Boards. The Adviser will provide information on any such financial benefits received by IBT to the Boards in connection with their annual review of the Funds' participation in the credit facility. Applicants represent that IBT will administer the credit facility solely in the best interests of the Funds.

14. Each Fund's participation in the proposed credit facility will be consistent with its organizational documents and its investment polices and limitations. The registration of each Fund discloses the individual borrowing and lending limitations of the Fund. Each Fund will notify shareholders of its intended participation in the proposed credit facility prior to relying upon any relief granted pursuant to the application. The statement of additional information of each Open-End Fund will disclose all material facts about the Fund's intended participation in the credit facility.

15. In connection with the credit facility, applicants request an order under (i) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; (iv) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having a common investment adviser and by having a common Board.

2. Section 6(c) provides that an exemptive order may be granted where an 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. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a party with potential adverse interests to and influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of such party and that are detrimental to the best interests of the

investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because (i) the Adviser supervises the program as a disinterested fiduciary; (ii) IBT administers the program as a disinterested service provider; (iii) all Interfund Loans would consist only of uninvested cash reserves that the Fund otherwise would invest in short-term repurchase agreements or other short-term instruments; (iv) the Interfund Loans would not involve a greater risk than other similar investments; (v) the lending Fund would receive interest at a rate higher than it could obtain through other similar investments; and (vi) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid the commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants believe that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security for purposes of sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b), and 12(d)(1)(J) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Funds or shareholders, and that neither the Adviser nor IBT would receive any additional compensation for their services in administering the credit facility. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all the participating Funds.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank; provided, that immediately after any such borrowing there is an asset coverage of at least 300 per centum for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined credit facility and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Open-End Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or affiliated person of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the Commission. Rule 17d-1 provides that in passing upon applications for exemptive relief, the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and investment limitations. Applicants therefore believe that each Fund's participation in the credit facility will be on terms that are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The interest rates to be charged to the Funds under the credit facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day the Cash Management Team will compare the Repo Rate with the Bank Loan Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is more favorable to the lending Fund than the Repo Rate and more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund (i) will be at an interest rate equal to or lower than any outstanding bank loan, (ii) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (iii) will have a maturity no longer than any outstanding bank loan (and in no event over seven days), and (iv) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the credit

facility only on a secured basis. A Fund may not borrow through the credit facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would be more than 33 1/3% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter (i) repay all its outstanding Interfund Loans, (ii) reduce its outstanding indebtedness to 10% or less of its total assets, or (iii) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition 5 shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceed 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No Fund may lend to a Fund through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 15% of its net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. Unless the Fund has a policy that prevents it from borrowing for other than temporary or emergency purposes, the Fund's borrowings through the Credit Facility, as measured on the day the most recent Interfund Loan was made to that Fund, will not exceed the greater of 125% of the Fund's total net cash redemptions or 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

12. The Cash Management Team will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an equitable basis among Funds, without the intervention of the portfolio manager of any Fund. The Cash Management Team will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. The Adviser will invest any amounts remaining after satisfaction of borrowing demand in accordance with standing instructions from portfolio managers or return remaining amounts for investment to the Funds.

13. The Adviser will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Boards of the Funds concerning their participation in the credit facility and the terms and conditions of any extensions of credit thereunder.

14. The Board of each Fund, including a majority of the Independent Trustees, (i) will review, no less frequently than quarterly, the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting such transactions, (ii) will establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review, no less frequently than annually, the continuing appropriateness of the Bank Loan Rate formula, and (iii) will review, no less frequently than annually, the continuing appropriateness of the Fund's participation in the credit facility.

15. In the event an Interfund Loan is not paid according to its terms and such default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, the Adviser will promptly refer such loan for arbitration to an independent arbitrator selected by the Board of any Fund involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[2] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Board setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve, for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, and such other information presented to the Fund's Board in connection with the review required by Conditions 13 and 14.

17. The Adviser will prepare and submit to the Board for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of operations of the credit facility, the Adviser will report on the operations of the credit facility at the Board's quarterly meetings. In addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund shall prepare an annual report that evaluates the Adviser's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it shall be filed pursuant to Item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (i) That the Interfund Rate will be higher than the Repo Rate, but lower than the Bank Loan Rate; (ii) compliance with the collateral requirements as set forth in this application; (iii) compliance with the percentage limitations on interfund borrowing and lending; (iv) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Trustees; and (v) that the interest rate on any Interfund Loan does not exceed the interest rate on any third

[2] If the dispute involves Funds with separate Boards, the Board of each Fund will select an independent arbitrator that is satisfactory to each party.

party borrowings of a borrowing Fund at the time of the Interfund Loan. After the final report is filed, each Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the credit facility unless the Fund has fully disclosed in its registration statement all material facts about its intended participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–16659 Filed 7–1–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46113; File No. SR–CBOE–2002–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Amend Rule 6.8 To Permit the Exchange To Allow Broker-Dealer Orders To Be Executed on RAES for Any Product Within Index Floor Procedure Committee's Jurisdiction

June 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 18, 2002, Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend Interpretation and Policy .01 of CBOE Rule 6.8 to permit the Exchange to allow broker-dealer orders to be executed on the Retail Automatic Execution System (''RAES'') for any product within Index Floor Procedure Committee's jurisdiction. The text of the proposed rule change is available at the CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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. CBOE 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, Proposed Rule Change

1. Purpose

The proposed rule change broadens the recent amendment to CBOE Rule 6.8.01, which granted the Index Floor Procedure Committee, on a pilot basis, the authority to allow broker-dealer orders for options on Nasdaq-100 Index'' Tracking Stock (''QQQ'') to be executed on RAES.[4] The proposed rule change would broaden the products that would be eligible to participate in the pilot to any series of any products within the scope of responsibilities of the Index Floor Procedure Committee, pursuant to the Board approved charter for that Committee.[5] In addition, the proposed rule change would give the Exchange the discretion to determine in which series broker-dealer orders could be executed on RAES.[6] All other aspects of Interpretation and Policy .01 remain unchanged.

For competitive reasons, CBOE believes that it is appropriate to expand the products available under the pilot program to those products that are under the jurisdiction of the Index Floor Procedure Committee. CBOE believes that the expansion of products in the pilot program will give the Exchange a fuller and richer data set to evaluate when it considers whether the pilot program has been effective and whether it has achieved its anticipated purpose.

CBOE believes that giving the Exchange the discretion to add permitted products to the pilot program will enhance the Exchange's ability to administer and evaluate the pilot program. Currently, only one type of product participates in the pilot program, but due to the potential increase in the number of products that may participate in the pilot program under the proposed rule change, CBOE believes the discretion to permit broker-dealer orders on RAES should operate differently.[7] The Exchange believes this is appropriate so that new products will be added to the pilot program in a manner that will optimize the evaluation of the pilot program. Since the evaluation and conclusions of the pilot program could have a broader impact than just on those products that are under the jurisdiction of the Index Floor Procedure Committee, CBOE believes that it is appropriate for the Exchange to have the discretion to determine which products within the jurisdiction of the Index Floor Procedure Committee should be added to the pilot program and when they should be added.

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with section 6(b)(5) of the Act[8] in that it is designed to promote just and equitable principles of trade, to enhance competition and to protect investors and the public interest. CBOE believes, that like the recently amended Interpretation and Policy .01 to CBOE Rule 6.8, the proposed rule change could enhance competition for the automatic execution of broker-dealer orders in a broader range of products. CBOE also believes that the expansion of the products eligible for the pilot program will give the Exchange a better array of information to evaluate the appropriateness of competing for orders

[4] *See* Securities Exchange Act Release No. 45967 (May 30, 2002), 67 FR 37888 (May 30, 2002) (SR–CBOE–2002–22).

[5] The CBOE represents that RAES has sufficient capacity to handle the processing of the potential increased order flow.

[6] Under the current rule, it is the Index Floor Procedure Committee that has the discretion to permit broker-dealer orders for options on QQQ to be executed on RAES. The Exchange discretion would be limited to any series of any products that are within the jurisdiction of the Index Floor Procedure Committee.

[7] New products will be added to the pilot program upon the recommendation of the Index Floor Procedure Committee.

[8] 15 U.S.C. 78f(b)(5).

of the accounts of broker-dealers in this manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder [10] because the proposed rule change (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, (or such shorter time as the Commission may designate); and the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act. [11]

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. CBOE has requested that the Commission waive the 30-day pre-operative waiting period. CBOE contends that, acceleration of the operative date is consistent with the protection of investors and the public interest because the changes that are proposed make no substantive changes to Interpretation and Policy .01 to CBOE Rule 6.8. In addition, the proposed rule change will increase competition in those products that are a part of the pilot and permit the Exchange to compete for orders of the accounts of broker-dealers in these products.

The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[13] Acceleration of the operative date will permit the Exchange to extend the pilot to a broader number of products, thus increasing competition for such products. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR–CBOE–2002–35 and should be submitted by July 23, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–16660 Filed 7–1–02; 8:45 am]

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[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] *See* 15 U.S.C. 78s(b)(3)(C).

[12] 17 CFR 240.19b–4.

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] Commission staff has provided interpretative guidance to the Exchange regarding the application of Section 11(a) of the Act, 15 U.S.C. 78k(a), to the RAES system. See letter from Paula Jenson, Deputy Chief Counsel, Division of Market Regulation, Commission, to Joanne Moffic-Silver, General Counsel and Corporate Secretary, CBOE, dated May 16, 2002.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46110; File No. SR–ISE–2001–34]

Self Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the International Securities Exchange LLC Amending Its Obvious Error Rule

June 25, 2002.

On November 19, 2001, the International Securities Exchange LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the definition of the term ''obvious error'' contained in ISE Rule 720 for options with a theoretical price of less than $3.00.

The proposed rule change was published for comment in the **Federal Register** on May 1, 2002.[3] The Commission received no comments on the proposal.

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 [4] and, in particular, the requirements of Section 6 of the Act [5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act [6] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

ISE Rule 720 gives the Exchange authority to bust or adjust trades that result from an ''obvious error.'' The Rule currently defines an obvious error based upon the market conditions and the difference between the execution price and the ''theoretical price'' of the options series. To be an obvious error, the difference in execution and theoretical price must be the greater of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45811 (April 24, 2002), 67 FR 21788 (May 1, 2002).

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

$0.50 or two times the allowable spread in regular market conditions (three times the allowable spread in ''fast market'' conditions).

As the ISE has noted, ISE Rule 720 does not directly consider the price at which the particular options series is trading in determining whether there has been an obvious error (although the allowable spread does increase as an option's price increases). The ISE represents that in administering the Rule, it has found that (1) the price of an option is a significant factor in determining when there is an obvious error; and (2) a pricing error in an options series trading at less than $3.00 can often be significant even if it does not meet the current $0.50 minimum requirement. The Commission believes that it is reasonable for the ISE, based upon its experience in administering the Rule, to amend the Rule to state that the standard for determining the existence of an obvious error for options series trading at less than $3.00 be whether the difference between the execution price and the theoretical price is at least $0.25.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–ISE–2001–34) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–16542 Filed 7–1–02; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46114; File No. SR–NASD–2002–45]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Partial Approval to a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Establishing Listing Standards and Listing Fees for Portfolio Depository Receipts and Index Fund Shares

June 25, 2002.

On April 3, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish listing standards and listing fees for Portfolio Depository Receipts (''PDRs'') and Index Fund Shares (''Fund Shares''). On May 6, 2002, Nasdaq filed Amendment No. 1 to the proposal.[3] On May 13, 2002, Nasdaq filed Amendment No. 2 to the proposal.[4] On May 20, 2002, the Commission published the proposed rule change for comment in the **Federal Register** and granted partial accelerated approval to the portion of the proposal relating to listing standards for PDRs and Fund Shares.[5] In this same release, the Commission published for notice and comment, but did not accelerate approval of, the portion of the proposal that dealt with Nasdaq's proposed new listing fees. The Commission is now approving Nasdaq's proposed new listing fees.

The Commission finds that this proposed rule change, as amended, is consistent with the requirements of section 15A of the Act[6] and the rules and regulations thereunder. Specifically, the Commission finds that this proposed rule change, as amended, is consistent with section 15(A)(b)(6),[7] which provides that the rules of the association be designed to promote just and equitable principals of trade, to foster cooperation and coordination with person engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission further believes that this proposed rule change, as amended, is consistent with the provisions of section 15A(b)(5) of the Act[8] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among issuers using the Nasdaq system. Nasdaq represents that the proposed listing fees for PDRs and Fund Shares are less than the current fees for traditional domestic and foreign equity issues listed on The Nasdaq National Market, as the regulatory and client services costs associated with PDRs and Fund shares are lower than those for traditional equity issues. Furthermore, Nasdaq represents that the proposed listing fees for PDRs and Fund Shares are designed to cover costs and allow Nasdaq to compete for the listing of these securities with national securities exchanges.

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the portion of the proposed rule change (SR–NASD–2002–45) relating to the proposed listing fees, as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland.

Deputy Secretary.

[FR Doc. 02–16540 Filed 7–1–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 3, 2002 (''Amendment No. 1''). In Amendment No. 1, Nasdaq did the following: (1) Made corrections to its proposed rule text and proposal; (2) added discussion and stated its statutory basis for the proposed listing fees; (3) clarified that its regular trading hours for PDRs and Fund Shares will be from 9:30 a.m. to 4:00 p.m. or 4:15 p.m., as designated by Nasdaq; and (4) requested accelerated approval for the portion of the proposal relating to the listing and trading standards for PDRs and Fund Shares, and not for the portion on the proposed listing fees.

[4] *See* letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated May 13, 2002 (''Amendment No. 2''). In Amendment No. 2, Nasdaq removed the term ''member organization'' throughout its proposed rule text and proposal.

[5] *See* Securities Exchange Act Release No. 45920 (May 13, 2002), 67 FR 35605. Nasdaq requested accelerated approval of all portions of the proposal except those that deal with its proposed new listing fees.

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78*o*–3(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46112; File No. SR–NASD–2002–83]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. and Amendment No. 1 To Establish Fees Assessed on Non-Members for the Use of Computer-to-Computer Interface Transmission Control Protocol/Internet Protocol Lines That Use Message Queue Series Software

June 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 14, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On June 19, Nasdaq amended the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to establish the fees for non-members for the use of Computer-to-Computer Interface (''CTCI'') Transmission Control Protocol/Internet Protocol (''TCP/IP'') lines that use Message Queue Series (''MQ Series'') software.[4] Nasdaq will implement the proposed rule change immediately upon approval by the Commission.

The text of the proposed rule change is below. Proposed new language is in italics. Rule 7010. System Services

(a)–(e) No change.

(f) Nasdaq Workstation™ Service

(1)–(2) No change.

(3) The following charges shall apply for each CTCI subscriber*:

Options	Price
Option 1: Dual 56kb lines (one for redundancy) and single hub and router	$1275/month.
Option 2: Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy).	$1600/month.
Option 3: Dual T1 lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy). Includes base bandwidth of 128kb.	$8000/month.
Option 1, 2, or 3 with Message Queue software enhancement	Fee for Option 1, 2, or 3 (including any Bandwidth Enhancement Fee) plus 20%
Disaster Recovery Option: Single 56kb line with single hub and router. (For remote disaster recovery sites only.).	$975/month
Bandwidth Enhancement Fee (for T1 subscribers only)	$4000/month per 64kb increase above 128kb T1 base
Installation Fee	$2000 per site for dual hubs and routers $1000 per site for single hub and router
Relocation Fee (for the movement of TCP/IP-capable lines within a single location)	$1700 per relocation

*As reflected in SR–NASD–00–80 and SR–NASD–00–81, x.25 CTCI circuits are being replaced with TCP/IP CTCI circuits. Pursuant to SR–NASD–2001–87 and SR–NASD–2001–88, the fee for x.25 CTCI circuits—which has remained $200 per month per circuit—is increased to $1,275 per month per circuit until the date of the termination of such circuits

(g)–(r) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's CTCI network is a point-to-point dedicated circuit connection from the premises of brokerages and service providers to Nasdaq's Trumbull, Connecticut processing facilities. Through CTCI, firms are able to enter trade reports into Nasdaq's Automated Confirmation Transaction Service (''ACT'') and orders into Nasdaq's transaction execution systems.

In response to numerous requests from market participants that Nasdaq upgrade the speed and reliability of its CTCI data transmission environment, Nasdaq began the process in January 2001 of ''sunsetting'' its CTCI × .25/bisynch network in favor of a new network that provides greater capacity and a more efficient transmission protocol. The new CTCI network operates over the Enterprise Wide Network II (''EWN II'') and provides connectivity over more powerful 56kb and T1 data lines. In addition, the new CTCI network uses the industry-standard TCP/IP transmission protocol, a protocol that is robust, efficient, and well known among the technical community. In May 2002, Nasdaq completed the ''sunsetting'' process. All members and non-members that access Nasdaq through CTCI have now been transitioned to TCP/IP lines.

As an optional enhancement, Nasdaq will support the use of MQ Series software over the TCP/IP lines. MQ Series is a commercially available messaging product that provides firms with the ability to integrate disparate systems over a common application programming interface (''API'') messaging infrastructure. There are over 20 operating systems that are supported by MQ Series, including Windows, Solaris, Mac OS, and Linux. Firms that use MQ Series are able to establish networks with less effort, skill, and resources, thereby achieving a seamless interconnection of disparate communications systems, and can make use of a comprehensive family of APIs designed to make coding for any messaging task straightforward. The use of MQ Series by firms that link to Nasdaq through CTCI TCP/IP is entirely optional.

In order to support the use of MQ Series by firms, Nasdaq has expended, and must continue to expend, resources to license, install, and maintain the software. Moreover, the system resources required to use MQ Series increase with the size of the TCP/IP line with which it is used. Accordingly, Nasdaq believes that it is appropriate to charge firms that opt to use MQ Series a higher fee for lines that use the software than for comparable lines that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* June 19, 2002 letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (''Amendment No. 1''). In Amendment No. 1, Nasdaq completely deleted the text of the proposed rule language in the original filing, and provided new proposed rule text.

[4] In a companion filing, SR–NASD–2002–82, Nasdaq proposes to make identical changes to the CTCI TCP/IP fees charged to members. *See* Securities Exchange Act Release No. 46111 (June 25, 2002).

do not. Fees for firms that do not use MQ Series remain unchanged.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,[5] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD–2002–83 and should be submitted by July 23, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–16543 Filed 7–1–02; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 79o–3(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46111; File No. SR–NASD–2002–82]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. to Establish Fees Assessed on NASD Members for the Use of Computer-to-Computer Interface Transmission Control Protocol/Internet Protocol Lines That Use Message Queue Series Software

June 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 14, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On June 19, 2002, Nasdaq amended the proposal.[3] Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(2) thereunder[5] as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to establish the fees assessed on NASD members for the use of Computer-to-Computer Interface (''CTCI'') Transmission Control Protocol/Internet Protocol (''TCP/IP'') lines that use Message Queue Series (''MQ Series'') software.[6] Nasdaq will implement the proposed rule change on July 1, 2002.

The text of the proposed rule change is below. Proposed new language is in italics.

Rule 7010. System Services

(a)–(e) No change.

(f) Nasdaq Workstation™ Service

(1)–(2) No change.

(3) The following charges shall apply for each CTCI subscriber*:

Options	Price
Option 1: Dual 56kb lines (one for redundancy) and single hub and router.	$1275/month.
Option 2: Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy).	$1600/month.
Option 3: Dual T1 lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy). Includes base bandwidth of 128kb.	$8000/month.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* June 19, 2002 letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (''Amendment No. 1''). In Amendment No. 1, Nasdaq completely deleted the text of the proposed rule language in the original filing, and provided new proposed rule text. For purposes of calculating the 60-day abrogation period, the Commission considers the abrogation period to have commenced on June 19, 2002, the date Nasdaq filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

[6] In a companion filing, SR–NASD–2002–83, Nasdaq proposes to make identical changes to the CTCI TCP/IP fees charged to non-members. *See* Securities Exchange Act Release No. 46112 (June 25, 2002).

Option 1, 2, or 3 with message queue software enhancement	Fee for option 1, 2, or 3 (including any bandwidth enhancement fee) plus 20%
Disaster Recovery Option: Single 56kb line with single hub and router. (For remote disaster recovery sites only.).	$975/month.
Bandwidth Enhancement Fee (for T1 subscribers only)	$4000/month per 64kb increase above 128kb T1 base.
Installation Fee	$2000 per site for dual hubs and routers. $1000 per site for single hub and router.
Relocation Fee (for the movement of TCP/IP-capable lines within a single location).	$1700 per relocation.

*As reflected in SR–NASD–00–80 and SR–NASD–00–81, x.25 CTCI circuits are being replaced with TCP/IP CTCI circuits. Pursuant to SR–NASD–2001–87 and SR–NASD–2001–88, the fee for x.25 CTCI circuits—which has remained $200 per month per circuit—is increased to $1,275 per month per circuit until the date of the termination of such circuits.

(g)–(r) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's CTCI network is a point-to-point dedicated circuit connection from the premises of brokerages and service providers to Nasdaq's Trumbull, Connecticut processing facilities. Through CTCI, firms are able to enter trade reports into Nasdaq's Automated Confirmation Transaction Service (''ACT'') and orders into Nasdaq's transaction execution systems.

In response to numerous requests from market participants that Nasdaq upgrade the speed and reliability of its CTCI data transmission environment, Nasdaq began the process in January 2001 of ''sunsetting'' its CTCI x.25/bisynch network in favor of a new network that provides greater capacity and a more efficient transmission protocol. The new CTCI network operates over the Enterprise Wide Network II (''EWN II'') and provides connectivity over more powerful 56kb and T1 data lines. In addition, the new CTCI network uses the industry-standard TCP/IP transmission protocol, a protocol that is robust, efficient, and well known among the technical community. In May 2002, Nasdaq completed the ''sunsetting'' process. All members and non-members that access Nasdaq through CTCI have now been transitioned to TCP/IP lines.

As an optional enhancement, Nasdaq will support the use of MQ Series software over the TCP/IP lines. MQ Series is a commercially available messaging product that provides firms with the ability to integrate disparate systems over a common application programming interface (''API'') messaging infrastructure. There are over 20 operating systems that are supported by MQ Series, including Windows, Solaris, Mac OS, and Linux. Firms that use MQ Series are able to establish networks with less effort, skill, and resources, thereby achieving a seamless interconnection of disparate communications systems, and can make use of a comprehensive family of APIs designed to make coding for any messaging task straightforward. The use of MQ Series by firms that link to Nasdaq through CTCI TCP/IP is entirely optional.

In order to support the use of MQ Series by firms, Nasdaq has expended, and must continue to expend, resources to license, install, and maintain the software. Moreover, the system resources required to use MQ Series increase with the size of the TCP/IP line with which it is used. Accordingly, Nasdaq believes that it is appropriate to charge firms that opt to use MQ Series a higher fee for lines that use the software than for comparable lines that do not. Fees for firms that do not use MQ Series remain unchanged.

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with the Act, including section 15A(b)(5) of the Act,[7] which requires that the rules of the NASD provide for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder,[9] because it establishes or changes a due, fee, or other charge imposed by the Association. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. 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

[7] 15 U.S.C. 78o–3(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to file number SR–NASD–2002–82 and should be submitted by July 23, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–16545 Filed 7–1–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46103; File No. SR–NYSE–2002–21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Allow the Use of Revised Forms U–4 and U–5

June 21, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 5, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby submits revised Uniform Application for Securities Industry Registration or Transfer (''Form U–4'') and the revised Uniform Termination Notice for Securities Industry Registration (''U–5'') for Commission review.

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 NYSE included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to allow the NYSE to use revised Uniform Application for Securities Industry Registration or Transfer (''Form U–4'') and Uniform Termination Notice for Securities Industry Registration (''Form U–5'') (together, the ''Forms''). The NYSE uses these Forms as part of its registration and oversight of persons associated with members and member organizations. In addition, these Forms are used in connection with the National Association of Securities Dealers, Inc.'s (''NASD'') Central Registration Depository (''CRD'') system, in which the Exchange participates. The CRD is an industry-wide automated system, which allows for the efficient review and tracking of registered persons in the securities industry, as well as changes in their work and disciplinary histories.

The Forms were filed by NASD Regulation, Inc. (''NASDR'') with the Commission, and approved by the Commission on March 11, 2002.[5] The NYSE included in its filing copies of the Forms (marked as Exhibits A and B). SR–NASD–2002–05 was based on NASDR's efforts to enhance the CRD and the registration and termination process of individuals in the securities industry. The Forms were amended to provide additional enhancements and information for more meaningful and detailed disclosure. The Forms are to be submitted electronically through the Internet.

The technical changes to the Forms will (1) update the Form U–4 to add examination and registration categories that were not previously included; (2) make certain formatting and technical changes to the Forms that would complete the transition from a paper-based filing model to an electronic-filing model; (3) clarify certain items that have been a source of confusion for Web CRD users; (4) provide separate paper filing instructions for those filers that do not use the CRD or Investment Adviser Registration Depository (''IARD'') systems; (5) accommodate the electronic submission of investment adviser filings in the IARD system; and (6) establish procedures that will enable broker/dealer firms and investment adviser firms employing dually registered persons to concur with information contained in the Forms.

Specific revisions that affect NYSE members and member organizations include the addition of new registration categories. The revised Forms add new registration categories for the NYSE Trading Assistant (''TA'') and Specialist Clerk (''SC'') positions.[6]

The revised Forms also add: (1) a Series 7A examination that corresponds with the Floor Member Conducting Public Business (''PM'') and Floor Clerk Conducting Business (''PC'') registration category;[7] (2) a NYSE Branch Manager Series 12 examination that corresponds with the Securities Manager (''SM'') registration category;[8] (3) a Series 21 examination that corresponds with the

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). The NYSE provided the Commission with written notice of its intention to file this proposed rule change on May 28, 2002. The Exchange has asked the Commission to waive the 30-day operative delay.

[5] *See* Securities Exchange Act Release No. 45531 (March 11, 2002), 67 FR 11735 (March 15, 2002) (SR–NASD–2002–05).

[6] *See* Securities Exchange Act Release Nos. 40943 (January 13, 1999), 64 FR 3330 (January 21, 1999) (SR–NYSE–98–36) and 41701 (August 3, 1999), 64 FR 43804 (August 11, 1999) (SR–NYSE–99–20) in which the Commission approved the TA and SC positions, respectively.

[7] *See* Securities Exchange Act Release No. 32698 (July 29, 1993), 58 FR 41539 (August 4, 1993)(SR–NYSE–93–10) in which the Commission approved the NYSE proposed rule change to adopt the Series 7A examination as a module of the Series 7 examination for floor members who only accept orders from professional customers, and to establish a new registration category. *See also* Securities Exchange Act Release No. 42092 (November 2, 1999), 64 FR 61375 (November 10, 1999) (SR–NYSE–99–36) in which the Commission approved the NYSE proposal to eliminate the Series 7B examination and adopt a new interpretation of Rule 345 to establish the Series 7A examination as the qualifying examination for floor clerks who only accept orders from professional customers.

[8] *See* Securities Exchange Act Release No. 39712 (March 3, 1998), 63 FR 11939 (March 11, 1998)(SR–NYSE–97–33), in which the Commission approved a Continuing Education Program for supervisors that included Series 12 examination-qualified securities managers.

NYSE SC registration category; and (4) a Series 25 examination that corresponds with the NYSE TA registration category.

Another change affecting NYSE members and member organizations is the Signature and Acknowledgment sections on Form U–4. To accommodate electronic filing, revised Section 15, the ''Signatures'' section, defines a ''signature'' as either ''a manual signature or an electronically transmitted equivalent.'' This section permits individuals and appropriate signatories to go directly to designated signature fields to execute the electronic signatures required by the Form U–4. Revised Sections 15A and 15B address the individual/applicant's acknowledgment and consent and the firm/appropriate signatory's representations, both of which must be completed on all initial or temporary registration Form U–4 filings. Section 15C addresses the Temporary Registration Acknowledgment, which must be completed for all initial or temporary registrations. Section 15D has been added to address an individual/applicant's acknowledgment and consent to amendments to the disclosure questions or the Disclosure Reporting Pages (''DRPs''). Firms and appropriate signatories must complete Section 15E for all amended Form U–4 filings. In addition, the signature section includes the Firm/Appropriate Signatory Concurrence (15F), which is a new signature section that enables one firm to concur with a filing made by another firm with which an individual is also registered (*i.e.,* the individual is registered with more than one broker/dealer and/or investment adviser firm).

The changes to Form U–5 combine the signatures into Section 8, which includes the firm acknowledgment in Section 8A and the individual acknowledgment and consent in Section 8B. Only appropriate signatories of firms are required to sign the Form U–5; however, if the terminating firm reports on the Form U–5 that an individual is under internal review, that individual may file a Part II to the Internal Review DRP to provide a response.

In addition, unregistered individuals are obligated to report to CRD any address changes for two years following the termination of registration. The individual acknowledgment and consent is included in the proposed changes to the Form U–5 to require individuals submitting an address change or an Internal Review DRP-Part II to attest that the information is accurate and complete. With the exception of Part II of the Form U–5 Internal Review DRP, there is currently no mechanism for a former associated person or member to submit information to amend or update a disclosure record through the use of the Forms. Part II of the Form U–5 Internal Review DRP provides a current or former registered representative an opportunity to provide a summary of the circumstances relating to an internal review reported on a Form U–5 by a former employer.

The revised technical and formatting amendments do not alter the reporting or disclosure requirements applicable to broker/dealers or their registered persons. Therefore, members and member organizations are not required to ''re-file'' disclosure or administrative information for their associated persons.

The amendments will enhance the utility of Forms U–4 and U–5 as part of the Exchange's registration and oversight function by providing more detailed reporting concerning persons associated with members and member organizations as well as enhancements to electronic filing through the Internet.

2. Statutory Basis

The NYSE believes the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] in that use of the Forms should foster cooperation and coordination with persons engaged in regulating transactions in securities. Additionally, the NYSE believes the information reported on the Forms assists the Exchange in its responsibilities under Section 6(c) of the Act[10] in denying membership to those subject to a statutory disqualification or who cannot meet such standards of training, experience and competence as are prescribed by the rules of the Exchange or those who have engaged in acts or practices inconsistent with just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(c).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and subparagraph (f)(6) of Rule 19b–4[12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow immediate use of the Forms. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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 such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR–NYSE–2002–21 and should be submitted by July 23, 2002.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–16544 Filed 7–1–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46115; File No. SR–PCX–2002–34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Relating to a Six-Month Extension of the Automatic Execution System Incentive Pilot Program

June 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 7, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On June 21, 2002, the PCX submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change has been filed by the Phlx as a ''non-controversial'' rule change under Rule 19b–4(f)(6) of the Act.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to extend the Automatic Execution System (''Auto-Ex'') Incentive Pilot Program for six months. The text of the proposed rule change is available at the Office of the Secretary, PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 25, 2001, the Commission approved, on a nine-month pilot basis, the Exchange's proposal to amend PCX Rule 6.87, which governs the operation of Auto-Ex[5] to provide an Auto-Ex Incentive Program for apportioning Auto-Ex trades among Market Makers.[6] The pilot program is currently set to expire on June 25, 2002.[7]

The Auto-Ex Incentive Program allows the Exchange to assign Auto-Ex orders to logged-on Market Makers according to their percentage of their in-person agency[8] contracts traded in an issue (excluding Auto-Ex contracts traded) compared to all of the Market Maker in-person agency contracts traded (excluding Auto-Ex contracts) during the review period. The review period is determined by the Options Floor Trading Committee (''OFTC'') and may be for any period of time not in excess of two weeks.[9] The percentage distribution determined for a review period will be effective for the succeeding review period.

The Exchange is requesting an additional extension of the pilot program for six months from June 25, 2002 to December 24, 2002. The Exchange is in the process of collecting data to determine the effect of the Auto-Ex Incentive Program on the apportionment of Auto-Ex trades among Market Makers. The added time permits the Exchange an opportunity to continue reviewing and evaluating the program. Therefore, the Exchange believes that a six-month extension of the program is warranted.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5),[11] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, enhance competition and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] Because the foregoing proposed rule change, as amended: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael Pierson, Vice President, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 20, 2002. In Amendment No. 1, the PCX explained that is had inadvertently made two virtually identical submissions to the Commission, which were received on June 7, 2002 and June 14, 2002, respectively, and were both titled SR–PCX–2002–34. The only difference between the two submissions was that the latter contained a pilot expiration date of December 24, 2002 (rather than December 25, 2002 as in the original document). Amendment No. 1 stated that the PCX wished to treat the second submission as amending the first by replacing it in full. Consequently, the operative pilot expiration date is December 24, 2002.

[4] 17 CFR 240.19b–4(f)(6).

[5] Auto-Ex is the Exchange's Automated Execution system feature of the Pacific Options Exchange Trading System (''POETS'') for market or marketable limit orders. POETS is the Exchange's automated trading system comprised of an options order routing system, Auto-Ex, an on-line order book system, and an automatic market quote update system. Option orders may be sent to POETS via the Exchange's Member Firm Interface (''MFI''). Market and marketable limit orders sent through the MFI will be executed by Auto-Ex if they meet order type and size requirements to the Exchange.

[6] *See* Securities Exchange Act Release No. 44847 (September 25, 2001), 66 FR 50237 (October 2, 2001).

[7] The proposed rule changes were, in part, based on CBOE Rule 6.8 *Interpretations and Policies* .06(c) ''100 Spoke RAES Wheel''. The 100 Spoke RAES Wheel pilot program has received three extensions, the latest being a six month extension issued on January 3, 2002. *See* Securities Exchange Act Release No. 45230 (January 3, 2002), 67 FR 1380 (January 10, 2002).

[8] Agency contracts are those contracts that are represented by an agent and do not include contracts traded between Market Makers in person in the trading crowd.

[9] The OFTC has set a two-week review period for all options classes and the OFTC will not vary the term of the review period except for exigent circumstances.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

(3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6)[15] thereunder.

The Exchange has requested that the Commission waive the five-day pre-notice requirement and the 30-day operative delay, to permit the Exchange to implement the proposal immediately. Under Rule 19b–4(f)(6)(iii), a proposed ''non-controversial'' rule change does not become operative for 30 days after the date of filing, unless the Commission designates a shorter time.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow for the continued operation of PCX's Auto-Ex Incentive Pilot Program without interruption.[16] For these reasons, the Commission designates the proposed rule change, as amended, to be effective and operative upon filing with the Commission. The Commission also waives the five-business day pre-filing requirement. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–PCX–2002–34 and should be submitted by July 23, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–16541 Filed 7–1–02; 8:45 am]

BILLING CODE 8010–01–P

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on June 21, 2002, the date that the Exchange filed Amendment No. 1.

[18] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

The Ticket to Work and Work Incentives Advisory Panel Teleconference

AGENCY: Social Security Administration (SSA).

ACTION: Notice of teleconference.

DATES: Monday July 29, 2002.

Teleconference: Monday July 29, 2002, 11 AM to 1 PM.

Ticket to Work and Work Incentives Advisory Panel Conference Call

Call-in number: 800–857–9091.

Pass code: PANEL.

Leader/Host: Sarah Wiggins Mitchell.

SUPPLEMENTARY INFORMATION:

Type of meeting: This teleconference meeting is open to the public. The interested public is invited to participate by calling into the teleconference at the number listed above. Public testimony will not be taken.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces this teleconference meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of Public Law 106–170 establishes the Panel to advise the Commissioner of SSA, the President, and the Congress on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Agenda: The Panel will deliberate on the implementation of TWWIIA and conduct administrative business. The Panel will be discussing establishing priorities for action in 2003. The agenda for this teleconference meeting will be posted on the Internet at *http://www.ssa.gov/work/panel/* one week prior to the teleconference or can be received in advance electronically or by fax upon request.

Contact Information: Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff by:

- Mail addressed to Ticket to Work and Work Incentives Advisory Panel Staff, Social Security Administration, 400 Virginia Avenue, SW, Suite 700, Washington, DC, 20024;
- telephone contact with Kristen Breland at (202) 358–6430;
- fax at (202) 358–6440; or
- e-mail to *TWWIIAPanel@ssa.gov.*

Dated: June 25, 2002.

Deborah M. Morrison,

Designated Federal Officer.

[FR Doc. 02–16536 Filed 7–1–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4059]

Office of Visa Services; Notice of Information Collection under Emergency Review: Form DS–158, Contact Information and Work History for Nonimmigrant Visa Applicant

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

Type of Request: Emergency Review.

Originating Office: Bureau of Consular Affairs, Department of State (CA/VO).

Title of Information Collection: Contact Information and Work History for Nonimmigrant Visa Applicant.

Frequency: Once per respondent.

Form Number: DS–158.

Respondents: All nonimmigrant visa applicants seeking to study in the United States and other nonimmigrant visa applicants as appropriate.

Estimated Number of Respondents: 2,500,000.

Average Hours Per Response: 1 hour.

Total Estimated Burden: 2,500,000 hours.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by June 24, 2002. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until 60 days from the date that this notice is published in the **Federal Register**. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

- 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, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E St. NW, Washington, DC 20520, who may be reached on 202–663–1163.

Dated: June 14, 2002.

Catherine Barry,

Acting Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 02–16653 Filed 7–1–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4060]

Determination Regarding Export-Import Bank Financing of Certain Defense Articles and Services for the Government of Venezuela

Pursuant to section 2(b)(6) of the Export-Import Bank Act of 1945, as amended, Executive Order 11958 of January 18, 1977, as amended by Executive Order 12680 of July 5, 1989, and State Department Delegation of Authority No. 245 of April 23, 2001, I hereby determine that:

(1) The defense articles and services for which the Government of Venezuela has requested Export-Import Bank (Ex-Im Bank) financing, spare parts for the maintenance of 12 OV–10 aircraft, are being sold primarily for anti-narcotics purposes.

(2) The sale of such defense articles and services is in the national interest of the United States.

(3) The requirement for a determination that the Government of Venezuela has complied with all U.S.-imposed end use restrictions on the use of defense articles and services previously financed under the Act is inapplicable at this time because the six previous transactions involving Ex-Im Bank Bank financing of defense articles and services for Venezuela have not been completed. Ex-Im Bank approved financing in support of six prior transactions involving Venezuela, but neither delivery of the defense article nor provision of the defense services have been completed in any of the six cases. The six previous transactions financed in part by Ex-Im Bank include: (1) Two cases involving the maintenance and refurbishment of the OV–10 aircraft in which the service has not yet been performed; (2) one case involving two 150-foot logistic support vessels that have not yet been delivered; (3) one case involving parts for the modification of four frigates that have not yet been installed; and (4) two cases involving reverse osmosis water purification and air conditioning and engine overhaul equipment for four Landing Ship, Tank (LST) vessels that have not yet been delivered or installed.

(4) The requirement for a determination that the Government of Venezuela has not used defense articles or services previously provided under the Act to engage in a consistent pattern of gross violations of internationally recognized human rights Act is inapplicable at this time because the six previous transactions have not been completed. As stated above, Ex-Im Bank financing has been used in connection with six defense articles or services transactions involving the Government of Venezuela. Two transactions involved maintenance and refurbishment of OV–10 aircraft for which the service has not yet been completed. A third transaction involved the delivery of two vessels, a fourth the modification of four frigates, and the fifth and sixth the modification of four Landing Ship, Tank (LST) naval vessels. None of these transactions have been completed.

This determination shall be reported to Congress and shall be published in the **Federal Register**.

Dated: March 12, 2002.

Richard L. Armitage,

Deputy Secretary of State, Department of State.

[FR Doc. 02–16655 Filed 7–1–02; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2001–11032]

Funding for Mandated Security Modifications to Flightcrew Compartment Doors

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Announcement of funding.

SUMMARY: This document announces changes to a program that allows partial reimbursement to passenger and cargo carrying operators for costs incurred following the events of September 11. Specifically, the reimbursement is for costs incurred by those operators required to comply with mandated security requirements for the flightcrew compartment doors. The program allow operators to choose how to use the funds to meet the modification requirements.

ADDRESSES: You may apply using the simplified application form found at *http://www2.airweb.faa.gov/airplane_security/announce/htm*

FOR FURTHER INFORMATION CONTACT: Dave Rich, Technical Programs and Continued Airworthiness Branch, Aircraft Certification Service, Federal Aviation Administration, 800

Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7141; fax: 202–267–5340; e-mail address: *9-awa-avr-design@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Shortly after the September 11 events, the FAA announced the establishment of the Enhanced Airplane Security Program for airplanes with operating certificates issued under part 119 that conduct operations under part 121 as passenger carrying operations in common carriage (*http://www2.airweb.faa.gov/airplane_security/announce.htm*). The objective of the program is to enhance safety by improving flightdeck security on airplanes meeting the criteria as recommended by the Secretary of Transportation's Rapid Response Team on Aircraft Security. The program specifically authorizes the funds for security enhancements to the flightcrew compartment door, as well as transponder modifications and video cameras in the cabin.

The program required that all participants report their progress against a set of goals, identifying modifications by airplane types, the date when modified airplanes are returned to service, and the actual cost of work on a per aircraft basis, including labor and materials. Participants are required to maintain for 3 years accounting and financial records reflecting all project costs with supporting documents and records that will be sufficient for financial audit.

To ensure the funding is appropriately used, the FAA announced that funding would be dependent on the level of modification, i.e., from level 1-simple modification to level 5-installation of new doors, and that funding would be distributed as follows: 30% when the design is authorized, 40% after completion of the first airplane installation, and the final 30% after the modifications are installed in the last airplane.

Related Activity

In the 7 months since the initial funding announcement, the FAA mandated short-term security enhancements to the flighdeck compartment door in SFAR 92–3 (67 FR 2112, January 15, 2002) and retrofit installation of reinforced doors in Amendments 25–106 and 121–288 (67 FR 2118). The retrofit requires that the reinforced doors be installed by April 9, 2003. These rules eliminated the need to distinguish between the level 1 through level 5 modifications described above. These levels are no longer a part of the program.

In its economic evaluation of the door retrofit requirement, the FAA estimated that the direct cost of the reinforced door alone would be at least $17,000 per aircraft. The SFAR 92–3 enhancements are believed to have cost operators several thousand dollars more per aircraft. Congress appropriated $100 million to assist the operators in making the modifications. Based on that amount, the FAA has decided to reimburse $13,200 of cost for each of the 7,000 affected aircraft. If funding remains available or becomes available, the FAA may increase the amount of the reimbursement. Because the expenditures will exceed the funds available per aircraft, the FAA has decided that this change in its funding strategy is necessary.

For operators that have already submitted an application and received notification from the FAA, nothing else is required. The FAA will contact you if further information is needed. Operators that have not yet applied for reimbursement may apply using the simplified applications form located at: *http://www2.airweb.faa.gov/airplane_security/announce.htm.*

Prior to receiving funding, each operator will have to commit to spending the entire reimbursed amount on the mandated door modifications. Operators will also be required to substantiate the actual level of expenditures per airplane made under this program.

Issued in Washington, DC, on June 26, 2002.

John J. Hickey,

Director, Aircraft Certification Service.

[FR Doc. 02–16499 Filed 7–1–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee to discuss rotocraft issues.

DATES: The meeting will be held on Thursday, July 18, 2002, at 1 p.m. Central Standard Time (CST).

ADDRESSES: Persons in the Forth Worth, Texas area can participate in the teleconference in the FAA Regional Office, ASW–100, Workroom E, 4th Floor, 2601 Meacham Blvd., Fort Worth, Texas, 76137. Those people in the Washington DC metropolitan area can come to the FAA headquarters building, 800 Independence Ave., Conference Room in Room 810, Washington DC, to access to teleconference at 2 p.m. Eastern Standard Time (EST). Persons interested in participating in the teleconference in the FAA headquarters building please contact Angela Anderson at telephone (202) 267–9681, e-mail *angela.anderson@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Mary Ann Phillips, FAA, Rotocraft Directorate, ASW–111, 2601 Meacham Blvd., Fort Worth, TX 76137, telephone (817) 222–5124, e-mail *mary.ann.phillips@faa.gov.*

SUPPLEMENTARY INFORMATION: The referenced meeting is announced pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 11). The agenda will include discussion of name clarification for the Fatigue Evaluation of Metallic Rotorcraft Structure Working Group and the presentation of the following two notices of proposed rulemaking (NPRMs) to request legal and economic drafting support:

- Damage Tolerance and Fatigue Evaluation of Metallic Rotorcraft Structure
- Damage Tolerance and Fatigue Evaluation of Composite Rotorcraft Structure

This meeting was previously scheduled to occur on June 25, 2002. However, due to a telecommunications equipment failure, that meeting was cancelled and is now being rescheduled. Attendance is open to the public but will limited to the space available on the telephone conferencing system. The telephone number for participating in the teleconference will be available by contracting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

The public must make arrangements to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 16 copies to the Assistant Chair at least 7 days prior to the meeting. Copies of the NPRMs that will be presented may be obtained by contacting Mary Ann Phillips at (817) 222–5124 or by emailing her at: *mary.ann.phillis@faa.gov.*

If you are in need as assistance or require a reasonable accommodation for the meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** In addition, sign and oral interpretation, as well as a

listening device, can be made available at the meeting if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington DC, on June 26, 2002.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 02–16646 Filed 7–1–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34117]

Pemiscot County Port Authority—Construction Exemption " Pemiscot County, MO

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 the construction by Pemiscot County Port Authority (Pemiscot) of a 5-mile line of railroad between milepost 212.32 at Hayti, MO, and milepost 217.22 at Pemiscot's existing intermodal port facility in Pemiscot County, MO.

DATES: The exemption will not become effective until the environmental review process is completed. Once that process is completed, the Board will issue a further decision addressing the environmental matters and establishing an exemption effective date at that time, if appropriate. Petitions to reopen must be filed by July 22, 2002.

ADDRESSES: Send pleadings, referring to STB Finance Docket No. 34117, to: (1) Surface Transportation Board, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) John D. Heffner, 555 Twelfth Street, NW., Suite 950N, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dā 2 Dā Legal Copy Service, Suite 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293–7776. [TDD for the hearing impaired: 1–800–877–8339.]

Board decisions and notices are available on our website at *"http://WWW.STB.DOT.GOV."*

Decided: June 25, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–16455 Filed 7–2–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices: Proposed Collections; Comment Requests

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on an information collection that is due for renewed approval by the Office of Management and Budget. The Office of Program Services within the Department of the Treasury is soliciting comments concerning Treasury International Capital Forms CQ–1 and CQ–2, Financial and Commercial Liabilities to, and Claims on, Unaffiliated Foreigners.

DATES: Written comments should be received on or before September 3, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments on international capital transactions and positions to: Department of the Treasury, ATTN: Dwight Wolkow, IP Room 4410 NY, 1500 Pennsylvania Avenue NW., Washington DC 20220. In view of delays in mail delivery due to recent events, please also notify Mr. Wolkow by email (*dwight.wolkow@do.treas.gov*), FAX (202–622–1207) or telephone (202–622–1276).

FOR FURTHER INFORMATION CONTACT: Copies of the proposed forms and instructions are available on the Treasury's TIC webpage for forms, http://www.treas.gov/tic/forms.html. Requests for additional information should be directed to Mr. Wolkow.

SUPPLEMENTARY INFORMATION: *Title:* Treasury International Capital Form CQ–1, Financial Liabilities to, and Claims on, Foreigners; and Treasury International Capital Form CQ–2, Commercial Liabilities to, and Claims on, Unaffiliated Foreigners.

OMB Number: 1505–0024

Abstract: Forms CQ–1 and CQ–2 are part of the Treasury International Capital (TIC) reporting system, which is required by law (22 U.S.C. 286f; 22 USC 3103; EO 10033; 31 CFR 128), and is designed to collect timely information on international portfolio capital movements. Forms CQ–1 and CQ–2 are quarterly reports filed by nonbanking and non-securities broker and dealer enterprises in the U.S. to report their international portfolio transactions with unaffiliated foreigners. This information is necessary for compiling the U.S. balance of payments accounts, for calculating the U.S. international investment position, and for use in formulating U.S. international financial and monetary policies. Current Actions: (a) The exemption level for reporting positions will be raised from $10 million to $50 million for Form CQ–1, and from $10 million to $25 million for Form CQ–2; (b) The period of time a reporter has to submit reports once the exemption level is exceeded has been changed to the remainder of the current calendar year; (c) For Bank Holding Companies and Financial Holding Companies (BHCs/FHCs), their insurance subsidiaries will continue to file TIC Form CQ–1 reports. (BHCs/FHCs and their other subsidiaries will continue to file TIC–B reports, according to the directions given in the instructions for the TIC B reports); (d) These proposed new C Forms and instructions will be effective as of March 31, 2003; (e) The instructions include a more detailed description of the reporting of liabilities and loans placed overseas; (f) The instructions contain a more detailed description of the reporting of short-term securities (including negotiable CDs); (g) On the revised form, respondents will report brokerage balances. A revised description of brokerage balances is included in the instructions; (h) The revised forms each have four memorandum rows for reporting the amounts contained in the grand totals of each column that are denominated in U.S. dollars, Euros, Pound Sterling, and Yen; (i) Both of the revised forms collect data on remaining maturities of the amounts contained in the grand totals of the two liabilities columns on each form. The maturities are broken down into ten categories; previously, there were two categories. Reporting of maturities will only be required from large reporters (more than $1 billion in reportable liabilities on Form CQ–1); (j) In Form CQ–1, Part I, Financial Liabilities, the two columns are redefined for reporting of Short-term Negotiable Securities and Other Liabilities; (k) In Form CQ–1, Part II, Financial Claims, the currently reported two columns for dollar denominated and foreign currency denominated deposits have been combined, and the resulting three columns in the revised form capture the reporting of Non-

Negotiable Foreign Deposits, Negotiable CDs & All Short-term Negotiable Securities, and Other Claims; (l) In Form CQ–1, section B has been added to capture foreign affiliate positions (including those with affiliates of the reporter's parents) of insurance underwriting subsidiaries and financial intermediaries. Insurance underwriting subsidiaries of BHCs/FHCs will report positions vis a vis all foreign-resident affiliates. Financial intermediaries will report positions vis a vis all foreign-resident affiliated financial intermediaries; (m) In Form CQ–1, three new memorandum rows have been added for reporting the amounts contained in the grand totals of certain columns that are Borrowings/Loans, Negotiable CDs, and Repurchases/Resale Agreements.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Forms CQ–1 and CQ–2 (1505–0024)

Estimated Number of Respondents: 400

Estimated Average Time per Respondent: Four and one/quarter (4.25) hours per respondent per filing. This average time varies from 4.5 hours for the approximately 190 CQ–1 reporters to 4.0 hours for the approximately 210 CQ–2 reporters.

Estimated Total Annual Burden Hours: 6,800 hours, based on 4 reporting periods per year.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the requests for OMB approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: whether Forms CQ–1 and CQ–2 are necessary for the proper performance of the functions of the Office, including whether the information collected has practical uses; the accuracy of the above burden estimates; ways to enhance the quality, usefulness, and clarity of the information to be collected; ways to minimize the reporting and/or recordkeeping burdens on respondents, including the use of information technologies to automate the collection of the data; and estimates of capital or start-up costs of operation, maintenance, and purchases of services to provide information.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. 02–16585 Filed 7–1–02; 8:45 am]

BILLING CODE 4810–25–P

Federal Register

Tuesday,
July 2, 2002

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Carolina Heelsplitter; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH31

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Carolina Heelsplitter

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), designate critical habitat for the Carolina heelsplitter (*Lasmigona decorata*), a freshwater mussel, pursuant to the Endangered Species Act of 1973, as amended (Act). The areas designated as critical habitat for the Carolina heelsplitter total approximately 148.4 kilometers (92.2 miles) of streams, including portions of three creeks in North Carolina and one river and six creeks in South Carolina.

Critical habitat identifies specific areas that are essential to the conservation of a listed species and that may require special management considerations or protection.

Section 7(a)(2) of the Act requires that each Federal agency shall, in consultation with the Service, insure that any action authorized, funded or carried out by such agency is not likely to jeopardize the continued existence of an endangered or threatened species or result in the destruction or adverse modification of critical habitat. Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat.

We solicited data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation.

DATES: This rule is effective August 1, 2002.

ADDRESSES: Comments and materials received, as well as supporting documentation used in preparation of this final rule, are available for public inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, NC 28801.

FOR FURTHER INFORMATION CONTACT: John Fridell, Fish and Wildlife Biologist (see **ADDRESSES** section), (telephone 828/258–3939, extension 225; facsimile 828/258–5330).

SUPPLEMENTARY INFORMATION:

Background

Lea (1852) originally described the Carolina heelsplitter, a native freshwater mussel, as *Unio decoratus.* Johnson (1970) synonymized this species with *Lasmigona subviridis* (Conrad 1835). Clarke (1985) recognized the Carolina heelsplitter as a distinct species, *Lasymigona decorata*, and synonymized *Unio charlottensis* (Lea 1863) and *Unio insolidus* (Lea 1872) with *Lasmigona decorata.* A genetic comparison of a specimen of *L. decorata* with specimens of *L. subviridis* (Tim King, U.S. Geological Survey, Leetown, West Virginia, pers. comm. 2001) supports Clarke's (1985) position on the taxonomy (scientific classification) of this species.

The Carolina heelsplitter has an ovate, trapezoid-shaped, unsculptured (smooth with no distinct bumps or protrusions) shell. The shell of the largest known specimen measures 11.5 centimeters (cm) (4.5 inches (in)) in length, 3.9 cm (1.5 in) in width, and 6.8 cm (2.7 in) in height. The shell's outer surface varies from greenish brown to dark brown in color, and shells from younger specimens have faint greenish brown or black rays. The nacre (inside surface) is often pearly white to bluish white, grading to orange in the area of the umbo (bulge or beak that protrudes near the hinge of a mussel). However, in older specimens the entire nacre may be a mottled pale orange. The hinge teeth (pseudocardinal teeth and lateral teeth) of the species are well developed but thin and rather delicate. The left valve (half of a mussel shell) has two blade-like pseudocardinal teeth and two lateral teeth, and the right valve has one of each. The left valve may also have an interdental projection, a slight projection located between the lateral and pseudocardinal teeth (adapted from Keferl 1991). Clarke (1985) provides a detailed description of the shell, with illustrations.

Distribution, Habitat, and Life History

The Carolina heelsplitter currently has a very fragmented, relict distribution but historically was known from several locations within the Catawba and Pee Dee River systems in North Carolina and the Pee Dee and Savannah River systems, and possibly the Saluda River system, in South Carolina. Historically, the species was collected from the Catawba River, Mecklenburg County, NC; several streams and ''ponds'' in the Catawba River system around the Charlotte area of Mecklenburg County, NC; one small stream in the Pee Dee River system in Cabarrus County, NC; one ''pond'' in the Pee Dee River system in Union County, NC; and an area in South Carolina referred to only as the ''Abbeville District,'' a terminology no longer employed (Clarke 1985, Keferl and Shelly 1988, Keferl 1991). The records from the Abbeville District, SC, previously were believed to have been from the Saluda River system (Clarke 1985, Keferl and Shelly 1988, Keferl 1991, Service 1993). However, biologists discovered a population of the Carolina heelsplitter in the spring of 1995 in the Savannah River system (Stevens Creek watershed) (Alderman 1995, 1998a, and 1998b; J. Fridell personal observation 1995, 1998, 2000, 2001). Therefore, the historic records from the Abbeville District may have been from either the Saluda River system or the Savannah River system or both. An additional historic record of the Carolina heelsplitter from the main stem of the Pee Dee River in Richmond County, NC, was discovered recently (Art Bogan, North Carolina Museum of Science and Natural History, pers. comm. 2001); however, surveys by biologists with the North Carolina Wildlife Resources Commission (NCWRC) and North Carolina Department of Transportation (NCDOT) have failed to find any evidence of a surviving population of the species at the site of this record or elsewhere in the main stem of the Pee Dee River (John Alderman, NCWRC, personal communication 2001; Tim Savidge, NCDOT, personal communication 2001).

Recent collection records (Keferl and Shelly 1988; Keferl 1991; Alderman 1995, 1998a, and 1998b; North Carolina Wildlife Resources Commission 1999 and 2000) indicate that the Carolina heelsplitter has been eliminated from the majority of its historical range, and only six populations are presently known to exist. In Union County, NC, one small remnant population occurs in Waxhaw Creek, a tributary to the Catawba River, and another small population occurs in both Goose Creek, a tributary in the Rocky River, and Duck Creek, a tributary to Goose Creek, in the Pee Dee River system. In South Carolina, there are four small surviving populations—one each in the Pee Dee and Catawba River systems and two in the Savannah River system. The population in the Pee Dee River system occurs in a relatively short reach of the Lynches River in Chesterfield, Lancaster, and Kershaw Counties and extends into Flat Creek, a tributary to the Lynches River in Lancaster County. In the Catawba River system, the species survives only in a short reach of Gills Creek in Lancaster County. In the

Savannah River system, one population is found in Turkey Creek in Edgefield and McCormick Counties, and two of its tributaries, Mountain Creek and Beaverdam Creek in Edgefield County; another smaller population survives in Cuffytown Creek, in Greenwood and McCormick Counties. Despite extensive surveys in recent years, no evidence of a population has been found in the Saluda River system (Keferl and Shelly 1988; Keferl 1991; Alderman 1998a).

Historically, the Carolina heelsplitter was reported from small to large, moderate-gradient streams and rivers as well as ponds. The ''ponds'' referred to in historic records are believed to have been mill ponds on some of the smaller streams within the species' historic range (Keferl 1991). Presently, the species is known to occur in only nine small streams and one small river. It has been recorded from a variety of substrates (including mud, clay, sand, gravel, and cobble/boulder/bedrock) without significant silt accumulations, along stable, well-shaded stream banks (Keferl and Shelly 1988, Keferl 1991). However, in Mountain Creek in Edgefield County, SC, two young, live individuals were found near the center of the stream channel in a stable, relatively silt-free substrate comprised primarily of a mixture of coarse sand, gravel, and cobble, with scattered areas of exposed boulders/bedrock (J. Fridell personal observation, 1995). It is conceivable that this is the preferred habitat type for the species and that in other areas scouring and degradation of the gravelly substrate in the center of the channel has restricted the species to the softer substrates found along the portion of the stream banks that receive less scouring (Service 1997). The stability of the stream banks and stream-bottom appears to be a habitat feature essential to the species. Keferl (1991) noted that in his surveys of Goose, Waxhaw, and Flat Creeks and the Lynches River, he found the highest concentrations of the species in (bank) undercuts and along shaded banks stabilized with extensive tree roots, a buried log, and rocks.

Like other freshwater mussels, the Carolina heelsplitter feeds by filtering food particles from the water column. The specific food items of the species are unknown, but other freshwater mussels have been documented to feed on detritus (decaying organic matter), diatoms (various minute algae), phytoplankton (microscopic floating aquatic plants), and zooplankton (microscopic floating aquatic animals). The Carolina heelsplitter's life span, their specific fish host species, and many other specific aspects of its life history are unknown, but likely are similar to that of other native freshwater mussels. For the reproductive cycle of mussels in general, males release sperm into the water column; the sperm are then taken in by the females through their siphons during feeding and respiration. The females retain the fertilized eggs in their gills until the larvae (glochidia) fully develop. The mussel glochidia are released into the water, and within a few days they must attach to the appropriate species of host fish, which are then parasitized for a short time while the glochidia develop into juvenile mussels. They then detach from their ''fish host'' and sink to the stream bottom where they continue to develop, provided they land in a suitable substratum with the correct water conditions.

Reasons for Decline and Threats to Surviving Populations

Available information indicates that several factors have contributed to the decline and loss of populations of the Carolina heelsplitter, and threaten the remaining populations. These factors include pollutants in wastewater discharges (sewage treatment plants and industrial discharges); habitat loss and alteration associated with impoundments, channelization, and dredging operations; channel and streambank scouring associated with increased storm-water runoff; and the runoff of silt, fertilizers, pesticides, and other pollutants from various land disturbance activities with inadequate or poorly maintained erosion and stormwater control (Service 1993, 1997). Many of the streams in the area of Charlotte, NC, that are known to have historically supported the Carolina heelsplitter, but which no longer do, have been degraded by a combination of the factors listed above and appear to no longer support, or be capable of supporting, any species of native mussels. Additionally, large reaches of the main stems of the Pee Dee, Catawba, Saluda, and upper Savannah Rivers, that likely once supported the Carolina heelsplitter, have been significantly affected by impoundments, as well as the other factors listed above, and have lost much of their historic freshwater mussel abundance and diversity (Keferl and Shelly 1988; Kerfel 1991; Alderman 1995, 1998a, 1998b; North Carolina Wildlife Resources Commission 1999, 2000).

The species continues to face a number of threats. In 1997, when the Recovery Plan for the Carolina Heelsplitter was approved (Service 1997) only four populations were known. Although two additional populations—in Gill Creek and Cuffytown Creek—have been found since then, the concerns expressed in the recovery plan regarding the vulnerability of the Carolina heelsplitter are still valid. The recovery plan states: ''The low number of individuals and the restricted range of each of the surviving populations make them extremely vulnerable to extirpation from a single catastrophic event or activity, such as a toxic chemical spill or major channel alteration. Also, the existing and potential future land-uses of the surrounding area threaten the habitat and water quality of all four populations with increased discharge or runoff of silt, sediments, and organic and chemical pollutants.''

Freshwater mussels, especially in their early life stages, are extremely sensitive to many pollutants (chlorine, ammonia, heavy metals, high concentrations of nutrients, etc.) commonly found in municipal and industrial wastewater effluents (Havlik and Marking 1987, Goudreau *et al.* 1988, Keller and Zam 1991). In the early 1900s, Ortmann (1909) noted that the disappearance of mussels is one of the first and most reliable indicators of stream pollution. The life cycle of native mussels makes the reproductive stages particularly vulnerable to pesticides and other pollutants (Ingram 1957, Stein 1971, Fuller 1974, Gardner *et al.* 1976). Mussels also have been identified as being more sensitive to metals than commonly tested fish and aquatic insects (Keller and Zam 1991).

Activities such as impoundments, channelization projects, and in-stream dredging operations eliminate mussel habitat. These activities can also alter the quality and stability of the remaining stream reaches by affecting the flow regimes, water velocities, and water temperature and chemistry. The effects of impoundments on mussels are summarized as follows in the recovery plan: ''Closure of dams changes the habitat from a lotic [moving water] to lentic [standing water] condition. Depth increases, flow decreases, and silt accumulates on the bottom. Fish communities change, and host fish species may be eliminated. Mussel communities change; species requiring clean gravel and sand substrate are eliminated (Bates 1962). In addition, dams result in the fragmentation of populations, making the surviving isolated population segments more vulnerable to extirpation'' (Service 1997).

Agriculture (both crop and livestock) and forestry operations, highway and road construction, residential and industrial developments, and other

construction and land-use activities that do not adequately control soil erosion and storm-water runoff alter the hydrology of the stream and contribute excessive amounts of silt, pesticides, fertilizers, heavy metals, and other pollutants. These pollutants can suffocate and poison freshwater mussels. Excessive sediment poses a threat to mussels because they are not able to move long distances to more suitable areas in response to heavy silt loads. Although natural sources of sediment resulting from seasonal storms probably do not significantly affect mussels, several types of human activities can create heavy silt loads that can severely affect native freshwater mussels. As noted in the recovery plan, ''Siltation has been documented to adversely affect native freshwater mussels both directly and indirectly. Siltation degrades water and substrate quality, limiting the available habitat for freshwater mussels (and their fish hosts); irritates and clogs the gills of filter-feeding mussels, resulting in reduced feeding and respiration; smothers mussels if sufficient accumulation occurs; and increases the potential exposure of the mussels to other pollutants (Ellis 1936, Marking and Bills 1979, Kat 1982). Ellis (1936) found that less than 1 inch of sediment deposition caused high mortality in most mussel species. Sediment accumulations that are less than lethal to adults may adversely affect or prevent recruitment of juvenile mussels into the population through the direct mortality of juvenile mussels or effects to the species' fish host(s)'' (Service 1997)

The runoff of storm water from cleared areas, roads, rooftops, parking lots, and other developed areas, which often is ditched or piped directly into streams, not only results in stream pollution but also results in increased water volume and velocity during heavy rains. This change in water volume and velocity causes channel and stream-bank scouring that leads to the degradation and elimination of mussel habitat. Construction and land-clearing operations are particularly detrimental when they result in the alteration of floodplains or the removal of forested stream buffers that ordinarily would help maintain water quality and the stability of stream banks and channels by absorbing, filtering, and slowly releasing rainwater. Also, when storm water runoff increases from land-clearing activities, less water is absorbed to recharge ground water levels. Therefore, flows during dry months can decrease and adversely affect mussels and other aquatic organisms.

Previous Federal Actions

In the Animal Notice of Review published in the January 6, 1989, **Federal Register** (54 FR 579), we recognized the Carolina heelsplitter as a species under review for potential addition to the Federal List of Endangered and Threatened Wildlife and Plants. In that document, we designated the Carolina heelsplitter as a category 2 candidate for Federal listing. We no longer maintain a list of category 2 candidate species. At that time, category 2 represented those species for which we had some information indicating that the taxa may be under threat, but sufficient information was lacking, to determine if they warranted Federal listing and to prepare a proposed rule. Subsequently, surveys of historical and potential Carolina heelsplitter habitat were conducted and revealed that the species had undergone a significant decline throughout its historical range and that the remaining known occurrences were threatened by many of the same factors that are believed to have resulted in this decline.

On May 26, 1992, we published a proposed rule to list the Carolina heelsplitter as an endangered species (57 FR 21925). The proposed rule provided information on the species' biology, status, and threats to its continued existence and included our proposed determination that the designation of critical habitat was not prudent for the Carolina heelsplitter. We solicited comments and suggestions concerning the proposed rule from the public, concerned governmental agencies, the scientific community, industry, and other interested parties.

Following our review of all the comments and information received throughout the listing process, we incorporated appropriate changes and, on June 30, 1993, published a final rule listing the Carolina heelsplitter as endangered (58 FR 34926). That decision included our determination that the designation of critical habitat was not prudent for the Carolina heelsplitter because, after a review of all the available information, we determined that the Carolina heelsplitter was threatened by taking and that the designation of critical habitat could be expected to increase the degree of such threat to the species and would not be beneficial to the species.

On June 30, 1999, the Southern Appalachian Biodiversity Project and the Foundation for Global Sustainability filed a lawsuit in United States District Court for the District of Columbia against the Service, the Director of the Service, and the Secretary of the Interior, challenging the Service's ''not prudent'' critical habitat determinations for four species in North Carolina—the Carolina heelsplitter (*Lasmigona decorata*), spruce-fir moss spider (*Microhexura montivaga*), Appalachian elktoe (*Alasmidonta raveneliana*), and rock gnome lichen (*Gymnoderma lineare*). On February 29, 2000, the U.S. Department of Justice entered into a settlement agreement with the plaintiffs in which we agreed to reexamine our prudency determination and, if appropriate, submit to the **Federal Register**, by July 1, 2001, a withdrawal of the existing not prudent determination for the Carolina heelsplitter, together with a new proposed critical habitat determination. We agreed further that if, upon consideration of all the available information and comments, we determined that the designation of critical habitat was prudent for the Carolina heelsplitter, we would send a final rule of this finding to the **Federal Register** by April 1, 2002.

On July 11, 2001, we published a prudency determination and a proposed designation of critical habitat for the Carolina heelsplitter (66 FR 36229). The proposed rule included maps and a description of all areas under consideration for designation as critical habitat for the species. On the same date, by letter, we also notified appropriate Federal and State agencies, local governments, scientific organizations, individuals knowledgeable about the species, and other interested parties about the proposal and requested their comments. A legal notice that announced the availability of the proposed rule and invited public comment was published in the following newspapers—*Enquirer-Journal,* Monroe, NC; *Lancaster News,* Lancaster, SC; *Chronicle-Independence,* Camden, SC; *Cheraw Chronicle,* Cheraw, SC; *The Index-Journal,* Greenwood, SC; *Citizen News,* Edgefield, SC; and, *McCormick Messenger,* McCormick, SC.

In the proposed rule and associated notifications, all interested parties were requested to submit, by September 10, 2001, comments, factual reports or information that might contribute to our determination and the development of a final rule. On March 6, 2002, we published a notice in the **Federal Register** (67 FR 10118) reopening the comment period on the proposed rule and announcing the availability of a draft economic analysis for the proposed designation of critical habitat for the Carolina heelsplitter. We notified appropriate agencies, government

officials, institutions, and other interested parties, by letter dated March 6, 2002, of the availability of the draft economic analysis and the reopening of the comment period until April 5, 2002, and published legal notices in the newspapers listed above inviting comments from the public. Because completion of the draft economic analysis for the proposed critical habitat designation was delayed, we filed a motion in the District Court pursuant to our settlement agreement, requesting an extension to complete the final designation. On April 15, 2002, the District Court granted the Service an extension until June 17, 2002 to finalize the critical habitat designation for the Carolina heelsplitter.

Summary of Comments and Recommendations

We received nine written comments during the two comment periods—four during the initial comment period and five during the reopened comment period. We received written comments from one Federal agency, three State agencies, two private organizations, and one private individual. One of the respondents provided comments during the initial comment period on the proposed rule and also submitted two additional letters with comments on the draft economic analysis during the reopened comment period. Of the seven respondents, three expressed support for the designation of critical habitat for the Carolina heelsplitter, while two stated they did not agree that there is a need for the designation of critical habitat for the species. The other two respondents provided comments on the draft economic analysis but expressed neither support nor opposition to the proposed designation of critical habitat for the Carolina heelsplitter.

We also contacted three experts in the field of malacology (native freshwater mussel biology and ecology) and requested that they serve as peer reviewers of the proposal to designate critical habitat for the Carolina heelsplitter. However, none of the three submitted comments on the proposal.

We reviewed all comments received for substantive issues and new information regarding the Carolina heelsplitter. Similar comments were grouped into issues relating specifically to the proposed critical habitat determination and draft economic analysis on the proposed determination. These issues and our response to each are presented below.

Issue 1: Two respondents stated that they have been working closely with the Service to evaluate, and consult on, their activities with regard to their potential to harm the Carolina heelsplitter and its habitat since the species was listed as endangered. They indicated that they agreed with the Service's 1993 determination that the designation of critical habitat would not provide additional protection to the Carolina heelsplitter beyond what is already afforded the species by the listing. One of these respondents stated that they have been involved in numerous section 7 consultations for activities in other areas that are already designated as critical habitat for other listed aquatic species and that in those cases the manner in which the consultations were handled did not differ from the manner in which consultations involving listed aquatic species without designated critical habitat were handled.

Response: Both respondents have been working closely with us to identify their activities with the potential to affect the Carolina heelsplitter and to implement conservation measures to avoid or minimize potential effects to the species and further the conservation of the species. We agree with their comments that the designation of critical habitat is not likely to significantly affect future section 7 consultations with respect to this species. (See section entitled Effects of Critical Habitat Designation, below, for additional information on this topic.) We also agree that the benefits to the Carolina heelsplitter from the designation of critical habitat may be minimal. However, based on our review of all available information, and with consideration of the standards for making a ''not prudent'' determination and recent court rulings on this topic, we cannot support a ''not prudent'' determination for the designation of critical habitat for the Carolina heelsplitter. We have not received or obtained any new information that alters the prudency determination we included in the proposed designation of critical habitat for the Carolina heelsplitter that we published in the **Federal Register** on July 11, 2001 (66 FR 36229). As we noted in the proposed rule, the designation of critical habitat may provide some benefit to the Carolina heelsplitter by providing additional information to individuals, local and State governments, and others that join conservation efforts for the species, to assist these entities in long-range planning since areas essential to the conservation of the species are specifically identified and the primary constituent elements of the habitat necessary to the conservation of the species are more clearly defined.

Issue 2: One respondent agreed that the identified habitats for the Carolina heelsplitter are essential and that the designation (of critical habitat) may assist individuals, local and State governments, and others that join conservation efforts to protect the Carolina heelsplitter, as suggested in the proposed rule.

Response: No response necessary.

Issue 3: One respondent expressed support for the designation of critical habitat for the Carolina heelsplitter but expressed concern that protection of habitat only to the ordinary high-water line will be insufficient to protect the species from habitat degradation. The respondent commented on the importance of buffers along proposed stream reaches and suggested the need for 100-foot buffers to protect the Carolina heelsplitter from the effects of sedimentation.

Response: We agree with the respondent about the importance of stream/riparian buffers. Along with other conservation measures as part of an ongoing revision to their Land and Resource Management Plan, the U.S. Forest Service is currently working with us to establish an appropriate minimum width for a forested corridor on each side of all perennial streams and intermittent streams in the watersheds of the creeks supporting the Carolina heelsplitter on the Sumter National Forest in South Carolina. The functions and values of forested buffers to stream ecosystems are numerous. They include, for example, providing essential nutrients and cover substrates, maintaining stream temperature, protecting water quality by capturing and assimilating pollutants carried in run-off from the surrounding watershed, protecting the hydrology of the stream, and maintaining stream channel and bank stability.

The width of the buffer necessary to perform the functions and values necessary for the protection and health of the stream and the Carolina heelsplitter depends on several variables; in most cases, however, a vegetated buffer by itself is not adequate. In many cases, a buffer larger than 100 or 200 feet may be necessary, depending on the activity in question and the health of the rest of the watershed, the type or lack of measures implemented to control runoff, and other relevant factors. However, in other cases, activities carried out in closer proximity to the streams may be acceptable. Accordingly, we are concerned that designating a standard size buffer as part of the designated critical habitat might imply that the fixed width always will be adequate to

protect the Carolina heelsplitter and its habitat. Therefore, we elected to designate only habitat directly utilized by the Carolina heelsplitter and which, if affected, regardless of the proximity of the activity in question, could affect the conservation of species. We note also that designated critical habitat is subject to the provisions of Section 7(a)(2) of the Act with regard to the actions of Federal agencies. Thus, all Federal agencies must, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of the Carolina heelsplitter or result in the destruction or adverse modification of designated critical habitat (see section entitled Critical Habitat, below). This requirement applies regardless of the location of the Federal action in relation to designated critical habitat—what is important is the likely effect such an action may have on the habitat features essential to the conservation of the species. We will continue working with Federal agencies and landowners through section 7 of the Act, the Service's Partners for Fish and Wildlife Program, Section 10 permits, and other regulations and/or programs to evaluate activities with the potential to affect the Carolina heelsplitter and to recommend sufficient size buffers and implement other conservation measures as necessary to ensure compliance with the Act and/or further the conservation of the species.

Issue 4: One respondent provided comments stating that to ensure the survival and recovery of the Carolina heelsplitter, the Service must designate well-distributed, well-connected areas as critical habitat regardless of whether they are currently occupied, and to do otherwise would consign some populations and perhaps the species to extinction.

Response: The Catawba, Pee Dee, and Savannah River systems are not connected and each feeds separately into the Atlantic Ocean. Consequently, it is not possible to connect the habitat or populations across these three systems. Further, within each river system, each of the surviving populations is separated from the other population in the same river system by extensive stream reaches that, based on the most recent survey data, do not appear to be capable of supporting the Carolina heelsplitter.

The areas we are designating as critical habitat constitute our best assessment of the areas needed for the conservation of the Carolina heelsplitter in accordance with the goals outlined in our recovery plan for the species (Service 1997) and based on the best scientific and commercial information currently available to us concerning the known historic range of the species and the physical and biological features that are essential to its conservation and that may require special management considerations or protection. The Service's recovery plan for the Carolina heelsplitter, which was written at a time when there were four known populations, states that the species will be considered for delisting (recovered) when a total of six distinct viable populations of the species exist that meet the criteria outlined in the plan. (See the section entitled Methods, below, for further explanation of recommendations and criteria in the recovery plan.) Based on the most recent survey data for the Carolina heelsplitter (Keferl and Shelly 1988; Keferl 1991; Alderman 1995, 1998a, and 1998b; North Carolina Wildlife Resources Commission 1999, 2000), there are six known surviving populations—the Goose Creek/Duck Creek population, Waxhaw Creek population, Gills Creek population, Lynches River/Flat Creek population, Turkey Creek/Mountain Creek/Beaverdam Creek population, and Cuffytown Creek population (see ''Background'' section). The areas that we are designating as critical habitat for the Carolina heelsplitter contain the habitat elements essential to the life cycle needs of the species, as they are currently known. These areas are distributed in different portions of the species' known historical range, with two occurring in the Catawba River system (Waxhaw Creek population and Gills Creek population), two in the Pee Dee River system (Goose Creek/Duck Creek population and the Flat Creek/Lynches River population), and two in the Savannah river system (Turkey Creek/Mountain Creek/Beaverdam Creek population, and Cuffytown Creek population). Extensive surveys have been conducted, but we are not currently aware of any other streams/stream reaches within the Carolina heelsplitter's historical range that provide suitable habitat for the species.

As discussed in the ''Background'' section of this document (under ''Reasons for Decline and Threats to Surviving Populations''), the majority of the streams known to have historically supported occurrences of the Carolina heelsplitter have been significantly degraded by a variety of factors and appear to no longer be capable of supporting the Carolina heelsplitter. In fact, many appear to no longer be capable of supporting any species of native mussels, even the most tolerant species. Because, based on the most recent data, the species and suitable habitat for the species are still present in each of the areas that we are designating as critical habitat, we considered these areas as the most likely sites for focusing conservation efforts for maintaining and recovering the species.

However, to the extent feasible, we will continue, with the assistance of other Federal, State, and private agencies or organizations, to conduct surveys and research on the species and to evaluate habitat throughout its historic range. Should additional information become available that indicates other areas within the Carolina heelsplitter's historical range are essential to the conservation of the species, we may revise the designated critical habitat accordingly. Similarly, if new information indicates any of the areas we have designated should not be included in the critical habitat designation because they no longer meet the definition of critical habitat, we may revise this final critical habitat designation. If, consistent with available funding and program priorities, we elect to revise the designation, we will do so through a subsequent rulemaking.

Issue 5: One respondent commented that the draft economic analysis for the proposed designation of critical habitat for the Carolina heelsplitter (1) appears to contain contradictory and/or unclear statements concerning distinctions made between section 7 consultation costs associated with critical habitat designation and section 7 consultation costs without critical habitat and (2) does a poor job of distinguishing between the two (upper bound and lower bound) baselines in the reporting of costs. The respondent cited statements in the document demonstrating that there are no anticipated costs associated solely with the critical habitat designation, while other statements (section headings) attribute section 7 costs to the designation of critical habitat.

Response: The Service agrees with the respondent's comments on this issue. We have attempted to clarify in the addendum to the economic analysis that the statements in the draft economic analysis addressing the potential costs analyzed under the upper bound baseline are potential future section 7 costs that would occur regardless of whether critical habitat was designated.

Issue 6: Three respondents commented that the draft economic analysis did not adequately assess the benefits of implementation of measures for the protection and recovery of the Carolina heelsplitter and its habitat, and one of these respondents stated that the assessment did not adequately address

the cost to small businesses and to society at large if the heelsplitter were to become extinct.

Response: There is little disagreement in the published economic literature that real social welfare benefits can result from the conservation and recovery of endangered and threatened species. Such benefits have also been ascribed to the preservation of open space and biodiversity, both of which are associated with species conservation. Likewise, a local and regional economy can benefit from the preservation of healthy populations of endangered and threatened species and the habitat on which these species depend.

It is not feasible, however, to fully describe and accurately quantify these benefits in the specific context of the economic analysis. For example, most of the studies in the economic literature do not allow for the separation of the benefits of listing (including the Act's take provisions) from the benefits of critical habitat designation. As our past experience with other species has shown, the designation of critical habitat does not necessarily inhibit the development of private property, which makes it difficult to draw from the literature the economic value of open space to identify the potential benefits of critical habitat designation. Also, while some economic studies attempt to measure the social value of protecting endangered species, the values identified in these studies would be most closely associated with the listing of a species as endangered or threatened because listing serves to provide the majority of the protection and conservation benefits afforded under the Act. Accordingly, the discussion presented in this report provides examples of potential benefits, which derive primarily from the listing of the species, based on information obtained in the course of developing the economic analysis. It is not intended to provide a complete analysis of the benefits that could result from section 7 of the Act in general or critical habitat designation in particular.

Issue 7: One respondent commented that their Federal agency currently is undertaking an accelerated construction program and expressed concern that the designation of critical habitat for the Carolina heelsplitter may affect the agency's efforts to complete projects. The agency requested that the Service work with them to draft an agreement that would allow the projects to proceed without the need for formal consultation.

Response: The Service's role in informal consultation is to assist the action agency with the identification of the potential direct and indirect effects of the agency's proposed projects and determine what measures can be implemented to avoid the potential adverse effects, when possible. We are always willing to work with any agency concerning a project, at their earliest convenience. The earlier in project planning that we are brought into the process, the more likely it is that formal consultation will be unnecessary and that project delays and modifications at later stages of the project can be avoided. Through cooperation during the early design stages of a project, the Service usually is able to work with the action agency to develop or adjust any project design features that might be needed to avoid or minimize adverse impacts to listed species and/or designated critical habitat as a result of the project. (See also our response to Issue 9, below.) However, section 7 of the Act requires formal consultation on any Federal action that is likely to adversely affect a federally listed species and/or designated critical habitat. Unless the potential adverse effect(s) associated with the proposed projects can be eliminated through informal consultation, formal consultation will be required. Also, all of the units that we are designating as critical habitat for the Carolina heelsplitter currently support populations of the species. Any activity that is likely to result in adverse effects to designated critical habitat would most likely also result in adverse effects to the species and, therefore, would require consultation regardless of whether critical habitat is designated.

Issue 8: One respondent emphasized the difficulty of estimating the number of projects that will require formal consultation. This respondent noted that there has been only one formal consultation involving the Carolina heelsplitter to date, yet the analysis predicts six to eight projects in the future (over the next 10 years) that will require formal consultation.

Response: We agree with the respondent that it is extremely difficult to estimate the number of potential future section 7 consultations that are likely to require formal consultation and that formal consultation is only rarely required. Based on new information provided by the NCDOT, we have revised the estimated number of potential future Federal activities over the next 10 years that are likely to require formal consultation in the addendum to the draft economic analysis. However, while some of the formal consultations included in the estimate in the addendum to the economic analysis may very likely not be required, as stated in the draft economic analysis, the estimates in the analysis are conservative (more likely to be overstated) in order to ensure that the costs/effects associated with potential future section 7 consultations are not understated.

Issue 9: One respondent commented that some of the costs in the draft economic analysis associated with project modifications to their agency's activities were too high, because the estimates were based on past projects, where concerns with the Carolina heelsplitter were not addressed in the project planning and design stages. The respondent stated that their agency has been making a concerted effort to address protected species issues early in the project planning stages so that these concerns can be addressed through project planning, alternative selection, and project design, thereby eliminating many costs associated with project delays and design changes.

Response: We agree with the respondent's comments on this issue and commend the agency for their efforts to address endangered species concerns early in the project planning stages. We have addressed the respondent's comments by amending the costs associated with project design changes relative to the respondent agency's actions in the addendum to the draft economic analysis.

Issue 10: One respondent questioned whether some of the costs in the draft economic analysis associated with the implementation of measures to control erosion and storm water were attributable to section 7 consultation or whether they are more appropriately attributable to other Federal and State regulations, such as the North Carolina Sedimentation Pollution Control Act and the Clean Water Act.

Response: In the addendum to the draft economic analysis, we have acknowledged that some of the costs we are attributing to potential future section 7 consultations may likely be incurred in order to comply with other Federal, State, and local regulations, even in the absence of the listing of the Carolina heelsplitter or designation of critical habitat. However, it is difficult to separate the costs associated with the implementation of measures that some agencies believe they may be required to implement as a result of section 7 consultation (that they believe may go beyond the sedimentation/erosion-control measures required by other regulations) from the costs associated with these other regulations. Therefore, we have elected to be conservative in our estimation of the costs potentially

associated with future section 7 consultations on the Carolina heelsplitter and its designated critical habitat rather than risk understating these costs.

Issue 11: One respondent stated that cost figures for timber sales on the Sumter National Forest in the draft economic analysis were inaccurate. According to this respondent, the Sumter National Forest lost $1.4 million on its timber sales in 1997; therefore, refraining from logging riparian zones in order to protect the Carolina heelsplitter might actually reduce the net costs of this program to the government.

Response: The draft economic analysis focuses on impacts to the local timber economy in the Sumter National Forest and does not attempt to calculate whether the National Forest's timber sale program is profitable for these particular actions. Such an analysis for these particular forecast sales is beyond the scope of this analysis. The opportunity cost of lost timber sales due to the protection of a riparian buffer zone was derived using cost estimates obtained from personnel at the Sumter National Forest and is based on current base rates for timber sales.

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 the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Pursuant to regulations at 50 CFR 424.12(e), areas outside the geographical area presently 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 necessary to bring endangered or threatened species to the point where 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 one or more of the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 of the Act requires that we designate critical habitat for a species at the time of listing, to the extent such habitat is determinable. We are required to designate those areas we know to be critical habitat, based on the best information available to us. When designating critical habitat, we will designate only areas currently known to be essential. 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.

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species' (50 CFR 424.12(e)). Accordingly, unless the best available scientific and commercial data demonstrate that the conservation needs of the species can not be met within currently occupied areas, we will not designate critical habitat in areas outside the geographical area presently occupied by the species.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. This policy requires Service 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 and the recovery plan, if one has been adopted by the Service. Additional information may be obtained from 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), and expert opinions.

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of the designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that the designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the conservation of the species. For these reasons, it should be understood that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be necessary for the conservation of the species. 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 section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We 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)(2) of the Act requires us to base critical habitat designations on the best scientific and commercial data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation if we determine that the benefits of excluding those areas outweigh the benefits of including the areas within the critical habitat, provided the exclusion will not result in the extinction of the species.

Methods

As required by section 4(b)(2) of the Act and regulations at 50 CFR 424.12, we used the best scientific data available to determine areas that contain the physical and biological features that are essential for the conservation of the Carolina heelsplitter. This included information from the listing package for the species, the recovery plan, scientific publications, and recent surveys and reports.

We also reviewed the goals for delisting the Carolina heelsplitter, as provided in our recovery plan for this species (Service 1997). The plan

provides five criteria that would need to be met to consider delisting the species. The first criterion calls for protection of existing populations, successful establishment of reintroduced populations, or discovery of additional populations, such that six distinct viable populations exist. These six populations must be distributed throughout the species' known historic range, with at least one each in the Catawba, Pee Dee, and Savannah River systems. The criterion also states that these populations must be extensive enough that it is unlikely that a single event would eliminate or significantly reduce one or more of them. In defining a viable population for the Carolina heelsplitter, the recovery plan states: ''A viable population is defined as a naturally reproducing population that is large enough to maintain sufficient genetic variation to enable it to evolve and respond to natural environmental changes. The number of individuals needed to reach a viable population will be determined as one of the recovery tasks.''

In addition to the criterion concerning the existence of six viable populations, the recovery plan includes four other criteria that would need to be achieved to consider removal of the Carolina heelsplitter from Endangered Species Act protection. They include: protection of the six populations and their habitats from any present and foreseeable threats that would jeopardize their continued existence; improvements in habitat where certain types of degradation have occurred; completion of studies and successful implementation of recovery measures to increase population density and/or the length of the river reach inhabited by each of the six populations; and the existence of a certain age class structure in the populations, as well as the presence of appropriate host fish for the mussel's reproductive cycle, over specified periods of time.

The areas we are designating as critical habitat, described below, constitute our best assessment of the areas needed for the conservation and recovery of the Carolina heelsplitter, are consistent with the goals and information outlined in our recovery plan for the species (Service 1997), and are based on the best scientific and commercial information currently available to us concerning the species' known present and historical range, habitat, biology, and threats. All of the areas we are designating as critical habitat are within what we believe to be the geographical area occupied by the Carolina heelsplitter, include all known surviving occurrences of the species, and are essential for the conservation of the species. These designated areas are distributed throughout the species' range with at least one occurring in the Catawba, Pee Dee, and Savannah river systems. We will continue, with the assistance of other Federal, State, and private researchers, to conduct surveys and research on the species and its habitat. If new information becomes available indicating that other areas within the Carolina heelsplitter's historical range are essential to the conservation of the species and provide for the essential life cycle needs of the species, we will revise the designated critical habitat for the Carolina heelsplitter accordingly.

Primary Constituent Elements

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These physical and biological features 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, and rearing of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distribution of a species (50 CFR 424.12(b)).

When considering areas for designation as critical habitat, we are required to focus on the principal biological and physical constituent elements within the defined area that are essential to the conservation of the species (50 CFR 424.12 (b)). Although additional information is needed to better define the habitat requirements of the Carolina heelsplitter, particularly the microhabitat requirements, all of the stream reaches that support occurrences of the Carolina heelsplitter are free flowing (no major impoundments) and natural (have not been channelized or otherwise significantly altered), and are not associated with (located a substantial distance from) significant point (discharges) and non-point (runoff) sources of pollutants. Although the species has been observed in a variety of substrates (see ''Background'' section), it has only been recorded from stable pockets of substrates in stream reaches with stable, well-vegetated stream bank and riparian areas, and in substrates without heavy accumulations of silt. Based on the best available information, the primary constituent elements essential for the conservation of the Carolina heelsplitter are:

(1) Permanent, flowing, cool, clean water;

(2) Geomorphically stable stream and river channels and banks;

(3) Pool, riffle, and run sequences within the channel;

(4) Stable substrates with no more than low amounts of fine sediment;

(5) Moderate stream gradient;

(6) Periodic natural flooding; and

(7) Fish hosts, with adequate living, foraging, and spawning areas for them.

Critical Habitat Designation

The Service's recovery plan for the Carolina heelsplitter states that the species will be considered for delisting when a total of six distinct viable populations exist and other criteria outlined in the plan are met (Service 1997). The critical habitat areas described below constitute our best assessment of the areas essential for the conservation of the Carolina heelsplitter. Critical habitat includes six units that currently are occupied by the species. Based on the most recent survey data for the Carolina heelsplitter (Keferl and Shelly 1988; Keferl 1991: Alderman 1995, 1998a, and 1998b; North Carolina Wildlife Resources Commission 1999 and 2000), there are currently six surviving populations: the Goose Creek/Duck Creek population, Waxhaw Creek population, Gills Creek population, Flat Creek/Lynches River population, Turkey Creek/Mountain Creek/Beaverdam Creek population, and Cuffytown Creek population (see ''Background'' section). The areas in the six units that we are designating as critical habitat for the Carolina heelsplitter include habitat for each of these populations. The lateral extent of designated critical habitat is up to the ordinary high-water line on each bank. In addition, given the threats to the species' habitat discussed in the final listing rule (58 FR 34926) and summarized in the ''Background'' section, we believe these areas may need special management considerations or protection. We are designating the following areas as critical habitat for the Carolina heelsplitter (see Table 1 below for a summary of approximate stream lengths):

Unit 1. Goose Creek and Duck Creek (Pee Dee River system), Union County, NC

Unit 1 encompasses approximately 7.2 km (4.5 mi) of the main stem of Goose Creek, Union County, NC, from the N.C. Highway 218 Bridge, downstream to its confluence with the Rocky River, and approximately 8.8 km (5.5 mi) of the main stem of Duck Creek, Union County, NC, from the Mecklenburg/Union County line downstream to its confluence with Goose Creek. This unit is part of the currently occupied range of the Carolina heelsplitter and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. The area is occupied by one of the six known populations of the Carolina heelsplitter, and supports one of the only two known populations in the Pee Dee River system. Based on our consideration of the best available information, including the recovery goals and criteria outlined in the recovery plan for the Carolina heelsplitter (Service 1997), protection of this unit is essential to the conservation of the species.

Unit 2. Waxhaw Creek (Catawba River system), Union County, NC

Unit 2 encompasses approximately 19.6 km (12.2 mi) of the main stem of Waxhaw Creek, Union County, NC, from the N.C. Highway 200 Bridge, downstream to the North Carolina/South Carolina State line. This unit is part of the currently occupied range of the Carolina heelsplitter and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. The area is occupied by one of the six known populations of the Carolina heelsplitter, and supports one of the only two known populations in the Catawba River system. Based on our consideration of the best available information, including the recovery goals and criteria outlined in the recovery plan for the Carolina heelsplitter (Service 1997), protection of this unit is essential to the conservation of the species.

Unit 3. Gills Creek (Catawba River system), Lancaster County, SC

Unit 3 encompasses approximately 9.6 km (6.0 mi) of the main stem of Gills Creek, Lancaster County, SC, from the County Route S–29–875, downstream to the S.C. Route 51 Bridge, east of the city of Lancaster. This unit is part of the currently occupied range of the Carolina heelsplitter and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. The area is occupied by one of the six known populations of the Carolina heelsplitter, and supports one of the only two known populations in the Catawba River system. Based on our consideration of the best available information, including the recovery goals and criteria outlined in the recovery plan for the Carolina heelsplitter (Service 1997), protection of this unit is essential to the conservation of the species.

Unit 4. Flat Creek (Pee Dee River system), Lancaster County, SC, and the Lynches River (Pee Dee River system), Lancaster, Chesterfield, and Kershaw Counties, SC

Unit 4 encompasses approximately 18.4 km (11.4 mi) of the main stem of Flat Creek, Lancaster County, SC, from the S.C. Route 204 Bridge, downstream to its confluence with the Lynches River, and approximately 23.6 km (14.6 mi) of the main stem of the Lynches River, Lancaster and Chesterfield Counties, SC, from the confluence of Belk Branch, Lancaster County, northeast (upstream) of the U.S. Highway 601 Bridge, downstream to the S.C. Highway 903 Bridge in Kershaw County, SC. This unit is part of the currently occupied range of the Carolina heelsplitter and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. The area is occupied by one of the six known populations of the Carolina heelsplitter, and supports one of the only two known populations in the Pee Dee River system. Based on our consideration of the best available information, including the recovery goals and criteria outlined in the recovery plan for the Carolina heelsplitter (Service 1997), protection of this unit is essential to the conservation of the species.

Unit 5. Mountain and Beaverdam Creeks (Savannah River system), Edgefield County, South Carolina, and Turkey Creek (Savannah River system), Edgefield and McCormick Counties, SC

Unit 5 encompasses approximately 11.2 km (7.0 mi) of the main stem of Mountain Creek, Edgefield County, SC, from the S.C. Route 36 Bridge, downstream to its confluence with Turkey Creek; approximately 10.8 km (6.7 mi) of Beaverdam Creek, Edgefield County, from the S.C. Route 51 Bridge, downstream to its confluence with Turkey Creek; and approximately 18.4 km (11.4 mi) of Turkey Creek, from the S.C. Route 36 Bridge, Edgefield County, downstream to the S.C. Route 68 Bridge, Edgefield and McCormick Counties, SC. This unit is part of the currently occupied range of the Carolina heelsplitter and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. The area is occupied by one of the six known populations of the Carolina heelsplitter, and supports one of the only two known populations in the Savannah River system. Based on our consideration of the best available information, including the recovery goals and criteria outlined in the recovery plan for the Carolina heelsplitter (Service 1997), protection of this unit is essential to the conservation of the species.

Unit 6. Cuffytown Creek (Savannah River system), Greenwood and McCormick Counties, SC

Unit 6 encompasses approximately 20.8 km (12.9 mi) of the main stem of Cuffytown Creek, from the confluence of Horsepen Creek, northeast (upstream) of the S.C. Route 62 Bridge in Greenwood County, SC, downstream to the U.S. Highway 378 Bridge in McCormick County. This unit is part of the currently occupied range of the Carolina heelsplitter and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. The area is occupied by one of the six known populations of the Carolina heelsplitter, and supports one of the only two known populations in the Savannah River system. Based on our consideration of the best available information, including the recovery goals and criteria outlined in the recovery plan for the Carolina heelsplitter (Service 1997), protection of this unit is essential to the conservation of the species.

TABLE 1.—APPROXIMATE LENGTHS OF STREAM DESIGNATED AS CRITICAL HABITAT FOR THE CAROLINA HEELSPLITTER

State	County	Unit and stream	Length in kilometers (miles)
North Carolina	Union	Unit 1—Goose Creek	7.2 (4.5)
		Unit 1—Duck Creek	8.8 (5.5)
		Unit 2—Waxhaw Creek	19.6 (12.2)
South Carolina	Lancaster	Unit 3—Gills Creek	9.6 (6.0)
		Unit 4—Flat Creek	18.4 (11.4)
	Lancaster, Chesterfield, and Kershaw	Unit 4—Lynches River	23.6 (14.6)
	Edgefield	Unit 5—Mountain Creek	11.2 (7.0)
		Unit 5—Beaverdam Creek	10.8 (6.7)
	Edgefield and McCormick	Unit 5—Turkey Creek	18.4 (11.4)
	Greenwood and McCormick	Unit 6—Cuffytown Creek	20.8 (12.9)

Land Ownership

Of the stream reaches we are designating as critical habitat, approximately 6.0 km (3.7 mi) of Beaverdam Creek, 13.6 km (8.5 mi) of Turkey Creek, and 1.6 km (1.0 mi) of Cuffytown Creek are bordered by the Sumter National Forest in South Carolina, and 2.4 km (1.5 mi) of Flat Creek that we are designating as critical habitat, are bordered by the Flat Creek Heritage Preserve, which is managed by the State of South Carolina. The remainder of the areas that we are designating as critical habitat for the Carolina heelsplitter, with the exception of State road and highway rights-of-way, are bordered by lands under private ownership.

Effects of Critical Habitat Designation

Designating critical habitat does not, in itself, lead to the recovery of a listed species. The designation does not establish a reserve, create a management plan, establish numerical population goals, prescribe specific management practices (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery and management plans and through section 7 consultation and section 10 permits.

Critical habitat receives regulatory protection only under section 7 of the Act through the prohibition against destruction or adverse modification of designated critical habitat by actions carried out, funded, or authorized by a Federal agency. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to land designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal land that do not involve a Federal action, critical habitat designation would not afford any protection under the Act against such activities. Accordingly, the designation of critical habitat will not have any regulatory effect on private or State activities unless those activities require a Federal permit, authorization, or funding.

Section 7(a)(2) of the Act and regulations at 50 CFR 402.10 require Federal agencies to ensure, in consultation with us, that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of designated critical habitat. ''Destruction or adverse modification'' is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of the listed species for which critical habitat was designated. Such alternations 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 (50 CFR 402.02).

Activities on Federal land, activities on private or State land carried out by a Federal agency, or activities receiving funding or requiring a permit from a Federal agency that may affect designated critical habitat of the Carolina heelsplitter will require consultation under section 7 of the Act. However, pursuant to section 7 of the Act and the related consultation regulations, Federal agencies also are required to consult with us on any action that may affect a listed species and to ensure that actions they authorize, fund, or carry out do not jeopardize the continued existence of listed species. Activities that jeopardize listed species are defined as actions that ''directly or indirectly, reduce appreciably the likelihood of both the survival and recovery of a listed species'' (50 CFR 402.02). Federal agencies are prohibited from jeopardizing listed species through their actions, regardless of whether critical habitat has been designated for the species.

Common to the definitions of both ''jeopardy'' and ''destruction or adverse modification of critical habitat'' is the concept that the likelihood of both survival and recovery of the species are appreciably reduced by the action. Because of the small size of surviving populations of the Carolina heelsplitter, the species' restricted range, and the limited amount of suitable habitat available to the species; and because all of the units that we are designating as critical habitat for the Carolina heelsplitter currently support populations of the species, actions that are likely to destroy or adversely modify critical habitat are also likely to jeopardize the species. Accordingly, even though Federal agencies will be required to evaluate the potential effects of their actions on any habitat that is designated as critical habitat for the Carolina heelsplitter, this designation would not be likely to change the outcome of section 7 consultations.

If, through section 7 consultation, a Federal agency determines that an action/activity that they propose may adversely affect a listed species and/or designated critical habitat, we will issue a biological opinion determining whether the effects of the action are likely to jeopardize the continued existence of the species and/or destroy or adversely modify designated critical habitat. If we issue a biological opinion concluding that the action is likely to jeopardize the species or destroy or adversely modify designated critical habitat, we will also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined as alternative actions 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 of the Service believes would avoid jeopardizing the species' continued existence and/or the destruction or adverse modification of designated critical habitat.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may destroy or adversely modify such habitat or may be affected by such designation. Activities that may destroy or adversely modify critical habitat are, as discussed above, those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of the Carolina heelsplitter is appreciably diminished. This may include any activity, regardless of the activity's location in relation to designated critical habitat, that would significantly alter the natural flow regime, channel morphology or geometry, or water chemistry or temperature of any of the six designated critical habitat units, as described by the primary constituent elements, or any activity that could result in the significant discharge or deposition of sediment, excessive nutrients, or other organic or chemical pollutants into any of the six designated critical habitat units. Such Federal activities include (but are not limited to) carrying out or issuing permits, authorizations, or funding for reservoir construction; stream/streambank alterations; wastewater facility development; hydroelectric facility construction and operation; pesticide/herbicide applications; forestry operations; and road, bridge, and utility construction. These same activities also have the potential to jeopardize the continued existence of the Carolina heelsplitter, and Federal agencies are already required to consult with us on these types of activities, or any other activity, that may affect the species.

Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits, or questions regarding whether specific activities will constitute adverse modification of critical habitat, may be addressed to the U.S. Fish and Wildlife Service, Asheville Field Office (see **ADDRESSES** section).

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 as critical habitat upon reaching a determination that the benefits of such exclusion 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.

Following publication of the proposed critical habitat designation, a draft economic analysis was conducted to estimate the potential economic effect of the designation. The draft analysis was made available for public review on March 6, 2002 (67 FR 10118). We accepted comments on the draft analysis until April 5, 2002.

Our draft economic analysis evaluated the potential future effects associated with the listing of the Carolina heelsplitter as an endangered species under the Act, as well as any potential effect of the designation of critical habitat above and beyond those regulatory and economic impacts associated with the listing. To quantify the proportion of total potential economic impacts attributable to the critical habitat designation, the analysis evaluated a ''without critical habitat'' baseline and compared it to a ''with critical habitat'' scenario. The ''without critical habitat'' baseline represented the current and expected economic activity under all modifications prior to the critical habitat designation, including protections afforded the species under Federal and State laws. The difference between the two scenarios measured the net change in economic activity attributable to the designation of critical habitat. The categories of potential costs considered in the analysis included the costs associated with: (1) Conducting section 7 consultations associated with the listing or with the critical habitat, including incremental consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) uncertainty and public perceptions resulting from the designation of critical habitat; and (4) potential offsetting beneficial costs associated with critical habitat, including educational benefits.

The majority of future section 7 consultations associated with the areas being designated as critical habitat for the Carolina heelsplitter are likely to address residential development, road and bridge construction, water utility expansion, and Federal forestry activities. The draft analysis estimated that, over a 10-year period, approximately 14 formal consultations and 301 informal consultations will occur on projects with the potential to affect the Carolina heelsplitter and its proposed critical habitat. In addition, the draft analysis estimated that the Service will provide technical assistance to various parties on 200 occasions. Our draft analysis assumed that many of the potential future consultations are likely to result in Service recommendations for certain types of project modifications. Based on our draft analysis, we concluded that costs associated with future section 7 consultations involving the Carolina heelsplitter and its designated critical habitat could potentially range from $9,995,000 to $66,686,000 over the next 10 years, but that these potential costs are most appropriately attributable to the listing of the Carolina heelsplitter rather than the designation of critical habitat for the species. Accordingly, we determined that the designation of critical habitat will not result in a significant economic impact.

Following the close of the comment period on the draft economic analysis, a final addendum was completed that incorporated public comments on the draft analysis. Based on new information provided by some of the respondents and additional research conducted pursuant to the comments received, we reduced the estimated number of formal consultations potentially occurring over the next 10 years from 14 to 9 and reevaluated the potential economic effects and costs associated with certain types of project modifications. Based on these changes, in the final addendum, we estimate that costs associated with future section 7 consultations involving the Carolina heelsplitter and its designated critical habitat could potentially range from $9,189,000 to $63,791,000 over the next 10 years. However, as stated in the draft economic analysis, the listing of the heelsplitter and the resultant Federal responsibility to avoid projects that would jeopardize the continued existence of the species is likely to trigger these impacts, whether or not critical habitat is designated, and the designation of critical habitat for the Carolina heelsplitter will not result in a significant economic impact.

A detailed discussion of our analysis is contained in the Draft Economic Analysis of Proposed Critical Habitat Designation for the Carolina Heelsplitter (February 2002) and the Final Addendum to Economic Analysis of Critical Habitat Designation for the Carolina Heelsplitter (April 2002). Both documents are included in the supporting documentation for this rulemaking and are available for inspection at the Asheville Field Office (see **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB), as OMB determined that this rule may raise novel legal or policy issues. The Service prepared an economic analysis of this action. The Service used this analysis to meet the requirement of section 4(b)(2) of the Endangered Species Act to determine the economic consequences of designating the specific areas as critical habitat. The draft economic analysis was made available for public comment, and we considered comments on it during the preparation of this rule.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. We are hereby certifying that this rule designating critical habitat for the Carolina heelsplitter will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale for this assertion.

According to the Small Business Administration (*http://www.sba.gov/size/*), small entities include small organizations, such as independent non-profit organizations, small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. 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.

In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Designation of critical habitat only has the potential to affect activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. Activities with Federal involvement that may require consultation regarding the Carolina heelsplitter and its critical habitat include: Regulation of activities affecting waters of the United States by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act; forestry activities carried out by the U.S. Forest Service; and, road construction, maintenance, and right of way designation authorized, funded, or carried out by a Federal agency. As required under section 4(b)(2) of the Act, we conducted an analysis of the potential economic impacts of this critical habitat designation. In the analysis, we found that the future section 7 consultations resulting from the listing of the Carolina heelsplitter and the proposed designation of critical habitat could potentially impose total economic costs for consultations and modifications to projects to range between approximately $9.2 and $63.8 million over a ten year period.

In determining whether this rule could ''significantly affect a substantial number of small entities,'' the economic analysis first determined whether critical habitat could potentially affect a ''substantial number'' of small entities in counties supporting critical habitat areas. While SBREFA does not explicitly define ''substantial number,'' the Small Business Administration, as well as other Federal agencies, have interpreted this to represent an impact on 20 percent or greater of the number of small entities in any industry. Based on the past consultation history of the Carolina heelsplitter, the economic analysis anticipated that future section 7 consultations could potentially affect small businesses associated with residential development. To be conservative (i.e., more likely to overstate impacts than understate them), the economic analysis assumed that a unique company will undertake each of the consultations forecasted in a given year, and so the number of businesses affected is equal to the total annual number of consultations projected in the economic analysis. Based on our analysis, the number of small businesses estimated to be impacted by future section 7 consultations is approximately 15 percent of the small businesses in the residential development industry in the affected counties. This finding is based on the extremely conservative assumption that the potential universe of affected entities includes only those within the counties in which critical habitat units are located, and attributes all of the effects of section 7 consultation on these activities solely to the critical habitat designation, even though these effects would likely occur with or without the designation of critical habitat for the heelsplitter due to the listing of the species. Because these estimates are less than the 20 percent threshold that would be considered ''substantial,'' the analysis provided a basis for concluding that this designation will not affect a substantial number of small entities as a result of the designation of critical habitat for the Carolina heelsplitter. The draft Economic Analysis and final Addendum contain the factual bases for this certification and contain a complete analysis of the potential economic effects of this designation. Copies of these documents are in the supporting record for the rulemaking and are available at the Service's Asheville, North Carolina, Field Office (see **ADDRESSES** section).

In summary, we have considered whether this rule could result in significant economic effects on a substantial number of small entities. We have determined, for the above reasons, that it will not affect a substantial number of small entities. Therefore, we are certifying that the designation of critical habitat for the Carolina heelsplitter will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

As discussed above, this rule is not a major rule under 5 U.S.C. 804(2), the

Small Business Regulatory Enforcement Fairness Act. This final designation of critical habitat: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed in the economic analysis, future potential section 7 costs in areas that we are designating as critical habitat for the Carolina heelsplitter are anticipated to have a total estimated economic effect ranging between approximately $9.2 and $63.8 million over a 10-year period. Furthermore, because all the areas that we are designating as critical habitat in this rule currently support populations of the Carolina heelsplitter, the Service would consult on the same range of activities in the absence of this critical habitat designation and the above costs are most appropriately attributable to the section 7 jeopardy provisions of the Act due to the listing of the species (see ''Effects of Critical Habitat'' section).

Proposed and final rules designating critical habitat for listed species are issued under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises will not be affected by the final rule designating critical habitat for this species. Therefore, we anticipate that this final rule will not place significant additional burdens on any entity.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211, which applies to regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The primary land uses within designated critical habitat for the Carolina heelsplitter include residential development and forestry operations. No significant energy production, supply, and distribution facilities are included within designated critical habitat. Therefore, this action is not a significant action affecting energy production, supply, and distribution facilities, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated in areas of occupied designated critical habitat.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the takings implications of designating approximately 148.4 km (92.2 mi) of streams in North Carolina and South Carolina in six units of critical habitat for the Carolina heelsplitter. Based on our consideration of the economic analysis and other pertinent information, this rule does not have significant takings implications, and a takings implication assessment is not required. This rule will not ''take'' private property. The designation of critical habitat affects only Federal agency actions. Federal actions on private land could be affected by the critical habitat designation; however, we expect no regulatory effect from this designation because all areas designated as critical habitat for the Carolina heelsplitter are considered to be within the geographical range occupied by the species and Federal actions would be reviewed under both the jeopardy and adverse modification standards under section 7 of the Act.

This rule will not increase or decrease the current restrictions on private property concerning taking of the Carolina heelsplitter as defined in section 9 of the Act and its implementing regulations (50 CFR 17.31). Additionally, critical habitat designation does not preclude the development of habitat conservation plans and the issuance of incidental take permits. Any landowner in areas that are included in the designated critical habitat will continue to have opportunity to use his or her property in ways consistent with the survival of the Carolina heelsplitter.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism Assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated the development of this critical habitat designation with, appropriate State natural resources agencies in North Carolina and South Carolina. We will continue to coordinate any future changes in the designation of critical habitat for the Carolina heelsplitter with the appropriate State agencies. The designation of critical habitat for the Carolina heelsplitter imposes few, if any, additional restrictions to those currently in place and therefore has little incremental impact on State and local governments and their activities. The designation may provide some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning, rather than waiting for case-by-case section 7 consultations to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Endangered Species Act, as amended. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs that are essential for the conservation of the Carolina heelsplitter. We have made every effort to ensure that the final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burdens, and is clearly written, such that the risk of litigation is minimized.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by the OMB under the Paperwork Reduction Act. This rule will not impose new record-keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This determination does not constitute a major federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. We are not aware of any Tribal lands essential for the conservation of the Carolina heelsplitter. Therefore, the designated critical habitat for the Carolina heelsplitter does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this rule is available upon request from the Asheville Field Office (see **ADDRESSES** section).

Author

The primary author of this document is John Fridell (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entry for the ''Heelsplitter, Carolina'' under ''CLAMS'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
CLAMS							
*	*	*	*	*	*		*
Heelsplitter, Carolina	*Lasmigona decorata*	U.S.A. (NC, SC)	Entire	E	505	17.95(f)	NA
*	*	*	*	*	*		*

3. Amend § 17.95(f) by adding critical habitat for the Carolina heelsplitter (*Lasmigona decorata*) in the same alphabetical order as the species occurs in 17.11(h).

§ 17.95 Critical habitat-fish and wildlife.

* * * * *

(f) *Clams and snails.* * * *

Carolina heelsplitter (*Lasmigona decorata*)

(1) Critical habitat units are described below and depicted in the maps that follow, with the lateral extent of each designated unit bounded by the ordinary high-water line.

(2) Unit 1.

(i) Union County, NC—main stem of Goose Creek (Pee Dee River system) from the N.C. Highway 218 Bridge, downstream to its confluence with the Rocky River, and the main stem of Duck Creek, from the Mecklenburg/Union County line, downstream to its confluence with Goose Creek.

(ii) Map of Unit 1 follows:

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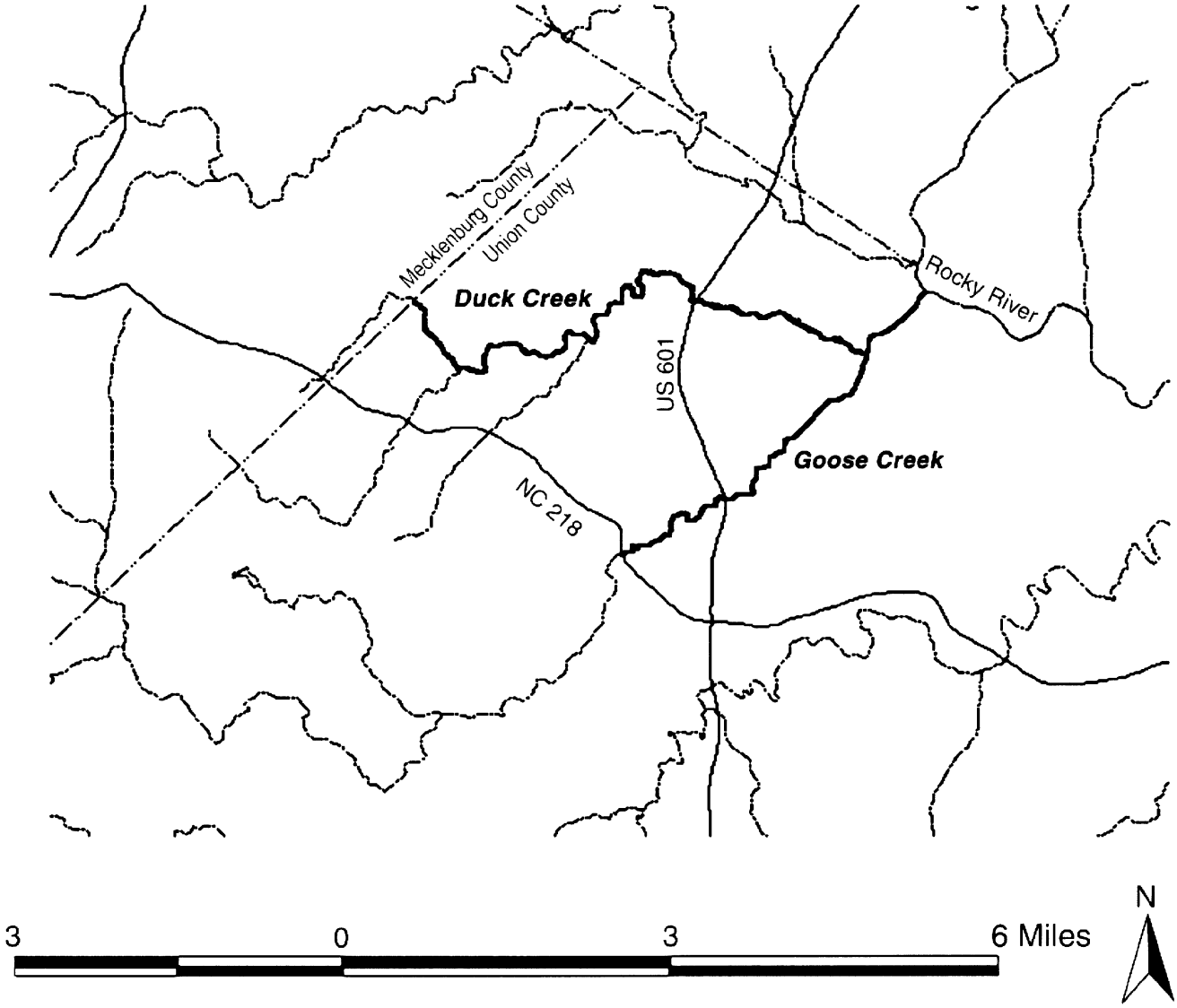
Unit 1. Goose Creek and Duck Creek (Pee Dee River System), Union County, North Carolina.

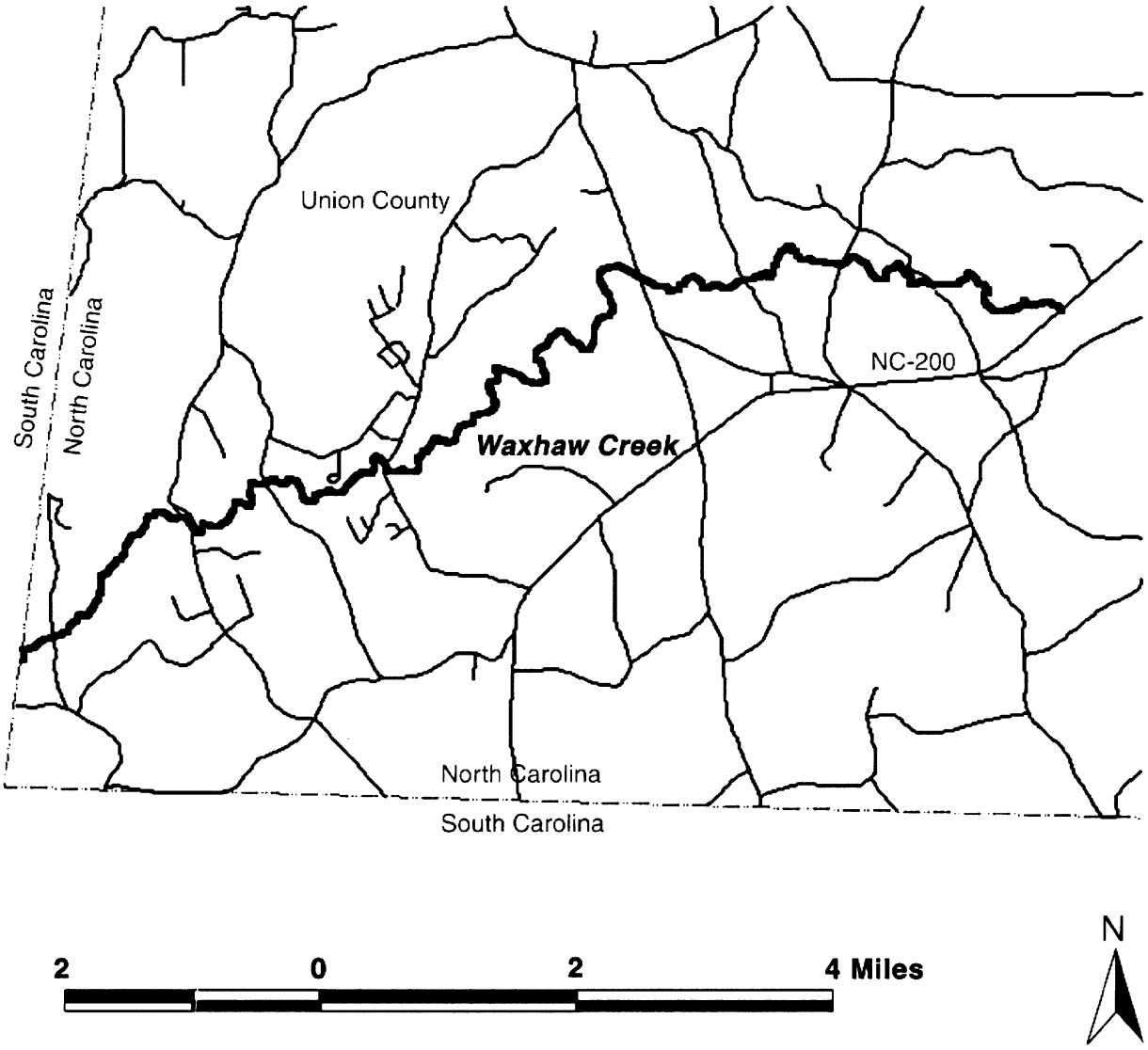


(3) Unit 2.

(i) Union County, NC—main stem of Waxhaw Creek (Catawba River system) from the N.C. Highway 200 Bridge, downstream to the North Carolina/South Carolina State line.

(ii) Map of Unit 2 follows:

Unit 2. Waxhaw Creek (Catawba River System), Union County, North Carolina.

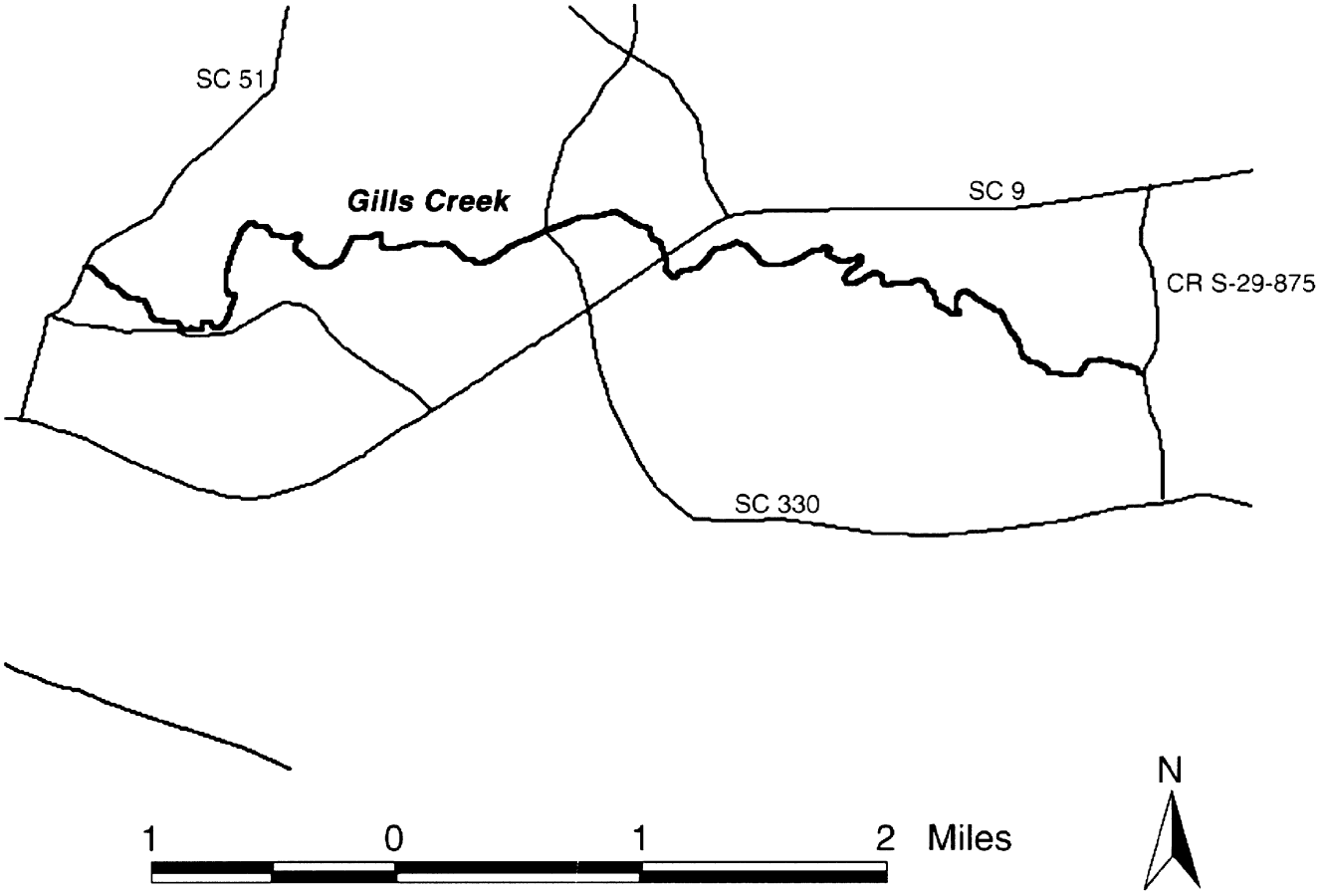


(4) Unit 3.

(i) Lancaster County, SC—main stem of Gills Creek (Catawba River system) from the County Route S–29–875, downstream to the S.C. Route 51 Bridge, east of the city of Lancaster.

(ii) Map of Unit 3 follows:

Unit 3. Gills Creek (Catawba River System), Lancaster County, South Carolina.

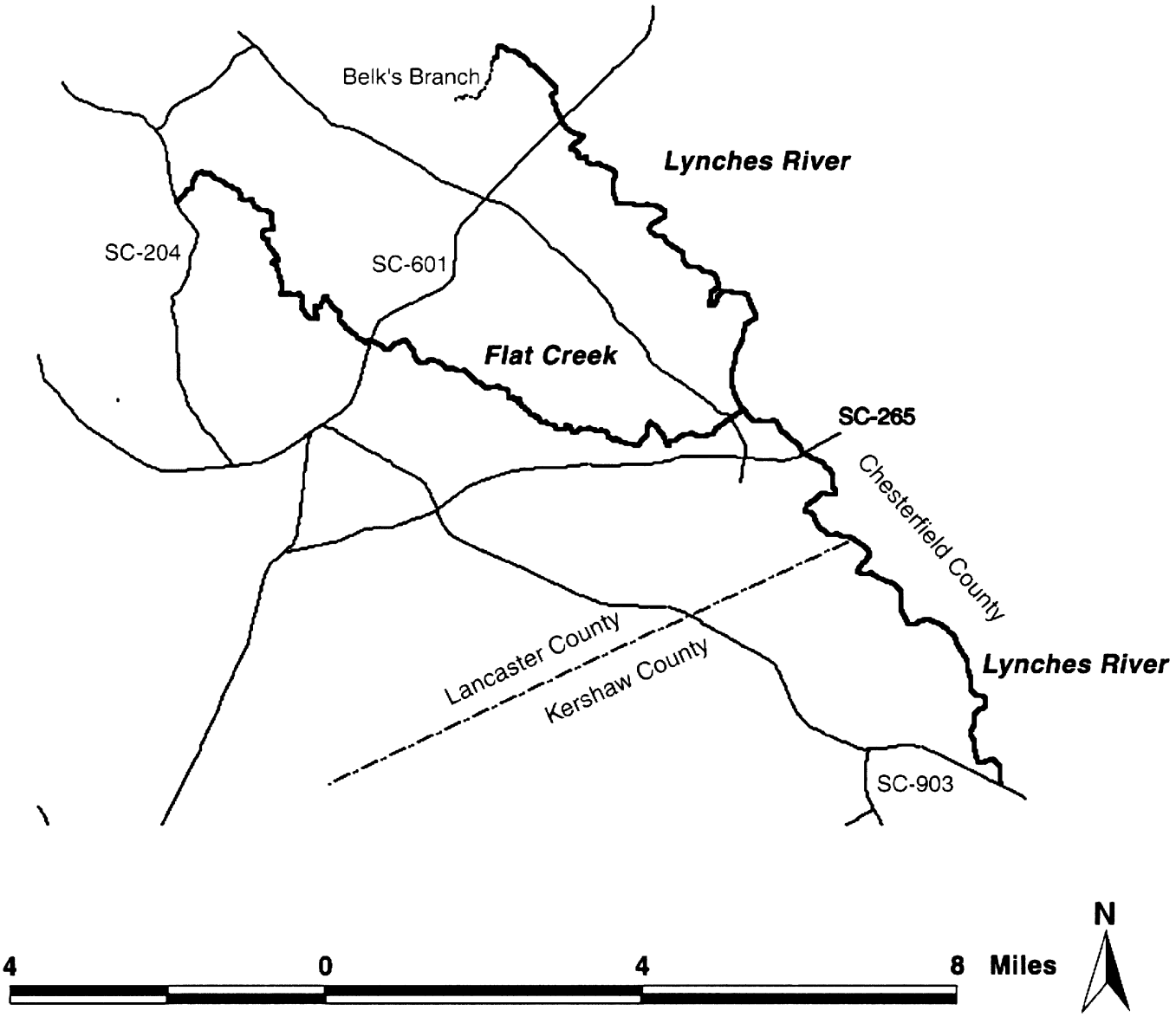


(5) Unit 4.

(i) Lancaster, Chesterfield, and Kershaw Counties, SC—main stem of Flat Creek (Pee Dee River system), Lancaster County, from the S.C. Route 204 Bridge, downstream to its confluence with Lynches River, and the main stem of the Lynches River, Lancaster and Chesterfield Counties, from the confluence of Belk Branch, Lancaster County, northeast (upstream) of the U.S. Highway 601 Bridge, downstream to the S.C. Highway 903 Bridge in Kershaw County.

(ii) Map of Unit 4 follows:

Unit 4. Flat Creek and Lynches River (Pee Dee River System), Lancaster and Kershaw Counties, South Carolina.

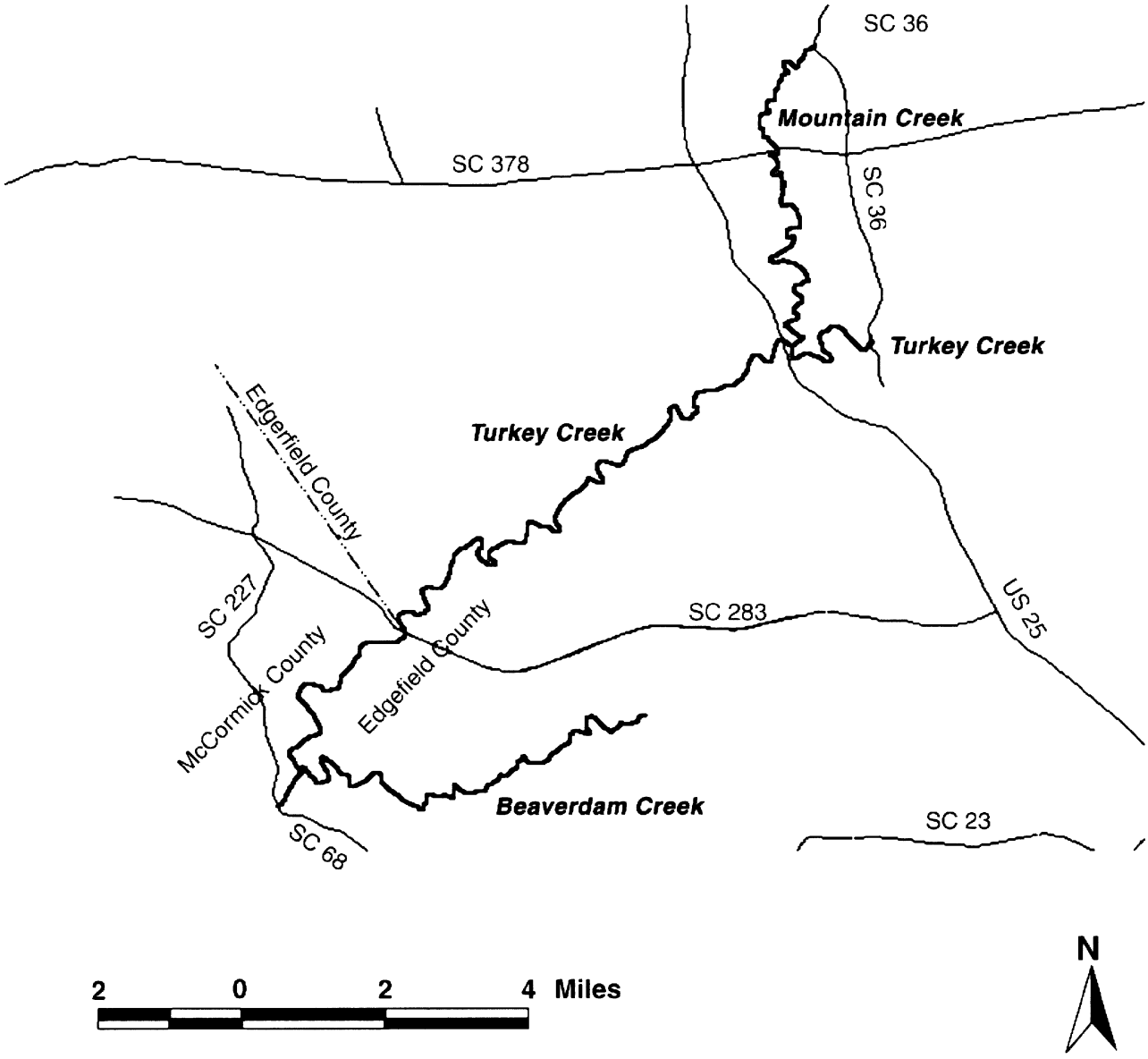


(6) Unit 5.

(i) Edgefield and McCormick Counties, SC—main stem of Mountain Creek (Savannah River system), Edgefield County, SC, from the S.C. Route 36 Bridge, downstream to its confluence with Turkey Creek; Beaverdam Creek, Edgefield County, from the S.C. Route 51 Bridge, downstream to its confluence with Turkey Creek; and Turkey Creek, from the S.C. Route 36 Bridge, Edgefield County, downstream to the S.C. Route 68 Bridge, Edgefield and McCormick Counties.

(ii) Map of Unit 5 follows:

Unit 5. Mountain and Beaverdam Creeks (Savannah River System), Edgefield County, South Carolina, and Turkey Creek (Savannah River System), Edgefield and McCormick Counties, South Carolina.

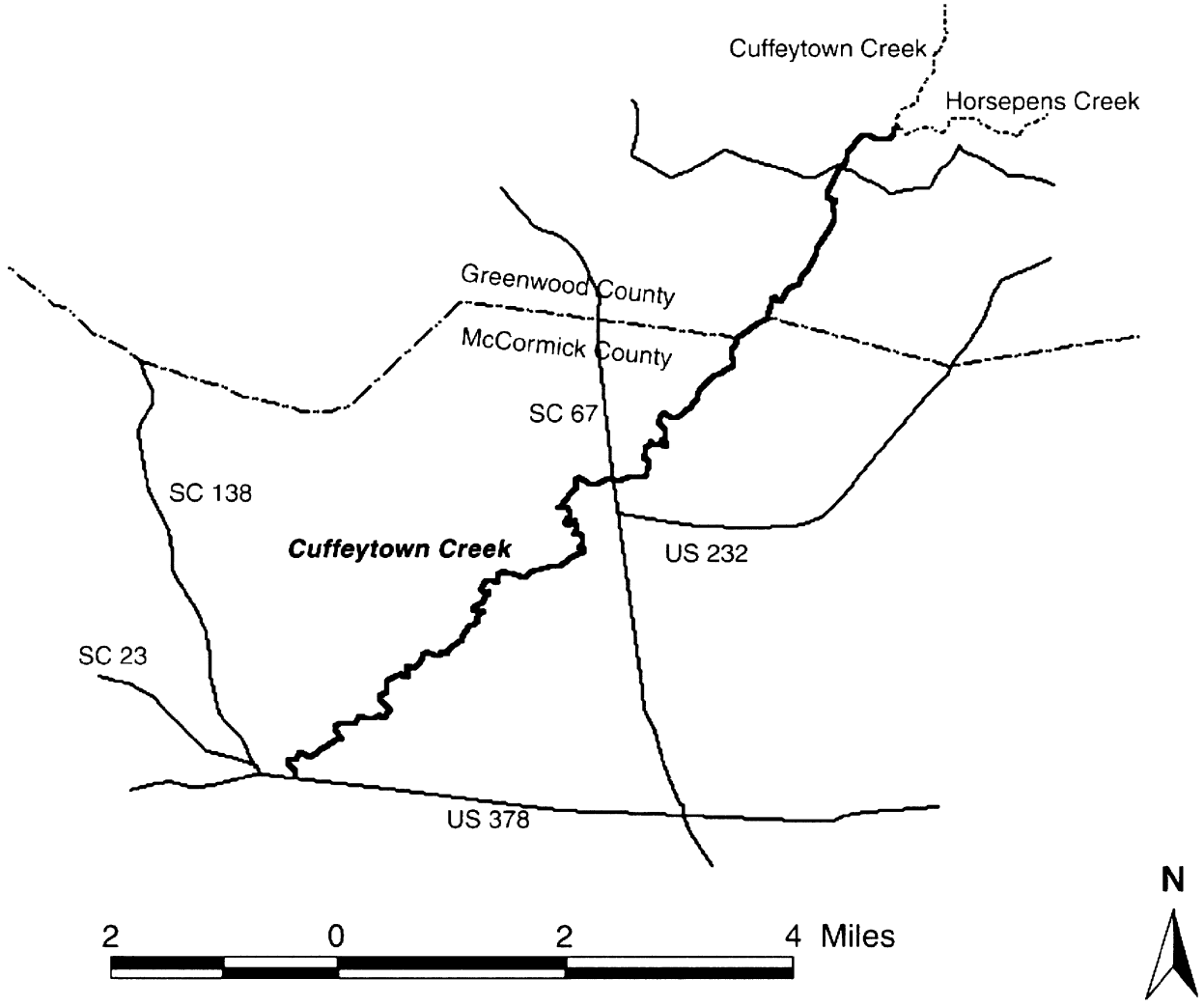


(7) Unit 6.

(i) Greenwood and McCormick Counties, SC—main stem of Cuffytown Creek (Savannah River system), from the confluence of Horsepen Creek, northeast (upstream) of the S.C. Route 62 Bridge in Greenwood County, downstream to the U.S. Highway 378 Bridge in McCormick County.

(ii) Map of Unit 6 follows:

Unit 6. Cuffeytown Creek (Savannah River System), Greenwood and McCormick Counties, South Carolina.



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(8) Within these areas, the primary constituent elements include:

(i) Permanent, flowing, cool, clean water;

(ii) Geomorphically stable stream and river channels and banks;

(iii) Pool, riffle, and run sequences within the channel;

(iv) Stable substrates with no more than low amounts of fine sediment;

(v) Moderate stream gradient;

(vi) Periodic natural flooding; and

(vii) Fish hosts, with adequate living, foraging, and spawning areas for them.

* * * * *

Dated: June 24, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–16580 Filed 7–1–02; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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