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# Federal Register

10–24–02 Thursday
Vol. 67 No. 206 Oct. 24, 2002
Pages 65285–65468

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# Rules and Regulations

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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

**RIN 3245–AE56**

### Small Business Size Standards; Inflation Adjustment to Size Standards.

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Final rule.

**SUMMARY:** The U.S. Small Business Administration (SBA) is adopting as final the size standards promulgated as an interim final rule effective on February 22, 2002. This rule, like the interim final rule, adjusts the monetary-based size standards (e.g., receipts, net income, net worth, and assets) by 15.8 percent to account for the effects of inflation since 1994. SBA is also adopting a provision in its regulations that will require, at least once every five years, an assessment of the impact of inflation on monetary-based size standards. This periodic review will generally ensure that monetary-based standards are current with inflation trends.

**DATES:** This final rule is effective on October 24, 2002.

**FOR FURTHER INFORMATION CONTACT:** Diane Heal, Office of Size Standards, (202) 205–6618.

**SUPPLEMENTARY INFORMATION:**

### Inflation Adjustment

On January 23, 2002 (67 FR 3041), SBA issued an interim final rule, effective February 22, 2002, that increased our monetary-based size standards by 15.8 percent in order to restore eligibility to firms that may have lost small business status due solely to the effects of inflation since the last inflation adjustment in 1994 (see 67 FR 3041 for a description of methodology adjusting size standards for inflation). Small business size standards are based on the six-digit industry codes of the North American Industry Classification System (NAICS). In addition, SBA has several programs that have their own size standards (e.g., Certified Development Company Program, Surety Bond Guarantee Program, Sale of Government Property, etc.). The size standards that SBA changed are those that are receipts-based and those based upon other monetary measures of business size. Employee-based, production-based, and other size standards established by legislation are unaffected by inflation, and are not part of this rulemaking. However, some receipt-based standards that were recently increased were not adjusted as the inflation effect had been factored into the new size standard. In the interim final rule, SBA did not apply the inflation increase to the $1 million size standard for Travel Agencies and the $1.5 million size standard for Real Estate Agencies because it believed that the increase would be too small to serve any meaningful purpose.

This final rule adopts the changes promulgated in the interim final rule.

### Inflation Review

In the interim final rule, SBA added a provision to its size standards regulations requiring that at least once every five years it will assess the impact of inflation on its monetary-based size standards. This provision provides assurances to the public that SBA is monitoring inflation and is making a decision whether or not to adjust size standards within a reasonable period of time since its last inflation adjustment. If SBA decides not to make an inflation adjustment after a review, it will continue to monitor inflation on an annual basis until such time an adjustment is made. SBA received favorable comments on this provision and adopts the language contained in the interim final rule without change.

### Discussion of Comments on the Interim Final Rule

SBA received 32 comments on the interim final rule's inflation adjustment and SBA's provision requiring it to assess at least every five years the impact of inflation on its size standards. Five comments were received from two members of Congress, seven comments came from four industry associations, while the remainder of the comments were received from businesses operating in various industries.

SBA received no comments opposing the 15.8 percent inflation adjustment. Five comments supported the provision requiring SBA to assess every five years the impact of inflation on its size standards. One comment recommended that SBA perform a biennial inflation review of its size standards. Six comments were received on the Travel Agencies industry size standard. Two comments addressed issues concerning the way inflation was calculated. Three comments addressed a concern about the listing of size standards in the interim final rule. The remaining comments addressed size standards issues pertaining to specific industries. Below, we address each significant issue raised by these comments and explain our reason for adopting or rejecting the comment's recommendation.

*Travel Agencies Be Included in Inflation Adjustment*

SBA received five comments supporting an inflationary increase for the travel agencies size standard. SBA had decided that it would not include travel agencies in its inflation adjustment because a 15.8 percent would be too small to warrant an increase to a size standard of only $1 million. These commenters believe that the travel agencies size standard should be increased by the 15.8 percent inflation adjustment at this time. They emphasized the fact that revenues for travel agencies are counted differently than other industry revenues. Travel agencies are allowed to exclude funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. One commenter pointed out that $1 million in commissions equates to approximately $20 million in sales and a 15.8 percent inflationary increase would equate to $23 million in sales. In addition, SBA received one comment requesting that the size standard for travel agencies be increased beyond the amount for inflation.

At the time of the interim final rule SBA was reviewing the Travel Agencies size standard. We subsequently proposed and adopted a $3 million size standard for travel agencies (see 67 FR 38186, dated May 31, 2002, effective July 1, 2002).

*Biennial Inflation Review*

One commenter believed that a biennial review of size standards would be more timely to reflect changes in business conditions. SBA is not adopting this comment. Under the adopted provision, if SBA finds that inflation increased significantly before the required five-year review, it has the authority to initiate an adjustment to the monetary size standards. SBA believes that a policy of adjusting for inflation on a more frequent interval than it has in the past is appropriate, but that it must retain the discretion to decide when inflation adjustments need to be made in light of inflation trends and other factors that influence the decision on size standards.

*Projected Inflation Adjustment Approach*

One commenter requested SBA consider a projected or forward adjustment approach that would take into account ''what the average increase would be at the mid-point for the next five year adjustment period.'' The commenter believed by adopting this approach SBA would always have current monetary-based size standards and eliminate the ''catch up'' approach with 5-year adjustments. SBA does not agree that this additional adjustment is better than its new policy of reviewing and making inflation adjustments on a regular basis. Furthermore, forecasting future inflation involves much uncertainty. Past inflation trends have proven not to be accurate measures of future inflation, especially in times of extremely high or low rates of inflation.

*The Use of the Personal Consumption Expenditures Chain-Type Price Index*

To measure the rate of inflation, one commenter recommended that SBA use the ''Personal Consumption Expenditures (PCE) Chain-Type Price Index'' instead of the ''Gross Domestic Product (GDP) Chain-Type Price Index.'' This commenter believes that ''Due to recent world events causing a downturn for the United States economy * * * the use of a Chain-Type Price Index for GDP does not properly reflect industry differences from industry-to-industry.''

SBA does not adopt this comment. As discussed in the preamble of the interim final rule, SBA decided to convert from the ''Implicit Price Deflator for GDP'' to the GDP Chain-Type Price Index for its measure for the inflation adjustment. This index is a broader measure of inflation for the entire economy than the PCE Chain-Type Price Index. The recommended PCE Chain-Type Price Index measures primarily purchases by U.S. individuals from private businesses and excludes the purchases of business and government. Furthermore, both indices track inflation very closely. Between the fourth quarter of 1993 to the fourth quarter of 2001, the two indices were only three-tenths of one percent different. This minor difference has no effect on the adopted size standards.

*Application of New Size Standards*

One commenter requested that under the effective date, SBA change the word ''issued'' to ''closing'' in the statement ''For the purposes of Federal procurements, this rule applies to solicitations, except for noncompetitive Section 8(a) contracts, *issued* (emphasis added) on or after February 22, 2002.'' The commenter stated that ''the rule as now written, creates a situation where an entity that qualifies as a small business on February 22, 2002, as intended by the rule, would be precluded from pursuing a previously issued, but still open solicitation, for which that businesses would otherwise be qualified.''

SBA does not adopt this comment. When contracting officers plan their procurements they explore the possibility of setting aside their solicitation for small business programs based upon the number of small businesses, at that time, able to submit an acceptable proposal or bid. Potential bidders then decide to pursue a contracting opportunity based partly on the potential competition. SBA is concerned that there would be legal and administrative burdens placed on contracting agencies if it were to make this change. Any change to the size standard of a pending solicitation must depend on the specific circumstances of the solicitation. SBA believes that it is the contracting officer's decision whether to amend a solicitation to incorporate the new size standards rather than SBA impose that requirement.

*Listing of Size Standards*

SBA received three comments concerning the industries listed in the interim final rule. One commenter recommended that SBA publish the entire table of size standards. Two commenters recommended that we publish all the size standards under NAICS code 562910, Remediation Services. These commenters believed that the publication of only the Remediation Services size standard that increased to $12 million and not the segmented size standard of 500 employees for Environmental Remediation Services caused confusion within the industry. SBA also received several phone calls regarding this NAICS code because many firms and contracting officers erroneously viewed SBA's action as eliminating the segmented size standard for Environmental Remediation Services. SBA has not eliminated the 500-employee size standard for Environmental Remediation Services.

The interim final rule listed only those NAICS industries and size standards changed by the inflation adjustment. SBA recognizes that the interim final rule may have led to the misinterpretation of its size standards. SBA considered publishing the size standards for all industries within the NAICS sectors in which one or more of the monetary-based size standards are revised. However, on September 6, 2002, SBA published the entire table of size standards (see 67 FR 55944), which included the inflation adjustment, as part of a correction to a proposed rule (see 67 FR 52633, dated August 13, 2002) to adopt the use of the Office of Management and Budget's 2002 revisions to the NAICS (this rule was adopted on August 13, 2002 (67 FR 52597) and was effective on October 1, 2002). This published listing should eliminate any misunderstanding of which size standards changed as a result of the inflation increase. A complete listing of current size standards is available at SBA's Size Standards' Web site at *http://www.sba.gov/size*, or by calling (202) 205–6618 for a copy of the table of size standards.

*More Than an Inflation Adjustment for Specific Industries and Programs*

SBA received 10 comments requesting additional increases beyond the inflation adjustment to SBA's Surety Bond program and seven industries: Accounting Services, Architectural and Engineering Services, Mapping Services, Construction Inspection and Management Services, Facility Support Services, Refuse Collection, and Automobile Dealers. The purpose of this final rule and the interim final rule is to adjust monetary-based size standards for the effects of inflation. Any additional change to a size standard based on other considerations must be assessed specifically through a separate rulemaking action. SBA is currently reviewing the size standards for the Surety Bond program, Facility Management Services, Refuse Collection, Accounting Services, and Automobile Dealers to determine if a change is warranted. SBA recently reviewed, with significant public input, and increased the size standards for

Architectural and Engineering Services and, Mapping Services (64 FR 26275, dated May 14, 1999), and Construction and Inspection Management Services (65 FR 37689, dated June 16, 2000). SBA does not plan on revisiting these industries unless significant changes occur in these industries.

**Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (44 U.S.C. Ch. 35) and the Paperwork Reduction Act (5 U.S.C. 601–612)**

The Office of Management and Budget (OMB) has determined that this proposed rule is a ''significant'' regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. More information follows in our Regulatory Impact Analysis and Final Regulatory Flexibility Analysis. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800. For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule would not impose new reporting or record keeping requirements, other than those required of SBA. For purposes of Executive Order 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order. Our Regulatory Impact Analysis follows.

**Regulatory Impact Analysis**

*i. Is There a Need for the Regulatory Action?*

SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry differences. For those size standards based on monetary measures of size (receipts, net worth, assets, etc.), SBA has made periodic adjustments to restore the real value of the size standard eroded by increases in the general level of prices.

*ii. What Are the Potential Benefits and Costs of This Regulatory Action?*

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for Federal small business assistance programs. Under this rule, 8,760 additional firms generating $55 billion percent of sales, or 29.3 percent of sales, will obtain small business status and become eligible for these programs. These include SBA's financial assistance programs, economic injury disaster loans and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses, and veteran-owned and service disabled veteran-owned small businesses, as well as those awarded through full and open competition after application of the HUBZone or SDB price adjustment. Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses. Other Federal agencies also use SBA size standards for a variety of regulatory and program purposes. SBA does not have information on each of these programs to evaluate the impact of size standard changes. However, in cases where an SBA's size standard is not appropriate, an agency may establish its own size standard with the approval of the SBA Administrator (see 13 CFR 121.801).

The benefits of a size standard increase to a more appropriate level would accrue to three groups: (1) Businesses that benefit by gaining small business status from the higher size standards that also use small business assistance programs, (2) growing small businesses that may exceed the current size standards in the near future and who will retain small business status from the higher size standard, and (3) Federal agencies that award contracts under procurement programs that require small business status.

Newly defined small businesses would benefit from the SBA's programs, 7(a) Guaranteed Loan Program and Certified Development Company (504) Program. SBA estimates that approximately $17 million in new Federal loan guarantees could be made to these newly defined small businesses. This represents 0.19% of the $9 billion in loans that were guaranteed by the SBA under these two financial programs to firms in industries with monetary-bases size standards.

The newly defined small businesses would also benefit from SBA's economic injury disaster loan program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected.

SBA estimates that approximately $39.2 million of additional Federal contracts may be awarded to businesses becoming newly designated small businesses. The percentage increase of annual sales attributed to these new small businesses is estimated at seven-tenths of one percent. SBA applied this factor to the fiscal year 2000 total small business prime contractor initial awards which totaled $5.6 billion [$5.6B × .007 (.7 of 1%) = $39.2M].

Federal agencies may benefit from the higher size standards if the newly defined and expanding small businesses compete for more set-aside procurements. The larger base of small businesses would likely increase competition and lower the prices on set-aside procurements. A large base of small business may create an incentive for Federal agencies to set aside more procurements creating greater opportunities for all small businesses. Large businesses with small business subcontracting goals may also benefit from a larger pool of small businesses by enabling them to better achieve their subcontracting goals and at lower prices. No estimate of cost savings from these contracting decisions can be made since data are not available to directly measure price or competitive trends on Federal contracts.

To the extent that up to 8,760 additional firms could become active in Federal small business programs, this may entail some additional administrative costs to the Federal government associated with additional bidders for Federal small business procurement programs, additional firms seeking SBA guaranteed lending programs, and additional firms eligible for enrollment in SBA's PRO-Net data base program. Among businesses in this group seeking SBA assistance, there will be some additional costs associated with compliance and verification of small business status and protests of small business status. These costs are likely to generate minimal incremental administrative costs since administrative mechanisms are currently in place to handle these administrative requirements.

The costs to the Federal government may be higher on some Federal contracts. With greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small

businesses rather than using full and open competition. The movement from unrestricted to set-aside is likely to result in competition among fewer bidders for a contract. Also, higher costs may result if additional full and open contracts are awarded through HUBZone and SDB price adjustments. The additional costs associated with fewer bidders, however, are likely to be minor since, as a matter of policy, procurements may be set aside for small businesses or under the 8(a), HUBZone Programs only if awards are expected to be made at fair and reasonable prices.

The proposed size standard may have distributional effects among large and small businesses. Although the actual outcome of the gains and losses among small and large businesses cannot be estimated with certainty, several trends are likely to emerge. First, there may be a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contracting opportunities as Federal agencies decide to set aside more Federal procurements for small businesses. Also, some Federal contracts may be awarded to HUBZone or small disadvantaged businesses instead of a large business since those two categories of small businesses are eligible for price adjustments for contracts competed on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contacts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The potential transfer of contracts away from large and currently defined small businesses would be limited by the number of newly defined and expanding small businesses were willing and able to sell to the Federal Government. The potential distributional impacts of these transfers may not be estimated with any degree of precision since the data on the size of business receiving a Federal contract are limited to identifying small or other-than-small businesses.

The inflation adjustment to SBA's monetary-based size standards operators is consistent with SBA's statutory mandate to assist small business. This regulatory action also promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards when appropriate ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with State, local, and tribal governments in the exercise of their government functions. In a few cases, State and local governments have voluntarily adopted SBA's size standards for their programs to eliminate the need to establish an administrative mechanism to develop their own size standards.

**Final Regulatory Flexibility Analysis**

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities. Immediately below, SBA sets forth a final regulatory flexibility analysis (FRFA) of this rule addressing the need for, and objectives of, the rule; the significant issues raised by commenters to the initial regulatory flexibility analysis; SBA's description and estimate of the number of small entities to which the rule will apply; the projected reporting, record keeping, and other compliance requirements of the rule; and alternatives to the final rule considered by SBA that minimize the impact on small businesses.

*(1) What Is the Need for, and Objectives of, This Rule?*

A review of the latest available inflation indices show inflation has increased a sufficient amount to warrant an adjustment to the current receipt-based size standards. As discussed in the supplemental information, the objective of this rule is to restore the small business eligibility of businesses who have grown above the size standard due to inflation rather than to an expansion of business activity.

*(2) What Significant Issues Were Raised By the Public Comments in Response to the Initial Regulatory Flexibility Analysis (IFRA)?*

SBA received no comments in response to the IRFA of the Interim Final Rule.

*(3) What Is SBA's Description and Estimate of the Number of Small Entities to Which the Rule Will Apply?*

SBA estimates that there will be approximately 8,760 newly designated small business, distributed as follows by NAICS Sectors and Subsectors:

ESTIMATE OF FIRMS GAINING SMALL BUSINESS STATUS

| | Number of firms | Associated annual sales (billion) |
|---|---|---|
| Retail | | |
| Sectors 44–45 | 2,800 | $17 |
| Services | | |
| Sectors 51, 52, 54, 55, 61, 62, 71, 72, 81, and Subsectors 531, 532, 561 | 4,100 | 22 |
| Finance, Insurance and Real Estate | | |
| Sectors 52–53 | 650 | 3 |
| Transportation & Utilities, | | |
| Sectors 22 & 48 | 450 | 3 |
| Construction and Refuse | | |
| Sector 23 & Subsector 562 | 760 | 10 |
| Total | 8,760 | 55 |

**Source:** *1997 Economic Census,* U.S. Census Bureau, Special Tabulation for SBA. Sales estimates restated to 2000 dollars.

The percentage increase in the number of small businesses that will result from this rule, compared to the existing base of small businesses, is estimated to be about two-tenths of one percent. The special tabulation of the 1997 Economic Census for SBA reports 5,082,970 total firms in the U.S. economy as defined by this census. We estimate that 98.4 percent of all businesses in the U.S. are currently defined as small under the existing size

standards. Under the rule, this will increase to 98.6 percent. The percentage increase of annual sales in the U.S. economy attributed to these new small businesses is likely to be approximately seven-tenths of one percent. This will be applied to a base of 28.6 percent. Thus under this proposal the percent of sales attributed to firms defined as small businesses in the U.S. is likely to increase to 29.3 percent.

Currently, 5,003,048 businesses are small. Less than five percent of these businesses utilize SBA programs. For example, in SBA's PRO-Net (a SBA database of small businesses interested in contracting with the Federal Government) 195,000 firms are currently registered. In fiscal year 2001, 43,817 firms received 7(a) guaranteed loans. Thus, with this inflation adjustment, the likely impact of this rule would be limited to the 8,760 firms that will gain small business status as a result of this rule. This figure is based on the U.S. Census Bureau's special tabulation of the 1997 Economic Census for SBA's Office of Size Standards, using size distribution of firms' tables. The following table shows these data.

TABLE 1.—INDUSTRY DATA

| Category | Firms |
|---|---|
| Total Businesses | 5,082,970 |
| Current Small Businesses (all sectors) | 5,003,048 |
| Current Small Businesses (affected sectors) | 5,001,642 |
| Small Businesses with the adoption of this rule | 5,011,808 |
| Small Businesses Registered in PRO–Net | 195,000 |
| Small Businesses with 7(a) Loans | 43,817 |

The 8,760 firms gaining small business status will become eligible to seek available SBA assistance provided that they meet other program requirements.

In addition, SBA cannot ascertain the entire impact of this inflation adjustment on current small businesses as many Federal, state, and local agencies and authorities use SBA's size standards for their programs and SBA does not have information on each of these uses to evaluate the impact of the size standards changes.

*(4) Will This Rule Impose Any Additional Reporting or Recordkeeping Requirements on Small Businesses?*

This rule does not impose any new information collection requirements from SBA which require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. A new size standard does not impose any additional reporting, record keeping or compliance requirements on small entities. Increasing size standards expands access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

*(5) What Are the Steps SBA Has Taken To Minimize the Significant Economic Impact on Small Businesses?*

Most of the economic impact on small businesses will be positive. The most significant benefits to businesses that would obtain small business status as a result of adoption of this final rule are (1) eligibility for the Federal Government's procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, and businesses located in Historically Underutilized Businesses Zones; and (2) the eligibility for SBA's financial assistance programs such as 7(a), 504, and Economic Injury Disaster Loan (EIDL) Assistance programs.

SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $39.2 million per year under the small business set-aside program, the 8(a) program or unrestricted contracts. This represents 0.7 of 1 percent of the $5.6 billion the Federal government awarded to small business prime contractors in FY2000 for initial awards. We view the additional amount of contract activity as the potential amount of transfer from non-small to newly designated small firms. In many cases, businesses that had been small but outgrew the size standards within the past seven years due to inflation will again be considered small businesses. This does not represent the creation of new contracting activity by the Federal government, merely a possible reallocation or transfer to different size firms.

Under SBA's 7(a) Guaranteed Loan program and Certified Development Company (504) program, SBA estimates that approximately $17 million in new Federal loan guarantees could be made to these newly defined small businesses. This represents 0.19 percent of the $9 billion in loans that were guaranteed by the SBA under these two financial programs to firms in industries with monetary-based size standards. Considering that the average size of firms gaining small business status will be $6 million, demand for assistance will likely be less than the overall participation rate for SBA loans among firms of all sizes. In any given year less than 1 percent of all small businesses receive SBA financing. Since larger firms are less likely to seek SBA financial assistance, we believe that no more than one-half of 1 percent of the newly designated small business would seek SBA assistance. SBA estimates that approximately 45 out of the 8,760 firms would seek SBA financing. SBA financial assistance recipients of this size on average obtain assistance worth $375,000, so the impact in terms of new loans generated is estimated to be $17 million.

The adopted inflation adjustment to size standards will minimize the impact on small businesses in two ways. First, small and more periodic inflation adjustments than SBA had adopted in the past will help to retain small business status for many businesses and limit the number of businesses whose status changes from small to nonsmall back to small. Second, more frequent inflation adjustments avoid the situation where existing small businesses find themselves immediately competing against a large number of newly defined small businesses. For example, SBA estimated that 20,000 businesses gained small business status from the 1994 inflation compared to the 8,760 businesses by this final rule's adjustment.

*(6) Alternatives*

(a) What Are the Legal Policies or Factual Reasons for Selecting the Alternative Adopted in the Final Rule?

As stated in the Small Business Act 15. U.S.C. 631 and 13 CFR part 121, SBA establishes size standards based on industry characteristics and for non-manufacturing concerns on the basis of the annual average gross receipts of a business concern over a period of three years. As these referenced concerns' receipts are subject to the effects of inflation, SBA must make an adjustment of 15.8 percent in order to restore eligibility to firms that may have lost small business status solely due to the effect of inflation.

(b) What Alternatives Did SBA Reject?

SBA considered two alternatives to this rule. First, to wait until inflation has increased a greater amount before proposing an adjustment to receipt-based size standards. Previous inflation adjustments ranged between 48 percent to 100 percent. SBA believes that more frequent adjustments are necessary since smaller amounts of inflation can change the small business eligibility of a large number of businesses.

Second, SBA considered a policy of automatically adjusting size standards for inflation on a fixed schedule. SBA

believes inflation must be closely monitored to assess the impact of inflation on size standards. Automatic adjustments may lead to inappropriate changes to size standards and prevent the Agency from taking into consideration other factors that bear on the review of size standards, such as changes in industry structure or Administration policies. Furthermore, an automatic adjustment could require SBA to make insignificant changes (*i.e.*, 1 percent) or to wait a longer period of time than necessary to adjust size standards if inflation rapidly increases.

**List of Subjects in 13 CFR Part 121**

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Small businesses.

Accordingly, the interim rule amending 13 CFR part 121, which was published at 67 FR 3041 on January 23, 2002, is adopted as a final rule.

Dated: October 10, 2002.

**Hector V. Barreto,**

*Administrator.*

[FR Doc. 02–27060 Filed 10–23–02; 8:45 am]

BILLING CODE 8025–01–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–CE–44–AD; Amendment 39–12920; AD 2002–21–13]**

**RIN 2120–AA64**

## Airworthiness Directives; Raytheon Aircraft Company Beech Models 35, 35R, A35, and B35 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes Airworthiness Directive (AD) 98–13–02, which currently requires operating limitations on Raytheon Aircraft Company (Raytheon) Beech Models 35, 35R, A35, and B35 airplanes. This AD is the result of Raytheon developing inspection and modification procedures that, when accomplished on the affected airplanes, will eliminate the need for the operating limitations. This AD retains the operating limitations for the affected airplanes until the recently developed inspection and modification procedures are accomplished. This AD also requires repetitive inspections of the fuselage structure. The actions specified by this AD are intended to prevent structural failure of the V-tail, which could result in loss of control of the airplane.

**DATES:** This AD becomes effective on December 10, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of December 10, 2002.

**ADDRESSES:** You may get the service information referenced in this AD from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043 or (316) 676–4556. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–44–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4407.

**SUPPLEMENTARY INFORMATION:**

### Discussion

*Has FAA Taken Any Action on the Raytheon Airplane Ruddervator System to This Point?*

AD 98–13–02, Amendment 39–10590 (63 FR 31916, June 11, 1998), currently requires the following on Raytheon Beech Models 35, A35, B35, and 35R airplanes:

—Fabricating a placard that restricts the never exceed speed (Vne) to no more than 144 miles per hour (MPH) or 125 knots (KTS) indicated airspeed (IAS) and installing this placard on the instrument panel within the pilot's clear view;

—Marking a red line on the airspeed indicator glass at 144 MPH (125 KTS);

—Marking a white slippage mark on the outside surface of the airspeed indicator between the glass and case; and

—Inserting a copy of this AD into the Limitations Section of the pilot's operating handbook/airplane flight manual (POH/AFM).

In addition, AD 94–20–04, Amendment 39–9032 (59 FR 49785, September 30, 1994), requires the following on certain Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B airplanes, as well as the Beech Models 35, A35, B35, and 35R airplanes:

—Checking the ruddervator static balance and rebalancing the ruddervators when the balance is not in accordance with manufacturer's specifications or anytime the ruddervators are repaired or repainted;

—Repetitively inspecting the fuselage bulkheads for damage and replacing any damaged parts;

—Installing stabilizer reinforcements for some airplane models, as applicable;

—Fabricating and installing airspeed limitation placards;

—Incorporating certain airspeed limitations into the POH/AFM;

—Inspecting the empennage, aft fuselage, and ruddervator control system for damage and replacing or repairing any damaged parts; and

—Ensuring the accuracy of the airplane basic weight and balance information and immediately correcting any discrepancies.

Accomplishment of these actions is required in accordance with the instructions to either Beech Kit No. 35–4016–3, 35–4016–5, 35–4016–7, or 35–4016–9, as applicable and as specified in Beech Service Bulletin No. 2188, dated May, 1987, and the applicable maintenance and shop manuals.

*What Has Happened Since AD 94–20–04 and AD 98–13–02 To Initiate This Action?*

AD 94–20–04 contains minor errors and FAA receives periodic calls from the public for clarification.

In addition, Raytheon has issued Recommended Service Bulletin No. SB 27–3358, Issued: February, 2000, which includes procedures for inspecting the aft fuselage, ruddervator, and related systems for acceptable condition and rebalancing the ruddervators to new specifications (upper limit reduced from 19.8 to 18 inch-pounds (tail heavy)). Accomplishing these inspections will eliminate the need for the operating limitations of AD 98–13–02. This service bulletin also includes the procedures necessary for continuing the repetitive inspections of the empennage, aft fuselage, and ruddervator control system (the inspections that AD 94–20–04 currently requires).

*Has FAA Taken Any Action to This Point?*

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Raytheon Beech Models 35, 35R, A35, and B35 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 26, 2001

(66 FR 16418). The NPRM proposed to supersede AD 98–13–02, Amendment 39–10590. The NPRM also proposed to require you to inspect the aft fuselage, ruddervator, and related systems for acceptable condition on Beech Models 35, 35R, A35, and B35 airplanes; adjust ruddervator balance to the new limits; and repair or replace damaged parts, as necessary. This proposed inspection requirement along with the new proposed limits for the ruddervator balance (set forth in Raytheon SB 27–3358, section 3.A) would terminate the need for the operating limitations for those airplanes.

*Was the Public Invited to Comment?*

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

**Comment Issue No. 1: Allow Equipment Options for Propeller Balancing and Give Credit if the Equipment Has Been Recently Balanced**

*What Is the Commenter's Concern?*

Several commenters state that requiring the propeller to be balanced in accordance with the service information is too restrictive. Raytheon Service Bulletin SB 27–3358 specifies the propeller balance in accordance with the Chadwick-Helmuth Dynamic Propeller balancer/analyzer procedure. These commenters believe that this is too restrictive because several different manufacturers' equipment is available. They request that FAA include other options. These commenters also request that we give credit to those owners/operators who already recently had the propeller balancing accomplished.

*What Is FAA's Response to the Concern?*

The proposed AD does not specify balancing of the propellers. This is only specified in paragraph (12) of Raytheon Service Bulletin SB 27–3358, Issued: February, 2000. We do recommend balancing the propellers to 0.02 inch per second (ips) or better using suitable equipment (if you have not already done the balancing within the last 5 years).

We are not changing the final rule based on these comments.

**Comment Issue No. 2: Allow Equipment Options for Skin Thickness and Acknowledge Differences in Skin Thickness**

*What Is the Commenter's Concern?*

Several commenters present the same concern with the equipment used to measure skin thickness as that concern with the propeller balancing. That concern is specifying only one piece of equipment. These same commenters also state that there are differences in skin thickness, *e.g.,* 0.016 inch instead of 0.018 inch.

*What Is FAA's Response to the Concern?*

We concur that specifying only one piece of equipment for the skin thickness measurement is too restrictive.

We are changing the final rule AD action to state that you must accomplish this measurement in accordance with a digital ultrasonic skin tester or equivalent skin tester or by direct methods that utilize calipers and micrometers.

We also concur that there are differences in skin thickness. We are adding to the final rule AD action reference to the different skin thicknesses that are specific to each airplane serial number and the location (fuselage stations) of each affected skin part number.

**Comment Issue No. 3: Only Require a Designated Engineer Review (DER) of Modifications When Major Structural Changes Have Been Made**

*What Is the Commenter's Concern?*

Several commenters state that a DER review for major structural modifications can be very expensive. These commenters recommend that an airframe and powerplant (A&P) mechanic be allowed to accomplish this review.

*What Is FAA's Response to the Concern?*

The proposed AD does not specify a DER review of major structural modifications. This is only specified in Raytheon Service Bulletin SB 27–3358, Issued: February, 2000. If an A&P mechanic suspects that the modifications might extensively affect the structural integrity of the airplane, a DER review is highly recommended.

We will add the following note to the final rule AD:

"Only the inspections, repairs, replacements, and airplane basic weight and balancing requirements are required by paragraphs (d)(5), (d)(6), (d)(7), (d)(7)(i), and (d)(7)(ii) of this AD and the Appendix to this AD. Other actions specified in Raytheon Service Bulletin SB 27–3358 such as a DER review for major structural modifications are not required by this AD. If you have major modifications incorporated in the aft fuselage or empennage, we recommend a Structures DER review to ensure that the structural integrity is maintained after the modifications."

**Comment Issue No. 4: This AD Will Not Address the Problem Unless the Counterweight Configuration is Updated**

*What Is the Commenter's Concern?*

One commenter relates an experience of making physical changes to counter weights as part of repainting. These changes used modified Beech parts that resulted in getting good balance and minimum weight. In fact, the commenter states that the balance required the same weight as was used with the airplane's 1949 delivery, even though the ruddervators had new skins with factory epoxy primer. The commenter points out the proposed AD will not address the problem unless the counterweight configuration is updated.

*What Is FAA's Response to the Concern?*

We do not concur. We do not have any information that indicates a balance specified in the service information cannot be obtained on the affected airplanes. If the balance cannot be obtained, we will consider alternative methods of compliance (AMOCs) to this portion of the AD provided substantiating information is submitted with the request.

We are not changing the final rule AD action based on this comment.

**Comment Issue No. 5: The NPRM Is Confusing About When the Speed Restrictions Are Required and When They May Be Removed**

*What Is The Commenter's Concern?*

One commenter states that it is unclear when the speed restrictions must be incorporated and when they may be removed. The commenter requests clarification on this subject.

*What Is FAA's Response to the Concern?*

The NPRM retains the speed restrictions from AD 98–13–02, which was effective on July 7, 1998. The Compliance column of the chart in paragraph (d)(1) of the AD states this.

In addition, paragraph (d)(7)(iii) states "Discontinue the placard and operating limitations required by paragraphs (d)(1) through (d)(4) of this AD." This is in sequence with the actions required that lead up to this limitations removal.

We are not changing the final rule AD action based on this comment.

**Comment Issue No. 6: This AD Does Not Address the Root Cause of the Problem**

*What Is the Commenter's Concern?*

One commenter states that FAA has not found any specific fault with the affected airplanes that could be corrected to prevent the tail vibration.

The proposed AD would only provide actions to detect and correct the damage after it happened and would allow this potential damage to occur. The commenter requests that FAA identify the root cause of the problem and then work to develop a modification that would prevent the problem from reoccurring.

*What Is FAA's Response to the Concern?*

Raytheon has analyzed and tested for many years to find the root cause for the problem. Raytheon has not been able to identify an obvious single cause for the ruddervator problems on the affected airplanes. However, Raytheon's analyses indicate that the new limits of the ruddervator balance set by this AD will greatly enhance the ruddervator stability.

Therefore, FAA has determined that it is imperative that those operating the affected airplanes follow all operating limitations and restrictions, ensure that all balance limits are correct, and follow all criteria and maintenance manual procedures.

Because of the age of these airplanes (some of which are over 40 years old), we must closely monitor the continued airworthiness safety even if all limits, operations, and maintenance procedures are followed.

Additional maintenance or operating procedures may be necessary to ensure their continued operational safety.

We are not changing the final rule AD action based on this comment.

**Comment Issue No. 7: Increase the 2-year Compliance Time to 3 Years**

*What Is the Commenter's Concern?*

One commenter states that there are not enough maintenance facilities to accomplish the inspections in paragraph (d)(7) of the proposed AD on all affected airplanes within 2 years. The commenter recommends that FAA change this compliance time to 3 years.

*What Is FAA's Response to the Concern?*

We concur and will change the final rule AD action accordingly.

**Comment Issue No. 8: This AD Is Being Used for Maintenance**

*What Is the Commenter's Concern?*

One commenter states that FAA is using this AD to enforce the use of correct maintenance procedures and to establish better or improved maintenance procedures on the affected airplanes. The commenter states that this is an incorrect use of an AD and punishes those who have adequately maintained their airplanes. We infer that the commenter either wants the NPRM withdrawn or wants an exemption from the AD.

*What Is FAA's Response to the Concern?*

Although we concur that part of this action is mandating better or improved maintenance procedures, we do not agree that this is an incorrect use of an AD. We are not issuing this AD to enforce the current procedures in the maintenance manual. An incorrect use of an AD would be to mandate the exact same actions that were part of the operators maintenance program at the time of aircraft delivery.

The actions of this AD are not to be used instead of the current maintenance practices. They are to work concurrently with the current maintenance practices. Based on the service history we have received on this subject over the years and our evaluation of the subject, we have determined that this AD is justified and the proposed actions should be complied with.

We are not changing the final rule AD action based on this comment.

**Comment Issue No. 9: Remove the Repetitive Requirement for the Skin Thickness Measurement**

*What Is the Commenter's Concern?*

Several commenters request that FAA remove the repetitive requirement for measuring the skin thickness. The commenters state that the inspection is done to determine whether the thickness is reduced beyond acceptable limits due to corrosion or due to surface polishing or abrasion over time.

*What Is FAA's Response to the Concern?*

The FAA concurs. The intent was to only require the skin thickness measurement once within the next 100 hours TIS.

We will change the repetitive skin thickness measurement in the final rule AD to a one-time action.

**Comment Issue No. 10: Do Not Require the Rebalancing of the Ruddervator if the Logbooks Show it is Already Within the Correct Balance Limits**

*What Is the Commenter's Concern?*

One commenter states that the ruddervator rebalancing limits should not be required if the logbook shows that these limits are currently met. The commenter recommends that we give accomplishment credit for this portion of the AD when the logbook entry shows that the ruddervator limits are met.

*What Is FAA's Response to the Concern?*

We concur that accomplishment credit should be given if the logbook ''positively'' shows that the ruddervators meet the limits specified in the service bulletin. To ''positively'' show this, the entry must indicate that the ruddervator is within the specified limits and list the details of the balancing. This includes balancing methods used and the amount of weights and washers used.

We will change the final rule AD action accordingly.

**Comment Issue No. 11: Allow the Option of Accomplishing Either the Inspections, Modifications, and Balancing Requirements or Operating Within the Current Speed Restrictions**

*What Is the Commenter's Concern?*

Several commenters state the actions in the proposed AD should only be required for those airplane operators who choose to exceed the current speed restrictions. The commenters suggest that the AD should provide the choice of accomplishing the proposed inspections, modifications, and balancing requirements or maintaining the speed restrictions currently required by AD 98–13–02.

*What Is FAA's Response to the Concern?*

We do not concur that the inspections, modifications, and balancing requirements should be optional. Some of the affected airplanes are over 40 years old. A thorough inspection over that provided during annual and 100-hour inspections is necessary to ensure the continued airworthiness of these airplanes. The inspections in the proposed AD provide this type of inspection.

Also, this AD will impose tighter margins on the ruddervator balance and this will improve the dynamic characteristics of the airplane and yield a more stable airplane.

We are not changing the final rule AD action based on this comment.

**Comment Issue No. 12: Do Not Require 100–Hour TIS Inspections of the Ruddervator Travel**

*What Is the Commenter's Concern?*

Several commenters state that the ruddervator travel need not be inspected every 100 hours TIS. These commenters state that this is too repetitive. The commenters do not recommend a different compliance time so we infer that the commenters want a one-time inspection of the ruddervator travel.

*What Is FAA's Response to the Concern?*

We concur that the ruddervator travel should only be a one-time action.

We are changing the AD final rule action accordingly.

**Comment Issue No. 13: Make the Repetitive Inspection Intervals Annual Instead of Every 100 Hours TIS**

*What Is the Commenter's Concern?*

One commenter states that the 100-hour TIS interval for the proposed inspection is too frequent. The commenter recommends FAA change these to annually.

*What Is FAA's Response to the Concern?*

We do not concur. These aging airplanes are prone to fatigue cracking in the frames and skins. Our analysis indicates that this is due to airplane operation and that 100-hour TIS interval inspections are necessary to address the continued operational safety of these airplanes.

We are not changing the final rule AD action based on this comment.

**Comment Issue No. 14: Allow Removal and Weighing of the Elevator Assembly Using a Simple Balance Beam Method**

*What Is the Commenter's Concern?*

The commenter states that the method outlined in the service bulletin for balancing the ruddervator is unnecessary and could be accomplished using a simple balance beam method. The commenter recommends FAA change the proposed AD to allow this method.

*What Is FAA's Response to the Concern?*

We partially concur. We have determined that the AD should require the ruddervator be balanced using procedures in Raytheon Service Bulletin SB 27–3358. We would consider other methods on a case-by-case basis if substantiating information is submitted with a request for an alternative method of compliance.

We are not changing the final rule AD action based on this comment.

**FAA's Determination**

*What Is FAA's Final Determination on This Issue?*

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for the changes and clarifications discussed above and minor editorial corrections. We have determined that these changes, clarifications, and minor corrections:

—Will not change the meaning of the AD; and

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

**Cost Impact**

*How Many Airplanes Does This AD Impact?*

We estimate that this AD affects 2,211 airplanes in the U.S. registry.

*What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?*

We estimate the following costs to accomplish the initial inspections:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 55 workhours at $60 per hour = $3,300 | $500 per airplane | $3,800 | $8,401,800 |

The above figures are based only on the initial inspections and do not take into account the cost of repetitive inspections or adjustments, repairs, or replacements that will be necessary based on the results of the inspections. We have no way of determining the number of repetitive inspections each owner/operator of the affected airplanes will incur or what adjustments, repairs, or replacements will be necessary based on the results of the inspections.

**Regulatory Impact**

*Does This AD Impact Various Entities?*

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

*Does This AD Involve a Significant Rule or Regulatory Action?*

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

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 98–13–02, Amendment 39–10590 (63 FR 31916, June 11, 1998), and by adding a new AD to read as follows:

**2002–21–13 Raytheon Aircraft Company (Beech Aircraft Corporation formerly held Type Certificate (TC) No. A–777):** Amendment 39–12920; Docket No. 2000–CE–44–AD; Supersedes AD 98–13–02, Amendment 39–10590.

(a) *What airplanes are affected by this AD?* This AD affects Beech Models 35, 35R, A35, and B35 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes referenced 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 structural failure of the V-tail, which could result in loss of control of the airplane.

**Note 1:** Only the inspections, repairs, replacements, and airplane basic weight and balancing requirements as specified in this AD are required by paragraphs (d)(5), (d)(6), (d)(7), (d)(7)(i), (d)(7)(ii) of this AD and the Appendix to this AD. Other actions specified in Raytheon Service Bulletin SB 27–3358 such as a DER review for major structural modifications are not required by this AD. If you have major modifications incorporated

in the aft fuselage or empennage, we recommend a Structures DER review to ensure structural integrity is maintained after the modifications.

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

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Fabricate a placard that restricts the never exceed speed (Vne) to no more than 144 miles per hour (MPH) or 125 knots (KTS) indicated airspeed (IAS), and install this placard on the instrument panel within the pilot's clear view. The placard should utilize letters of at least 0.10-inch in height and contain the following words: ''Never exceed speed, Vne, 144 MPH (125 KTS) IAS''. | Within the next 10 hours time-in-service (TIS) after July 7, 1998 (the effective date of AD 98–13–02), unless already accomplished. | Not Applicable. |
| (2) Mark a red line on the airspeed indicator glass at 144 MPH (125 KTS) and mark a white slippage mark on the outside surface of the airspeed indicator between the glass and case. | Within the next 10 hours time-in-service (TIS) after July 7, 1998 (the effective date of AD 98–13–02), unless already accomplished. | Not Applicable. |
| (3) Insert a copy of this AD into the Limitations Section of the airplane flight manual (AFM). | Within the next 10 hours time-in-service (TIS) after July 7, 1998 (the effective date of AD 98–13–02), unless already accomplished. | Not Applicable. |
| (4) 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) may fabricate and install the placard as required by paragraph (d)(1) of this AD and insert this AD into the Limitations Section of the AFM as required by paragraph (d)(3) of this AD. | Within the next 10 hours time-in-service (TIS) after July 7, 1998 (the effective date of AD 98–13–02), unless already accomplished. | Make an entry into the aircraft records showing compliance with this AD in accordance with 43.9 of the Federal Aviation Regulations (14 CFR 43.9). |
| (5) Visually inspect the empennage, aft fuselage, and ruddervator control system for damage:<br>(i) Part of this is an inspection of the aft fuselage skin for wrinkles or cracks. Specific skin thicknesses are presented in Figures 1 and 2 of this AD. The skin thickness measurement is not repetitive.<br>(ii) The inspection and setting of the travels on the elevator and elevator trim tabs are not repetitive.<br>(iii) Repair or replace any damaged parts and set the elevator controls, rudder and tab system controls, cable tensions, and rigging. | Inspect within the next 100 hours TIS after the last inspection required by AD 94–20–04 or within the next 25 hours TIS after December 10, 2002 (the effective date of this AD), whichever occurs later, and thereafter at intervals not to exceed 100 hours TIS, except for the skin thickness measurement and the inspection and setting of the travels on the elevator and elevator trim tabs, which are one-time actions. Accomplish any repairs, replacements, and adjustments prior to further flight after the applicable inspection. | Accomplish the inspection and repairs or replacements in accordance with the procedures in paragraphs (5)(a) through (5)(f) of the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Service Bulletin No. SB 27–3358, Issued: February, 2000, and use a digital ultrasonic skin tester or equivalent skin tester or direct methods that utilize calipers and micrometers. Specific skin thicknesses are contained in Figures 1 and 2 of this AD. |
| (6) Verify the accuracy of the airplane basic weight and balance information and correct any discrepancies. | Accomplish the airplane basic weight and balance accuracy verification within the next 100 hours TIS after December 10, 2002 (the effective date of this AD), unless already accomplished as previously required by AD 94–20–04. Correct any discrepancies prior to further flight after the verification. | Use the procedures contained in the Appendix to this AD. |
| (7) Inspect the aft fuselage, ruddervator, and related systems for acceptable condition:<br>(i) Repair or replace any parts found unacceptable as specified in the service bulletin.<br>(ii) Rebalance the ruddervators to the new specifications that reduce the upper limit from 19.8 to 18 inch-pounds (tail heavy). This is not necessary initially if you can positively verify in the logbook that the ruddervators meet the limits specified in the service bulletin:<br>(A) To positively show this, the entry must indicate that the ruddervator is within the specified limits and list the details of the balancing.<br>(B) This must include the balancing methods used and the amount of weights and washers used. | Accomplish the inspections within the next 3 years after December 10, 2002 (the effective date of this AD), unless already accomplished. Accomplish any repair or replacement prior to further flight after the inspection. Accomplish any ruddervator rebalancing prior to further flight after the inspection, unless previously accomplished within the last 100 hours TIS, and thereafter when the ruddervators are repaired or repainted (even if stripes are added or paint is touched up). | Accomplish the inspection and repairs or replacements in accordance with the procedures in the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Service Bulletin No. SB 27–3358, Issued: February, 2000. Accomplish the rebalancing in accordance with Section 3A(8) of the service bulletin and use the procedure in Section 3 of Beech Shop Manual 35–590096B19 (or subsequent revision). |

| Actions | Compliance | Procedures |
|---|---|---|
| (iii) Discontinue the placard and operating limitations required by paragraphs (d)(1) through (d)(4) of this AD. | | |

(e) *Where can I find Figures 1 and 2 of this AD?* Figures 1 and 2 of this AD, as referenced in paragraph (d)(5)(i) of this AD, follow:

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**Skin Thickness – Raytheon Aircraft (Beech) Models 35, 35R, A35, and B35**

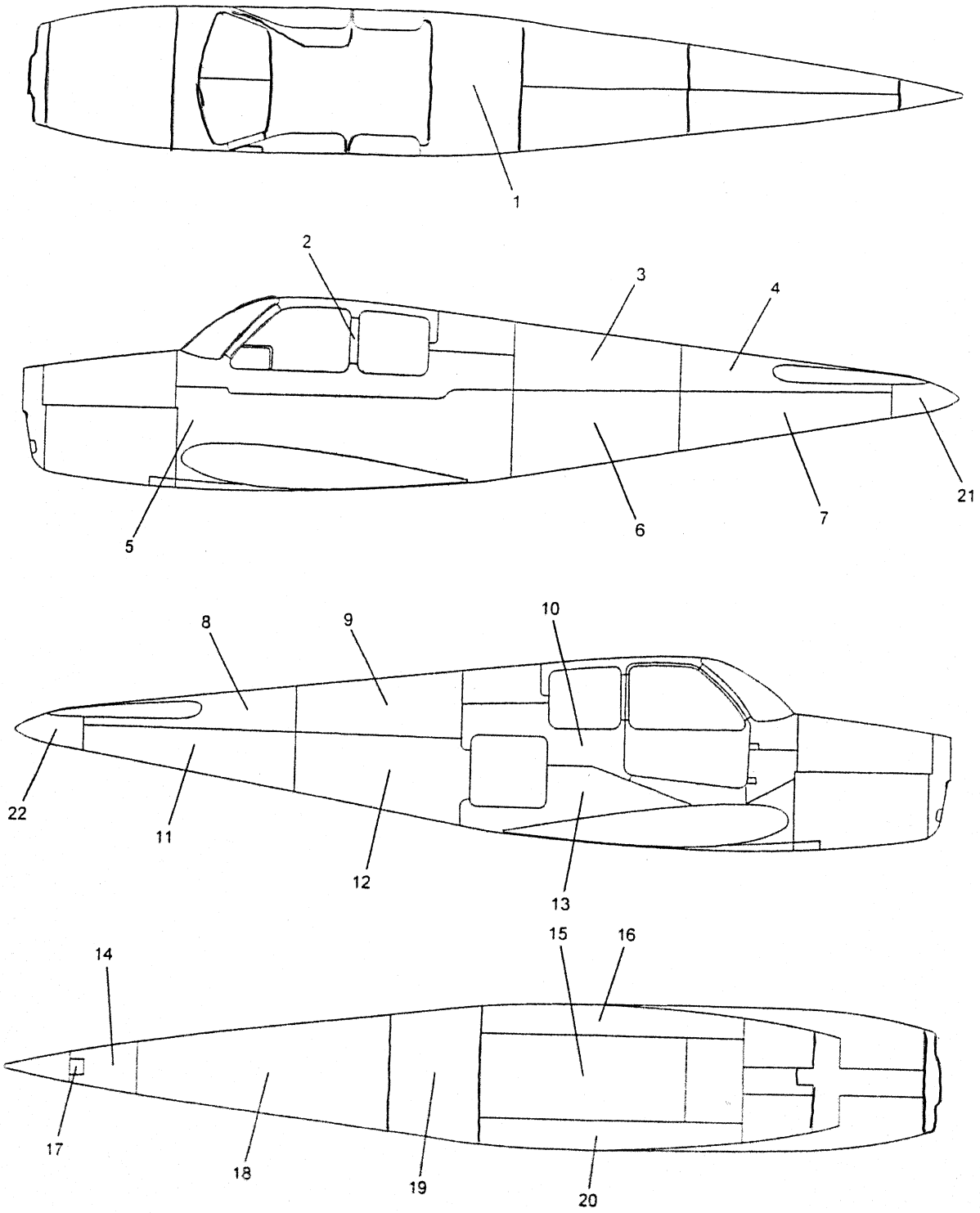


**Figure 1**

## Skin Thickness – Raytheon Aircraft (Beech) Models 35, 35R, A35, and B35

| INDEX NUMBER | PART NUMBER | SKIN THICKNESS | SKIN TOLERANCE | LOCATION | EFFECTIVITY |
|---|---|---|---|---|---|
| 1 | 35-410006-26 | 0.016 | See ANSI AA H35.2(M) | | |
| 2 | 35-410006-20 | 0.025 | See ANSI AA H35.2(M) | | |
| 3 | 35-410008-2 | 0.016 | See ANSI AA H35.2(M) | FS 151 - FS 272 | D-1 through D-15 |
| | 35-410008-2 | 0.016 | | FS 151 – FS 233.5 | D-16 through D-1574 |
| | 35-410008-20 | 0.016 | | FS 151 – FS 207 | D-1575 & After |
| 4 | 35-410008-18 | 0.025 | See ANSI AA H35.2(M) | FS 233.5 – FS 272 | D-16 through D-1574 |
| | 35-410008-22 | 0.025 | | FS 207 – FS 272 | D-1575 & After |
| 5 | 35-410006-6 | 0.025 | See ANSI AA H35.2(M) | | D-1 through D-1500 |
| | 35-410359-2 | 0.025 | | | D-1501 & After |
| 6 | 35-410007-2 | 0.016 | See ANSI AA H35.2(M) | FS 207 – FS 272 | D-1 through D-1574 |
| | 35-410007-24 | 0.016 | | | D-1575 & After |
| | 35-410007-24 | 0.020 | | | Class III |
| 7 | 35-410007-26 | 0.020 | See ANSI AA H35.2(M) | FS 207 – FS 272 | D-1575 & After |
| 8 | 35-410009-12 | 0.025 | See ANSI AA H35.2(M) | FS 233.5 – FS 272 | D-16 through D-1574 |
| | 35-410009-18 | 0.025 | | FS 207 – FS 272 | D-1575 & After |
| 9 | 35-410009-2 | 0.016 | See ANSI AA H35.2(M) | FS 151 - FS 272 | D-1 through D-15 |
| | 35-410009-2 | 0.016 | | FS 151 – FS 233.5 | D-16 through D-1574 |
| | 35-41009-16 | 0.016 | | FS 151 – FS 207 | D-1575 & After |
| 10 | 35-410006-22 | 0.025 | See ANSI AA H35.2(M) | FS 207 – FS 272 | |
| 11 | 35-410010-18 | 0.020 | See ANSI AA H35.2(M) | | D-1575 & After |
| 12 | 35-410010-2 | 0.016 | See ANSI AA H35.2(M) | FS 151 - FS 272 | D-1 through D-1574 |
| | 35-410010-16 | 0.016 | | FS 151 – FS 233.5 | D-1575 & After |
| | 35-410010-16 | 0.020 | | FS 151 – FS 207 | Class III |
| 13 | 35-410006-8 | 0.025 | See ANSI AA H35.2(M) | | D-1 through D-1500 |
| | 35-410359-4 | 0.025 | | | D-1501 & After |
| 14 | 35-410022BSC | 0.032 | See ANSI AA H35.2(M) | | |
| 15 | 35-410006-42 | 0.020 | See ANSI AA H35.2(M) | | D-1 through D-1500 |
| | 35-410359-6 | 0.020 | | | D-1501 & After |
| 16 | 35-410006-34 | 0.020 | See ANSI AA H35.2(M) | | D-1 through D-1500 |
| | 35-410359-8 | 0.020 | | | D-1501 & After |
| 17 | 35-410012-2 | 0.016 | See ANSI AA H35.2(M) | | |
| 18 | 35-410011-2 | 0.016 | See ANSI AA H35.2(M) | | |
| 19 | 35-410006-40 | 0.016 | See ANSI AA H35.2(M) | | |
| | 35-410014BSC | 0.016 | | | Record Change |
| 20 | 35-410006-32 | 0.020 | See ANSI AA H35.2(M) | | D-1 through D-1500 |
| | 35-410359-10 | 0.020 | | | D-1501 & After |
| 21 | TAILCONE | | | | |
| 22 | TAILCONE | | | | |

**Figure 2**

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(f) *Can I comply with this AD in any other way?* (1) You may use an alternative method of compliance or adjust the compliance time if:

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

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

(2) Alternative methods of compliance approved in accordance with AD 98–13–02, which is superseded by this AD, are approved as alternative methods of compliance for the corresponding portion of 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 (f) 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.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mr. T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4407.

(h) *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.

(i) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Service Bulletin SB 27–3358, Issued: February, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(j) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 98–13–02, Amendment 39–10590.

(k) *When does this amendment become effective?* This amendment becomes effective on December 10, 2002.

## Appendix to AD 2002–21–13

*Weight and Balance Accuracy Method No. 1*

1. Review existing weight and balance documentation to assure completeness and accuracy of the documentation from the most recent FAA-approved weighing or from factory delivery to date of compliance with this AD.

2. Compare the actual configuration of the airplane to the configuration described in the weight and balance documentation.

3. If equipment additions or deletions are not reflected in the documentation or if modifications affecting the location of the center of gravity (*e.g.*, paint or structural repairs) are not documented, determine the accuracy of the airplane weight and balance data in accordance with Method No. 2.

*Weight and Balance Information Accuracy Method No. 2*

1. Determine the basic empty weight and center of gravity (CG) of the empty airplane using the Weighing Instructions in the Weight and Balance section of the airplane flight manual/pilot's operating handbook (AFM/POH).

2. Record the results in the airplane records, and use these new values as the basis for computing the weight and CG information as specified in the Weight and Balances section of the AFM/POH.

Issued in Kansas City, Missouri, on October 15, 2002.

**Dorenda D. Baker,**

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

[FR Doc. 02–26661 Filed 10–23–02; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NM–216–AD; Amendment 39–12912; AD 2002–21–06]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

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

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

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes, that currently requires revisions to the Airplane Flight Manual; installation of inspection aids on the wing upper surfaces; and, among other actions, installation of an overwing heater blanket system or primary upper wing ice detection system, and installation of a heater protection panel or an equipment protection device on certain overwing heater blanket systems. This amendment retains those requirements and adds a requirement to disable the anti-ice systems for the upper wing surface on certain airplanes. The actions specified in this AD are intended to prevent ingestion of ice into one or both engines and consequent loss of thrust from one or both engines; and damage to the upper wing skin surface and its structure, due to prolonged short-circuit electrical arcing of certain anti-ice systems.

**DATES:** Effective November 8, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 8, 2002.

The incorporation by reference of certain publications, as listed in the regulations, was approved previously by the Director of the Federal Register as January 17, 1992 (57 FR 2014, January 17, 1992).

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of May 7, 2001 (66 FR 17499, April 2, 2001).

Comments for inclusion in the Rules Docket must be received on or before December 23, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–216–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–216–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft

Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** *Technical Information:* Daniel Bui, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5339; fax (562) 627–5210.

*Other Information:* Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov.* Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

**SUPPLEMENTARY INFORMATION:** On May 30, 2001, the FAA issued AD 2001–06–16 COR, amendment 39–12163 (66 FR 31121, June 11, 2001), applicable to all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. That amendment corrected an incorrect paragraph reference in AD 2001–06–16, amendment 39–12163 (66 FR 17499, April 2, 2001). AD 2001–06–16 was prompted by incidents in which ice accumulation on the wing upper surfaces shed into the engines during takeoff. AD 2001–06–16 COR requires revisions to the Airplane Flight Manual (AFM); installation of inspection aids on the wing upper surfaces; and, among other actions, installation of an overwing heater blanket system or primary upper wing ice detection system, and installation of a heater protection panel or an equipment protection device on certain overwing heater blanket systems. The actions required by AD 2002–06–16 COR are intended to prevent ice accumulation on the wing upper surfaces, which could result in ingestion of ice into one or both engines and consequent loss of thrust from one or both engines.

## Actions Since Issuance of Previous Rule

Since the issuance of AD 2001–06–16 COR, the FAA has received reports of short-circuit electrical arcing at the upper wing interface unit and on the wing upper surface of the Honeywell Anti-Ice System, which was installed per Supplemental Type Certificate (STC) SA6061NM. During the investigation of one incident, a burn-through hole resulting from a high energy electrical short was observed on the cover plate of the interface unit. Investigation of another incident revealed a small pitting hole on the upper wing surface near the heater. Wire chafing appears to have caused the over-wing heater blanket system to short circuit. This condition, if not corrected, could cause prolonged short-circuit electrical arcing of the anti-ice system, which could result in damage to the upper wing skin surface and its structure.

## Issuance of New Service Information

Honeywell has issued Alert Service Bulletin, 109XXXX–30–38, dated August 8, 2002, which describes procedures to disable the upper wing surface anti-ice system for those airplanes on which STC SA6061NM has been installed. The Honeywell anti-ice system specified in that service bulletin is identical to the Allied Signal overwing heater blanket system referred to in AD 2001–06–16 COR.

## Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 2001–06–16 COR. This AD continues to require revisions to the Airplane Flight Manual (AFM); installation of inspection aids on the wing upper surfaces; and, among other actions, installation of an overwing heater blanket system or primary upper wing ice detection system, and installation of a heater protection panel or an equipment protection device on certain overwing heater blanket systems. This AD also requires disabling the anti-ice systems for the upper wing surface of airplanes equipped with Honeywell Anti-Ice Systems installed per STC SA6061NM, per the service bulletin described previously.

## Explanation of Change to Applicability

The FAA has revised the applicability of the AD 2002–06–16 COR to identify model designations as published in the most recent type certificate date sheet for the affected models.

## Removal of Note 6 From AD 2001–06–16 COR

Note 6 of AD 2001–06–16 COR states that installation of an overwing heater blanket system per Allied Signal STC SA6061NM (also known and specified in this AD as a Honeywell anti-ice system installed per STC SA6061NM) is an approved means of compliance with the requirements of paragraph (f)(2)(ii) of that AD. Since this AD requires disabling the system installed per STC SA6061NM, the FAA has removed the wording of the previous Note 6 from this AD, and renumbered the notes accordingly.

## Interim Action

This is considered to be interim action. Honeywell has advised that it currently is developing a modification that will address reactivating the anti-ice system that will be disabled per the requirements of this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

## Determination of Rule's Effective Date

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

## Comments Invited

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

Submit comments using the following format:

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–216–AD.'' The postcard will be date stamped and returned to the commenter.

## Regulatory Impact

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment AD 2001–06–16 COR, 39–12163 (66 FR 31121, June 11, 2001), and by adding a new airworthiness directive (AD), amendment 39–12912, to read as follows:

2002–21–06 **McDonnell Douglas**: Amendment 39–12912. Docket 2002–NM–216–AD. Supersedes AD 2001–06–16 COR, Amendment 39–12163.

*Applicability:* All Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes; certificated in any category.

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

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

To prevent damage to the upper wing skin surface and its structure, due to prolonged short-circuit electrical arcing of the anti-ice system; accomplish the following:

**Restatement of AD 2001–06–16 COR**

**Airplane Flight Manual Revision**

(a) Within 10 days after January 17, 1992 (the effective date of AD 92–03–02, amendment 39–8156), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

*''Ice on Wing Upper Surfaces*

CAUTION

Ice shedding from the wing upper surface during takeoff can cause severe damage to one or both engines, leading to surge, vibration, and complete thrust loss. The formation of ice can occur on wing surfaces during exposure of the airplane to normal icing conditions. Clear ice can also occur on the wing upper surfaces when cold-soaked fuel is in the main wing fuel tanks, and the airplane is exposed to conditions of high humidity, rain, drizzle, or fog at ambient temperatures well above freezing. Often, the ice accumulation is clear and difficult to detect visually. The ice forms most frequently on the inboard, aft corner of the main wing tanks. [END OF CAUTIONARY NOTE]

The wing upper surfaces must be physically checked for ice when the airplane has been exposed to conditions conducive to ice formation. Takeoff may not be initiated unless the flight crew verifies that a visual check and a physical (hands-on) check of the wing upper surfaces have been accomplished, and that the wing is clear of ice accumulation when any of the following conditions occur:

(1) When the ambient temperature is less than 50 degrees F and high humidity or visible moisture (rain, drizzle, sleet, snow, fog, etc.) is present;

(2) When frost or ice is present on the lower surface of either wing;

(3) After completion of de-icing.

When inspection aids (*i.e.* tufts, decals, mount pads, painted symbols, and paint stripes) are installed in accordance with McDonnell Douglas MD–80 Service Bulletin 30–59, the physical check may be made by assuring that all installed tufts move freely.

NOTE

This limitation does not relieve the requirement that aircraft surfaces are free of frost, snow, and ice accumulation, as required by Federal Aviation Regulations Sections 91.527 and 121.629. [END OF NOTE]''

**AFM Configuration Deviation List Revision**

(b) Within 10 days after January 17, 1992, revise the Configuration Deviation List (CDL) Appendix of the FAA-approved AFM to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

*''30–80–01 Triangular Decal and Tuft Assemblies*

Up to two (2) decals or tufts per side may be missing, provided:

(a) At least one decal and tuft on each side is located along the aft spar line; and

(b) The tufts are used for performing the physical check to determine that the upper wing is free of ice by observing that the tufts move freely.

Up to eight (8) decals and/or tufts may be missing, provided:

(a) Takeoff may not be initiated unless the flight crew verifies that a physical (hands-on) check is made of the upper wing in the location of the missing decals and/or tufts to assure that there is no ice on the wing when icing conditions exist;

OR

(b) When the ambient temperature is more than 50 degrees F.''

**Installation of Inspection Aids**

(c) Within 30 days after January 17, 1992, install inspection aids (*i.e.*, tufts, decals, mount pads, painted symbols, and paint stripes) on the inboard side of the wings' upper surfaces, in accordance with McDonnell Douglas Service Bulletin 30–59, dated September 18, 1989; Revision 1, dated January 5, 1990; or Revision 2, dated August 15, 1990.

**Repetitive Tests and One-Time Inspection**

(d) For airplanes on which an overwing heater blanket system was installed without installation of a heater protection panel (HPP) or an equipment protection device (EPD) prior to May 7, 2001 (the effective date of 2001–06–16 COR, amendment 39–12163): Within 60 days days after May 7, 2001, accomplish the actions specified in paragraph (d)(1) or (d)(2) of this AD, as applicable.

(1) For airplanes on which the overwing heater blanket system was installed in accordance with McDonnell Douglas Service Bulletin MD80–30–071, Revision 02, dated February 6, 1996; or McDonnell Douglas Service Bulletin MD80–30–078, Revision 01, dated April 8, 1997: Accomplish paragraphs (d)(1)(i) and (d)(1)(ii) of this AD.

(i) Remove secondary access covers, and perform a one-time detailed visual inspection to detect discrepancies (mechanical damage or punctures in the upper skin of the blanket, prying damage on the panel, and fuel leakage) of the overwing heater blanket, in accordance with McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997. And,

(ii) Accomplish paragraph (d)(1)(ii)(A) or (d)(1)(ii)(B) of this AD.

(A) Perform dielectric withstanding voltage and resistance tests in accordance with McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997. Repeat the tests thereafter at intervals not to exceed 150 days, until installation of an HPP in accordance with paragraph (f)(1)(i) or (f)(1)(ii) of this AD, as applicable.

(B) Deactivate the overwing heater blanket system until accomplishment of dielectric withstanding voltage and resistance tests specified in paragraph (d)(1)(ii)(A). If the overwing heater blanket system is deactivated as provided by this paragraph, continue to accomplish the requirements of paragraphs (a), (b), and (c) of this AD.

**Note 2:** For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(2) For airplanes on which the overwing heater blanket system was installed in accordance with TDG Aerospace, Inc., STC SA6042NM: Accomplish paragraphs (d)(2)(i) and (d)(2)(ii) of this AD.

(i) Remove secondary access covers, and perform a one-time detailed visual inspection to detect discrepancies (mechanical damage or punctures in the upper skin of the blanket, prying damage on the panel, and fuel leakage) of the overwing heater blanket, in accordance with McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997. And,

(ii) Accomplish paragraph (d)(2)(ii)(A) or (d)(2)(ii)(B) of this AD.

(A) Perform dielectric withstanding voltage and resistance tests in accordance with McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997. Repeat the tests thereafter at intervals not to exceed 150 days, until installation of an EPD in accordance with paragraph (f)(2)(i) of this AD.

(B) Deactivate overwing heater blanket system until accomplishment of dielectric withstanding voltage and resistance tests specified in paragraph (d)(2)(ii)(A). If the overwing heater blanket system is deactivated as provided by this paragraph, continue to accomplish the requirements of paragraphs (a), (b), and (c) of this AD.

**Corrective Action**

(e) If any discrepancy is detected during any inspection or test performed in accordance with paragraph (d) of this AD, prior to further flight, repair or replace the affected heater blanket, in accordance with McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997; except as provided in paragraph (h) of this AD.

**Note 3:** McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997, references TDG Aerospace Document E95–451, Revision B, dated January 31, 1996, as an additional source of service information for accomplishment of repair or replacement of the overwing heater blanket.

**Installation of Overwing Heater Blanket or Primary Upper Wing Ice Detection System**

(f) Within 3 years after May 7, 2001, do the requirements of either paragraph (f)(1) or (f)(2) of this AD.

(1) Do the actions specified in paragraph (f)(1)(i) or (f)(1)(ii) of this AD, as applicable.

(i) For airplanes listed in Group 1 in McDonnell Douglas Service Bulletin MD80–30–090, dated October 19, 1999: Install an overwing heater blanket system in accordance with McDonnell Douglas Service Bulletin MD80–30–071, Revision 02, dated February 6, 1996; and modify and reidentify the existing HPP in accordance with McDonnell Douglas Service Bulletin MD80–30–090. Modification of the existing HPP in accordance with this paragraph constitutes terminating action for the repetitive inspections required by (d)(1)(ii)(A) of this AD.

(ii) For airplanes listed in Group 2 in McDonnell Douglas Service Bulletin MD80–30–090, dated October 19, 1999: Install an overwing heater blanket system in accordance with McDonnell Douglas Service Bulletin MD80–30–078, Revision 01, dated April 8, 1997; and install an HPP and associated wiring in accordance with McDonnell Douglas Service Bulletin MD80–30–090. Installation of an HPP and associated wiring in accordance with this paragraph constitutes terminating action for the repetitive inspections required by (d)(1)(ii)(A) of this AD.

**Note 4:** For other airplanes, accomplishment of the requirements of paragraph (f)(1)(i) or (f)(1)(ii) of this AD may be acceptable per paragraph (i)(1) of this AD.

(2) Accomplish the actions specified in either paragraph (f)(2)(i), (f)(2)(ii), or (f)(2)(iii) of this AD.

(i) Install an overwing heater blanket system, and install an EPD that provides a circuit protection function to the overwing heater blanket, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Installation of an EPD in accordance with this paragraph constitutes terminating action for the repetitive inspections required by (d)(2)(ii)(A) of this AD.

**Note 5:** Installation of an overwing heater blanket system and installation of an EPD that provides a circuit protection function to the overwing heater blanket, in accordance with TDG Aerospace, Inc., SA6042NM, or TDG Master Drawing List (MDL) E93–104, Revision R, dated October 25, 2000; is an approved means of compliance with the requirements of paragraph (f)(2)(i) of this AD.

(ii) Install an overwing heater blanket system in accordance with a method approved by the Manager, Los Angeles ACO.

(iii) Install an FAA-approved primary upper wing ice detection system in accordance with a method approved by the Manager, Los Angeles ACO.

**Note 6:** Boeing (McDonnell Douglas) has received FAA approval of a primary upper wing ice detection system that is considered to be an alternative method of compliance (AMOC) with the requirements of paragraph (f)(2)(iii) of this AD. Information concerning such AMOCs may be obtained from the Los Angeles ACO.

**AFM Revision**

(g) Except as provided by paragraph (h) of this AD, prior to further flight after accomplishment of the installation required by paragraph (f)(1) or (f)(2) of this AD, revise the Limitations Section of the FAA-approved AFM to include the following. This may be accomplished by inserting a copy of this AD in the AFM. After accomplishment of the installation required by paragraph (f)(1) or (f)(2) of this AD and this AFM revision, the AFM revisions required by paragraphs (a) and (b) of this AD may be removed from the AFM, and the inspection aids required by paragraph (c) of this AD may be removed from the airplane.

*''Ice on Wing Upper Surfaces*

CAUTION

Ice shedding from the wing upper surface during takeoff can cause severe damage to one or both engines, leading to surge, vibration, and complete thrust loss. The formation of ice can occur on wing surfaces during exposure of the airplane to normal icing conditions. Clear ice can also occur on the wing upper surfaces when cold-soaked fuel is in the main wing fuel tanks, and the airplane is exposed to conditions of high humidity, rain, drizzle, or fog at ambient temperatures well above freezing. Often, the ice accumulation is clear and difficult to detect visually. The ice forms most frequently on the inboard, aft corner of the main wing tanks. [END OF CAUTIONARY NOTE]''

**MMEL Provision**

(h) An airplane may be operated with an inoperative overwing heater blanket or primary upper wing ice detection system for 10 days per the Master Minimum Equipment List (MMEL), provided that the actions specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD are done before further flight.

(1) Revise the Limitations Section of the FAA-approved AFM to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

*''Ice on Wing Upper Surfaces*

CAUTION

The wing upper surfaces must be physically checked for ice when the airplane has been exposed to conditions conducive to ice formation. Takeoff may not be initiated unless the flight crew verifies that a visual check and a physical (hands-on) check of the wing upper surfaces have been accomplished, and that the wing is clear of ice accumulation when any of the following conditions occur:

(1) When the ambient temperature is less than 50 degrees F and high humidity or visible moisture (rain, drizzle, sleet, snow, fog, etc.) is present;

(2) When frost or ice is present on the lower surface of either wing;

(3) After completion of de-icing.

When inspection aids (*i.e.* tufts, decals, mount pads, painted symbols, and paint stripes) are installed in accordance with McDonnell Douglas MD–80 Service Bulletin 30–59, the physical check may be made by assuring that all installed tufts move freely.

NOTE

This limitation does not relieve the requirement that aircraft surfaces are free of frost, snow, and ice accumulation, as required by Federal Aviation Regulations Sections 91.527 and 121.629. [END OF NOTE]''

(2) Revise the CDL Appendix of the FAA-approved AFM to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

*''30–80–01 Triangular Decal and Tuft Assemblies*

Up to two (2) decals or tufts per side may be missing, provided:

(a) At least one decal and tuft on each side is located along the aft spar line; and

(b) The tufts are used for performing the physical check to determine that the upper wing is free of ice by observing that the tufts move freely.

Up to eight (8) decals and/or tufts may be missing, provided:

(a) Takeoff may not be initiated unless the flight crew verifies that a physical (hands-on) check is made of the upper wing in the location of the missing decals and/or tufts to assure that there is no ice on the wing when icing conditions exist;

OR

(b) When the ambient temperature is more than 50 degrees F.''

(3) Install inspection aids (*i.e.*, tufts, decals, mount pads, painted symbols, and paint stripes) on the inboard side of the wings' upper surfaces, in accordance with McDonnell Douglas Service Bulletin 30–59, dated September 18, 1989; Revision 1, dated January 5, 1990; or Revision 2, dated August 15, 1990.

**New Requirements of This AD**

**Note 7:** The Honeywell Anti-Ice System specified in paragraphs (i), (j), and (k) of this AD, is also known and specified as an overwing heater blanket system installed in accordance with AlliedSignal Supplemental Type Certificate (STC) STC SA6061NM.

**For Airplanes Equipped With a Honeywell Anti-Ice System Installed per STC SA6061NM**

(i) For airplanes equipped with a Honeywell Anti-Ice System installed per STC SA6061NM: Accomplish the actions specified in paragraphs (i)(1), (i)(2), (i)(3), and (i)(4) of this AD, at the times specified in those paragraphs.

(1) Within 72 hours after the effective date of this AD, disable the Honeywell Anti-Ice System installed per STC SA6061NM, per Honeywell Alert Service Bulletin 109XXXX–30–38, dated August 8, 2002.

(2) Within 72 hours after the effective date of this AD, revise the Limitations Section of the FAA-approved AFM to include the following (this may be accomplished by inserting a copy of this AD in the AFM):

*''Ice on Wing Upper Surfaces*

CAUTION

Ice shedding from the wing upper surface during takeoff can cause severe damage to one or both engines, leading to surge, vibration, and complete thrust loss. The formation of ice can occur on wing surfaces during exposure of the airplane to normal icing conditions. Clear ice can also occur on the wing upper surfaces when cold-soaked fuel is in the main wing fuel tanks, and the airplane is exposed to conditions of high humidity, rain, drizzle, or fog at ambient temperatures well above freezing. Often, the ice accumulation is clear and difficult to detect visually. The ice forms most frequently on the inboard, aft corner of the main wing tanks. [END OF CAUTIONARY NOTE]

The wing upper surfaces must be physically checked for ice when the airplane has been exposed to conditions conducive to ice formation. Takeoff may not be initiated unless the flight crew verifies that a visual check and a physical (hands-on) check of the wing upper surfaces have been accomplished, and that the wing is clear of ice accumulation when any of the following conditions occur:

(1) When the ambient temperature is less than 50 degrees F and high humidity or visible moisture (rain, drizzle, sleet, snow, fog, etc.) is present;

(2) When frost or ice is present on the lower surface of either wing;

(3) After completion of de-icing.

When inspection aids (*i.e.* tufts, decals, mount pads, painted symbols, and paint stripes) are installed in accordance with McDonnell Douglas MD–80 Service Bulletin 30–59, the physical check may be made by assuring that all installed tufts move freely.

NOTE

This limitation does not relieve the requirement that aircraft surfaces are free of frost, snow, and ice accumulation, as required by Federal Aviation Regulations Sections 91.527 and 121.629. [END OF NOTE]''

**AFM Configuration Deviation List Revision**

(3) Within 72 hours after the effective date of this AD, revise the CDL Appendix of the FAA-approved AFM to include the following (this may be accomplished by inserting a copy of this AD in the AFM):

*''30–80–01 Triangular Decal and Tuft Assemblies*

Up to two (2) decals or tufts per side may be missing, provided:

(a) At least one decal and tuft on each side is located along the aft spar line; and

(b) The tufts are used for performing the physical check to determine that the upper wing is free of ice by observing that the tufts move freely.

Up to eight (8) decals and/or tufts may be missing, provided:

(a) Takeoff may not be initiated unless the flight crew verifies that a physical (hands-on) check is made of the upper wing in the location of the missing decals and/or tufts to assure that there is no ice on the wing when icing conditions exist;

OR

(b) When the ambient temperature is more than 50 degrees F.''

**Installation of Inspection Aids**

(4) Within 30 days after the effective date of this AD, install inspection aids (*i.e.*, tufts, decals, mount pads, painted symbols, and paint stripes) on the inboard side of the wings' upper surfaces, in accordance with McDonnell Douglas Service Bulletin 30–59, dated September 18, 1989; Revision 1, dated January 5, 1990; or Revision 2, dated August 15, 1990.

**Note 8:** Operators should note that certain AMOCs have been approved as acceptable methods of compliance with paragraph (i)(4) of this AD. Information concerning such AMOCs may be obtained from the Manager, Los Angeles ACO.

**Installation of Overwing Heater Blanket or Primary Upper Wing Ice Detection System**

(j) For airplanes equipped with disabled Honeywell Anti-Ice Systems installed per STC SA6061NM: Within 3 years after May 7, 2001, accomplish the requirements of paragraph (j)(l), (j)(2), or (j)(3) of this AD.

(1) Install an overwing heater blanket system, and install an EPD that provides a circuit-protection function to the overwing heater blanket, in accordance with a method approved by the Manager, Los Angeles ACO, FAA.

**Note 9:** Installation of an overwing heater blanket system and installation of an EPD that provides a circuit-protection function to the overwing heater blanket, in accordance with TDG Aerospace, Inc., SA6042NM, or TDG Master Drawing List (MDL) E93–104, Revision R, dated October 25, 2000; is an approved means of compliance with the requirements of paragraph (j)(1) of this AD.

(2) Install an overwing heater blanket system in accordance with a method approved by the Manager, Los Angeles ACO.

(3) Install an FAA-approved primary upper wing ice detection system in accordance with a method approved by the Manager, Los Angeles ACO.

**Note 10:** Boeing (McDonnell Douglas) has received FAA approval of an acceptable primary upper wing ice detection system, which is considered to be an acceptable method of compliance with the requirements of paragraph (j)(3) of this AD when

accomplished in accordance with a method approved by the Manager, Los Angeles ACO.

**AFM Revision**

(k)(1) For airplanes equipped with a disabled Honeywell Anti-Ice Systems installed per STC SA6061NM: Prior to further flight after accomplishment of the installation required by paragraph (j)(1), (j)(2), or (j)(3) of this AD, revise the Limitations Section of the FAA-approved AFM to include the following (this may be accomplished by inserting a copy of this AD in the AFM):

*"Ice on Wing Upper Surfaces*

CAUTION

Ice shedding from the wing upper surface during takeoff can cause severe damage to one or both engines, leading to surge, vibration, and complete thrust loss. The formation of ice can occur on wing surfaces during exposure of the airplane to normal icing conditions. Clear ice can also occur on the wing upper surfaces when cold-soaked fuel is in the main wing fuel tanks, and the airplane is exposed to conditions of high humidity, rain, drizzle, or fog at ambient temperatures well above freezing. Often, the ice accumulation is clear and difficult to detect visually. The ice forms most frequently on the inboard, aft corner of the main wing tanks. [END OF CAUTIONARY NOTE]"

(2) After accomplishment of the installation required by paragraph (j)(1) of this AD and this AFM revision, the AFM revisions and CDLs required by paragraphs (i)(2) and (i)(3) of this AD may be removed from the AFM, and the inspection aids required by paragraph (i)(4) of this AD may be removed from the airplane.

**Alternative Methods of Compliance (AMOCs)**

(l)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

(2) The following AMOCs were approved previously per AD 92–03–02, amendment 39–8156, and are approved as AMOCs with the indicated paragraphs of this AD:

(i) Installation of a non-skid, striped triangular symbol per Option 5 of McDonnell Douglas Service Bulletin MD80–30–059, Revision 4 through Revision 7, is approved as an AMOC with paragraphs (b) and (i)(2) of this AD; and

(ii) Revision of the Configuration Deviation List (CDL) Appendix of the AFM by inserting a copy of CDL Appendix, Section I, Page 2A, dated March 10, 1993, into the AFM, is approved as an AMOC with paragraphs (c) and (i)(3) of this AD.

**Note 11:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

**Special Flight Permits**

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

**Incorporation by Reference**

(n) Unless otherwise specified in this AD, the actions shall be done in accordance with the applicable service document identified in the following table:

| Service Document | Revision Level | Date |
|---|---|---|
| Honeywell Alert Service Bulletin 109XXXX–30–38 | Original | August 8, 2002 |
| McDonnell Douglas Alert Service Bulletin MD80–30A087 | Original | September 22, 1997 |
| McDonnell Douglas Service Bulletin 30–59 | Original | September 18, 1989 |
| McDonnell Douglas Service Bulletin 30–59 | 1 | January 5, 1990 |
| McDonnell Douglas Service Bulletin 30–59 | 2 | August 15, 1990 |
| McDonnell Douglas Service Bulletin MD80–30–071 | 02 | February 6, 1996 |
| McDonnell Douglas Service Bulletin MD80–30–078 | 01 | April 8, 1997 |
| McDonnell Douglas Service Bulletin MD80–30–090 | Original | October 19, 1999 |

(1) The incorporation by reference of Honeywell Alert Service Bulletin 109XXXX–30–38, dated August 8, 2002, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas Service Bulletin 30–59, dated September 18, 1989; McDonnell Douglas Service Bulletin 30–59, Revision 1, dated January 5, 1990; and McDonnell Douglas Service Bulletin 30–59, Revision 2, dated August 15, 1990; was approved previously by the Director of the Federal Register as of January 17, 1992 (57 FR 2014, January 17, 1992).

(3) The incorporation by reference of the remaining service bulletins listed in Table 1 of this AD, was approved previously by the Director of the Federal Register as of May 7, 2001 (66 FR 17499, April 2, 2001).

(4) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

**Effective Date**

(o) This amendment becomes effective on November 8, 2002.

Issued in Renton, Washington, on October 9, 2002.

**Ali Bahrami,**

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

[FR Doc. 02–26480 Filed 10–23–02; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–NM–57–AD; Amendment 39–12915; AD 2002–21–09]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes. This AD requires, among other actions, various

inspections to detect cracks of the cockpit enclosure window sill, and follow-on and corrective actions, as applicable. The actions specified by this AD are intended to prevent fatigue cracking of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective November 29, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 29, 2002.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** *Technical Information:* Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5324; fax (562) 627–5210.

*Other Information:* Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov.* Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on July 17, 2002 (67 FR 46932). That action proposed to require, among other actions, various inspections to detect cracks of the cockpit enclosure window sill, and follow-on and corrective actions, as applicable.

## Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the supplemental NPRM or the FAA's determination of the cost to the public.

## Explanation of Change to Proposed Rule

The FAA has corrected paragraph (j)(2) of this final rule to state that an alternative method of compliance (AMOC) that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Designated Engineering Representative (DER) authorized by the FAA to make such findings, and to clarify that a DER is not permitted to approve an inspection method.

## Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

## Cost Impact

There are approximately 809 Model DC–9–10, –20, –30, –40, and –50 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 572 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the initial inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be $137,280, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

## Regulatory Impact

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2002–21–09 McDonnell Douglas:** Amendment 39–12915. Docket 2000–NM–57–AD.

*Applicability:* Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, DC–9–34F, DC–9–41, and DC–9–51 airplanes; listed in Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability

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

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

To prevent fatigue cracking of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

**Note 2:** Where there are differences between the AD and the referenced service bulletin, the AD prevails.

**Initial Inspections**

(a) Before the accumulation of 40,000 total landings, or within 5,000 landings after the effective date of this AD, whichever occurs later, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD per the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002.

(1) Do a general visual inspection to determine if any existing repair of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill has been accomplished before the effective date of this AD.

**Note 3:** For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(2) Do inspections to detect cracks or loose or missing fasteners of the cockpit enclosure window sill per paragraphs 3.B.1. through 3.B.6. of the Accomplishment Instructions of the service bulletin. The inspections include a general visual inspection to detect loose or missing fasteners or cracks of the upper nose skins of the cockpit; a high frequency eddy current (HFEC) inspection for cracking of Zees; and detailed, borescope, and HFEC inspections for cracking of the skins and frames.

**Note 4:** For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required.''

**Note 5:** If any cracked Zee is found during any inspection per paragraph (a)(2) of this AD, refer to paragraph (h) of this AD.

**Condition 1 (No Previous Repair and No Crack)**

(b) If no previous repair and no crack is found during the inspections required by paragraphs (a)(1) and (a)(2) of this AD: Do the actions specified in paragraph (b)(1) or (b)(2) of this AD, at the times specified in those paragraphs.

**Condition 1, Option 1: Repetitive Inspections**

(1) Condition 1, Option 1: Repeat the inspections required by paragraph (a)(2) of this AD every 5,000 landings, until paragraph (b)(2) of this AD is done. If any crack is found, before further flight, determine the applicable Condition as specified in the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002, and do the applicable actions required by this AD.

**Condition 1, Option 2: Permanent Repair**

(2) Condition 1, Option 2: Do paragraphs (b)(2)(i) and (b)(2)(ii) of this AD.

(i) Before further flight, do all actions associated with the permanent repair (including detailed and eddy current inspections of various parts; and repair, replacement, or rework of those parts, as applicable) per Condition 1, Option 2 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002. This terminates the repetitive inspections per paragraph (b)(1) of this AD.

**Note 6:** Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002, refers to Boeing Service Rework Drawing SR09530268, Revision D, dated November 29, 2001, as an additional source of service information for identifying parts to be inspected, and repairing, replacing, or reworking those parts.

(ii) Within 40,000 landings after doing the permanent repair required by paragraph (b)(2)(i) of this AD, repeat the inspections specified in paragraph (a)(2) of this AD to detect any crack of the completed repair, per the Accomplishment Instructions of the service bulletin. If no crack is found, repeat the inspections specified in paragraph (a)(2) of this AD every 5,000 landings. If any crack is found, do paragraph (g) of this AD.

**Condition 2 (Any Crack Within Flyable Limits for Temporary Repair)**

(c) If any crack is found during the initial inspection required by paragraph (a)(2) of this AD or during any repetitive inspection required by paragraph (b)(1) of this AD, and that crack is WITHIN the flyable limits specified in Condition 2 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002: Do the actions specified in paragraph (c)(1) OR (c)(2) of this AD.

**Note 7:** Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002, refers to Boeing Service Rework Drawing SR09530268, Revision D, dated November 29, 2001, as the source for determining flyable limits.

**Condition 2, Option 1: Temporary Repair and Repetitive Inspections**

(1) Condition 2, Option 1: Do paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(iii), and (c)(1)(iv) of this AD, at the times specified in those paragraphs.

(i) Before further flight, do the temporary repair (including installation of doublers) per Condition 2, Option 1, of the Accomplishment Instructions of the service bulletin.

(ii) Within 2,000 landings after doing the temporary repair, do a general visual inspection to detect cracks of the skins and external doublers. If NO crack is found that is outside the flyable limits specified in Condition 2 of the Accomplishment Instructions of the service bulletin, repeat the inspection every 2,000 landings until paragraph (c)(2)(i) of this AD is done.

(iii) Within 3,500 landings after doing the temporary repair, do borescope and HFEC inspections to detect cracks of the internal structure. If NO crack is found that is outside the flyable limits specified in Condition 2 of the Accomplishment Instructions of the service bulletin, repeat the inspection every 3,500 landings until paragraph (c)(2)(i) of this AD is done.

**Note 8:** If any crack is found during any inspection per paragraph (c)(1)(ii) or (c)(1)(iii) of this AD, refer to paragraph (f) of this AD.

(iv) Except as provided by paragraph (f) of this AD, within 8,000 landings after doing the temporary repair, do the permanent repair specified in paragraph (c)(2) of this AD.

**Condition 2, Option 2: Permanent Repair**

(2) Condition 2, Option 2: Do paragraphs (c)(2)(i) and (c)(2)(ii) of this AD at the times specified in those paragraphs.

(i) Before further flight, do all actions associated with the permanent repair (including detailed and eddy current inspections of various parts; and repair, replacement, or rework of those parts, as applicable) per Condition 2, Option 2, of the Accomplishment Instructions of the service bulletin. This terminates the repetitive inspections required by paragraphs (c)(1)(ii) and (c)(1)(iii) of this AD.

(ii) Within 40,000 landings after doing the permanent repair required by paragraph (c)(2)(i) of this AD, repeat the inspections specified in paragraph (a)(2) of this AD to detect any crack of the completed repair, per the Accomplishment Instructions of the service bulletin. If no crack and no crack progression is found, repeat the inspections specified in paragraph (a)(2) of this AD every 5,000 landings. If any crack or crack progression is found, do paragraph (g) of this AD.

**Condition 3 (Existing Temporary Repairs Per Certain Service Information)**

(d) If any temporary repair is found during any inspection required by paragraph (a)(1) of this AD and that repair WAS accomplished per the service information identified in Condition 3 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002: Do the actions specified in paragraph (d)(1) or (d)(2) of this AD. Also, if the Station Y=83.550 frames have been repaired before the effective date of this AD per DC–9/MD–80 Structural Repair Manual, Section 53–03, Figure 34, or Boeing Service Rework Drawing S509530127, do a one-time inspection of the frames for crack growth emanating beyond the repair angles. If any crack progression is found, before further flight, replace the frames with new frames per the Accomplishment Instructions of the service bulletin.

**Condition 3, Option 1: Repetitive Inspections**

(1) Condition 3, Option 1: Do paragraphs (d)(1)(i), (d)(1)(ii), and (d)(1)(iii) of this AD at the times specified in those paragraphs.

(i) Within 2,000 landings after doing the temporary repair, or before further flight after accomplishment of the initial inspections in paragraph (a) of this AD, whichever is later, do a general visual inspection to detect cracks of the skins and external doublers. If NO crack is found that is outside the flyable limits specified in Condition 2 of the Accomplishment Instructions of the service bulletin, repeat the inspection every 2,000 landings until paragraph (d)(2)(i) of this AD is done.

**Note 9:** If any crack outside the flyable limits is found during any inspection per paragraph (d)(1)(i) or (d)(1)(ii) of this AD, refer to paragraph (f) of this AD.

(ii) Within 3,500 landings after doing the temporary repair, or before further flight after accomplishment of the initial inspections in paragraph (a) of this AD, whichever is later, do borescope and HFEC inspections to detect cracks of the internal structure. If NO crack is found that is outside the flyable limits specified in Condition 2 of the Accomplishment Instructions of the service bulletin, repeat the inspection every 3,500 landings until paragraph (d)(2)(i) of this AD is done.

(iii) Except as provided by paragraph (f) of this AD, within 8,000 landings after doing the temporary repair, or before further flight if more than 8,000 landings have been accumulated since the temporary repair, do the permanent repair specified in paragraph (d)(2)(i) of this AD.

**Condition 3, Option 2: Permanent Repair**

(2) Condition 3, Option 2: Do paragraphs (d)(2)(i) and (d)(2)(ii) of this AD at the times specified in those paragraphs.

(i) Before further flight, do all actions associated with the permanent repair (including detailed and eddy current inspections of various parts; and repair, replacement, or rework of those parts, as applicable) per Condition 3, Option 2 of the Accomplishment Instructions of the service bulletin. This terminates the repetitive inspections required by paragraphs (d)(1)(i) and (d)(1)(ii) of this AD.

(ii) Within 40,000 landings after doing the permanent repair required by paragraph (d)(2)(i) of this AD, repeat the inspections specified in paragraph (a)(2) of this AD to detect any crack of the completed repair, per the Accomplishment Instructions of the service bulletin. If no crack and no crack progression is found: Repeat the inspections specified in paragraph (a)(2) of this AD every 5,000 landings. If any crack or crack progression is found, do paragraph (g) of this AD.

**Condition 4 (Existing Repairs Per Other Service Information)**

(e) If any repair is found during any inspection required by paragraph (a)(1) of this AD, and the repair was not accomplished per the service information identified in Condition 4 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002: Before further flight, repair per a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

**Condition 5 (Crack Outside Flyable Limits for Temporary Repair)**

(f) If any crack is found during any inspection required by paragraph (a)(2), (b)(1), (c)(1)(ii), (c)(1)(iii), (d)(1)(i), or (d)(1)(ii) of this AD; AND that crack is OUTSIDE the limits specified in Condition 2 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002; AND a permanent repair was NOT previously accomplished per this AD: Do paragraphs (f)(1) and (f)(2) of this AD at the times specified in those paragraphs.

(1) Before further flight, do all actions associated with the permanent repair (including detailed and eddy current inspections of various parts; and repair, replacement, or rework of those parts, as applicable) per Condition 5 of the Accomplishment Instructions of the service bulletin.

(2) Within 40,000 landings after doing the permanent repair required by paragraph (f)(1) of this AD, repeat the inspections specified in paragraph (a)(2) of this AD to detect any crack of the completed repair, per the Accomplishment Instructions of the service bulletin. If no crack and no crack progression is found, repeat the inspections specified in paragraph (a)(2) of this AD every 5,000 landings. If any crack or crack progression is found, do paragraph (g) of this AD.

**Corrective Actions: Cracking Following Permanent Repair**

(g) If any crack or crack progression is found during any inspection required by paragraph (b)(2)(ii), (c)(2)(ii), (d)(2)(ii), or (f)(2) of this AD: Before further flight, repair per a method approved by the Manager, Los Angeles ACO.

**Corrective Action for Cracked Zee**

(h) If any cracked Zee is found during any inspection performed per paragraph (a)(2) of this AD: Before further flight, replace the cracked Zee with a new part per the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002.

**Previously Accomplished Inspections and Repairs**

(i) Inspections and repairs accomplished before the effective date of this AD per the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, dated December 14, 1999, are acceptable for compliance with the corresponding actions in this AD.

**Alternative Methods of Compliance**

(j)(1) An alternative method of compliance (AMOC) or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Los Angeles ACO, to make such findings.

**Note 10:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

**Special Flight Permits**

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

**Incorporation by Reference**

(l) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Effective Date**

(m) This amendment becomes effective on November 29, 2002.

Issued in Renton, Washington, on October 11, 2002.

**Michael J. Kaszycki,**

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

[FR Doc. 02–26664 Filed 10–23–02; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 97**

**[Docket No. 30334; Amdt. No. 3027]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

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

**DATES:** This rule is effective October 24, 2002. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 24, 2002.

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

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independent Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

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

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

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

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

### The Rule

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

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

### Conclusion

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

### List of Subjects in 14 CFR part 97

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

Issued in Washington, DC on October 11, 2002.

**James J. Ballough,**

*Director, Flight Standards Service.*

### Adoption of the Amendment

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

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

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

2. Part 97 is amended to read as follows:

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

** * * Effective November 28, 2002*

Savannah, GA, Savannah Intl, RADAR-1, Amdt 9, CANCELLED
Lee's Summit, MO, Lee's Summit Muni, RNAVA (GPS) RWY 18, Orig
Lee's Summit, MO, Lee's Summit Muni, RNAVA (GPS) RWY 29, Orig
Lee's Summit, MO, Lee's Summit Muni, RNAVA (GPS) RWY 36, Orig
Lee's Summit, MO, Lee's Summit Muni, VOR/DME–A, Orig
Lee's Summit, MO, Lee's Summit Muni, NDB RWY 18, Amdt 1
Lee's Summit, MO, Lee's Summit Muni, GPS RWY 29, Orig, CANCELLED
Lee's Summit, MO, Lee's Summit Muni, VOR–A, Orig–A, CANCELLED
Cleveland, OH, Cleveland-Hopkins Intl, ILS RWY 6L, Orig
Cleveland, OH, Cleveland-Hopkins Intl, ILS RWY 6R, Amdt 18
Cleveland, OH, Cleveland-Hopkins Intl, ILS RWY 24R, Orig
Cleveland, OH, Cleveland-Hopkins Intl, RNAV (GPS) Y RWY 6L, Orig
Cleveland, OH, Cleveland-Hopkins Intl, RNAV (GPS) Z RWY 6L, Orig
Cleveland, OH, Cleveland-Hopkins Intl, RNAV (GPS) Y RWY 24R, Orig
Cleveland, OH, Cleveland-Hopkins Intl, RNAV (GPS) Z RWY 24R, Orig
Alva, OK, Alva Regional, RNAV (GPS) RWY 35, Orig
Alva, OK, Alva Regional, GPS RWY 35, Orig, CANCELLED
Hinton, OK, Hinton Muni, RNAV (GPS) RWY 17, Orig
Hinton, OK, Hinton Muni, RNAV (GPS) RWY 35, Orig
El Paso, TX, El Pas Intl, GPS RWY 22, Orig

** * * Effective January 23, 2003*

Alexandria, LA, Esler Regional, ILS RWY 26, Amdt 14
Alexandria, LA, Esler Regional, NDB OR GPS RWY 26, Amdt 8
Alexandria, LA, Esler Regional, LOC BC RWY 8, Amdt 10C, CANCELLED

**Note:** The FAA published the following procedure in Docket No. 30332, Amdt No. 3025 to Part 97 of the Federal Aviation Regulations (Vol. 67, FR No. 195, Page 62638–62640; dated October 8, 2002) under section 97.27 effective November 28, 2002, which is hereby amended rescinded:

Dallas-Fort Worth, TX, Dallas-Fort Worth International, ILS RWY 35C, Amdt 7
Dallas-Fort Worth, TX, Dallas-Fort Worth International, Converging ILS RWY 35C, Amdt 5
Dallas-Fort Worth, TX, Dallas-Fort Worth International, RNAV (GPS) RWY 35C, Orig
Dallas-Fort Worth, TX, Dallas-Fort Worth International, GPS RWY 35C, Orig–A, CANCELLED
Gordonsville, VA, Gordonsville Muni, NDB OR GPS RWY 23, Amdt 1, CANCELLED

**Note:** The FAA published the following procedure in Docket No. 30332, Amdt No. 3025 to Part 97 of the Federal Aviation Regulations (Vol. 67, FR No. 195, Page 62638–62640; dated October 8, 2002) under section 97.27 effective November 28, 2002, which is hereby amended to read as follows:

Durhamville, NY, Kamp, VOR OR GPS RWY 28, Amdt 1B, CANCELLED

[FR Doc. 02–27098 Filed 10–23–02; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 30335; Amdt. No. 3028]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

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

**DATES:** This rule is effective October 24, 2002. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of October 24, 2002.

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

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC

*For Purchase*—Individual SIAP copies my be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

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

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

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

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

## The Rule

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

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

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

## Conclusion

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

## List of Subjects in 14 CFR part 97

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

Issued in Washington, DC on October 11, 2002.

**James J. Ballough,**

*Director, Flight Standards Service.*

## Adoption of the Amendment

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

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

**Authority:** 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

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

2. Part 97 is amended to read as follows:

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

* * **Effective Upon Publication*

| FDC Date | State | City | Airport | FDC No. | Subject |
|---|---|---|---|---|---|
| 09/05/02 | TX | Dallas | Addison | 2/9363 | ILS Rwy 15, Amdt 9A |
| 09/20/02 | TX | Del Rio | Del Rio Intl | 2/9902 | LOC 13, Orig-A |
| 09/23/02 | TX | Corpus Christi | Corpus Christi | 2/9952 | ILS Rwy 13, Amdt 26A |
| 09/23/02 | TX | Corpus Christi | Corpus Christi | 2/9954 | NDB Rwy 13, Amdt 25 |
| 09/23/02 | FM | Yap Island | Yap Intl | 2/9977 | NDB Rwy 7, Amdt 1 |
| 09/25/02 | TX | Houston | Sugar Land Muni Hull Field | 2/0115 | NDB Rwy 35, Amdt 15 |
| 09/25/02 | WI | Madison | Dane County Regional Truax Field | 2/0136 | VOR Rwy 13, Orig |
| 09/26/02 | CA | Sacramento | Sacramento Mather | 2/0179 | RNAV (GPS) Rwy 4R, Orig |
| 09/27/02 | FL | Sarasota(Bradenton) | Sarasota/Bradenton Intl | 2/0201 | ILS Rwy 14, Amdt 4 |
| 09/27/02 | FL | Sarasota(Bradenton) | Sarasota/Bradenton Intl | 2/0202 | ILS Rwy 32, Amdt 5 |
| 09/27/02 | CA | Palm Springs | Bermuda Dunes | 2/0208 | VOR–A, Orig |
| 09/27/02 | TN | Knoxville | McGhee Tyson | 2/0218 | ILS Rwy 5L, Amdt 7A |
| 10/02/02 | OR | Aurora | Aurora State | 2/0339 | GPS Rwy 17, Amdt 1 |
| 10/02/02 | OR | Aurora | Aurora State | 2/0340 | GPS Rwy 35, Amdt 1A |
| 10/02/02 | OR | Aurora | Aurora State | 2/0341 | LOC Rwy 17, Orig-A |
| 10/02/02 | OK | Oklahoma City | Will Rogers World | 2/0362 | Radar, Amdt 20 |
| 10/02/02 | OK | Oklahoma City | Will Rogers World | 2/0363 | ILS Rwy 17R, Amdt 9D |
| 10/02/02 | OK | Oklahoma City | Will Rogers World | 2/0364 | ILS Rwy 17L,. Orig-D |
| 10/02/02 | OK | Oklahoma City | Will Rogers World | 2/0365 | NDB Rwy 35R, Amdt 5C |
| 10/02/02 | OK | Oklahoma City | Will Rogers World | 2/0366 | ILS Rwy 35R, Amdt 8D |
| 10/02/02 | OK | Oklahoma City | Will Rogers World | 2/0367 | NDB Rwy 17R, Amdt 24B |
| 10/02/02 | GA | Rome | Richard B. Russell | 2/0382 | VOR/DME or GPS Rwy 1, Amdt 8B |
| 10/03/02 | TX | Houston | Ellington Field | 2/0414 | ILS Rwy 22, Amdt 3B |
| 10/03/02 | WY | Casper | Natrona County Intl | 2/0443 | ILS Rwy 3, Amdt 5A |
| 10/03/02 | TN | Knoxville | Knoxville Downtown Island | 2/0446 | LOC Rwy 26, Amdt 3A |
| 10/03/02 | AK | Scammon Bay | Scammon Bay | 2/0470 | GPS Rwy 10, Orig |
| 10/03/02 | AK | Scammon Bay | Scammon Bay | 2/0471 | GPS Rwy 28, Orig |
| 10/03/02 | TX | Denton | Denton Muni | 2/0478 | GPS Rwy 35, Amdt 1 |
| 10/03/02 | TX | Muleshoe | Muleshoe Muni | 2/0489 | VOR/DME–A, Amdt 1 |
| 10/03/02 | CA | Sacramento | McClellan Airfield | 2/0497 | ILS Rwy 16, Orig-B |

| FDC Date | State | City | Airport | FDC No. | Subject |
|---|---|---|---|---|---|
| 10/04/02 | AR | Batesville | Batesville Regional | 2/0517 | NDB or GPS Rwy 7, Amdt 5C |
| 10/04/02 | NH | Manchester | Manchester | 2/0521 | ILS Rwy 6, Orig-A |
| 10/04/02 | WA | Spokane | Spokane Intl | 2/0561 | ILS Rwy 3 (Cat I, II, III), Amdt 4 |
| 10/04/02 | WA | Spokane | Spokane Intl | 2/0562 | RNAV (GPS) Rwy 3, Orig-B |
| 10/04/02 | MA | Westfield | Barnes Muni | 2/0576 | GPS Rwy 2, Orig |
| 10/04/02 | MA | Westfield | Barnes Muni | 2/0577 | GPS Rwy 20, Orig |
| 10/04/02 | MA | Westfield | Barnes Muni | 2/0578 | ILS Rwy 20, Amdt 5 |
| 10/04/02 | MA | Westfield | Barnes Muni | 2/0579 | NDB Rwy 20, Amdt 15 |
| 10/04/02 | MA | Westfield | Barnes Muni | 2/0580 | VOR Rwy 20, Amdt 20 |
| 10/04/02 | MA | Westfield | Barnes Muni | 2/0581 | VOR Or Tacan Rwy 2, Amdt 4 |
| 10/04/02 | OK | Oklahoma City | Will Rogers World | 2/0587 | LOC BC Rwy 35L, Amdt 10D |
| 10/07/02 | WA | Spokane | Spokane Intl | 2/0626 | VOR Rwy 3, Amdt 12 |
| 10/07/02 | WA | Seattle | Boeing Field/King County Intl | 2/0627 | ILS Rwy 13R, Amdt 28A |
| 10/07/02 | WA | Seattle | Boeing Field/King County Intl | 2/0627 | ILS Rwy 13R, Amdt 28A |
| 10/07/02 | MS | Jackson | Hawkins Field | 2/0631 | NDB Rwy 16, Amdt 5 |

[FR Doc. 02–27088 Filed 10–23–02; 8:45 am]

**BILLING CODE 4910–13–M**

## FEDERAL TRADE COMMISSION

## 16 CFR Part 305

## Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Trade Commission (''Commission'') announces that, because ranges of comparability have not changed significantly, the current ranges of comparability for refrigerators, refrigerator-freezers, and freezers will remain in effect until further notice.

**EFFECTIVE DATE:** January 22, 2003.

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202–326–2889); *hnewsome@ftc.gov.*

**SUPPLEMENTARY INFORMATION:** The rule was issued by the Commission in 1979, 44 FR 66466 (Nov. 19, 1979), in response to a directive in the Energy Policy and Conservation Act of 1975 (''EPCA'').[1] The rule covers several categories of major household appliances including refrigerators, refrigerator-freezers, and freezers.

### I. Background

The rule requires manufacturers of all covered appliances to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an ''EnergyGuide'' label, fact sheets (for some appliances), and in catalogs. The rule requires manufacturers to include, on labels and fact sheets, an energy consumption or efficiency figure and a ''range of comparability.'' This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models similar to the labeled model. The rule also requires manufacturers to include, on labels for some products, including those that are the subject of this notice, a secondary energy usage disclosure in the form of an estimated annual operating cost based on a specified DOE national average cost for the fuel the appliance uses.

Section 305.8(b) of the rule requires manufacturers, after filing an initial report, to report certain information annually to the Commission by specified dates for each product type.[2] These reports, which are to assist the Commission in preparing the ranges of comparability, contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information on labels consistent with these changes, the Commission will publish new ranges if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission will publish a statement that the prior ranges remain in effect for the next year.

### II. 2002 Refrigerator Information

The annual submissions of data for refrigerators, refrigerator-freezers, and freezers have been made and analyzed by the Commission. The ranges of comparability for the products have not changed significantly for these products.[3] Therefore, the current ranges for these products (16 CFR Part 305, Appendices A1 through A8 and B1 through B3) will remain in effect until further notice.[4]

### List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

The authority citation for Part 305 continues to read as follows:

**Authority:** 42 U.S.C. 6294.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 02–26970 Filed 10–23–02; 8:45 am]

**BILLING CODE 6750–01–M**

[1] 42 U.S.C. 6294. The statute also requires the Department of Energy (''DOE'') to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

[2] Reports for refrigerators, refrigerator-freezers, and freezers are due August 1.

[3] The Commission's analysis excluded models with energy consumption figures that do not meet the current DOE energy conservation standards. See 62 FR 23102 (April 28, 1997).

[4] See November 19, 2001 (66 FR 57867), November 26, 2001 (66 FR 59050), December 10, 2001 (66 FR 63749), and January 29, 2002 (67 FR 4173).

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 73**

**[Docket No. 00C–1321]**

## Listing of Color Additives Exempt From Certification; Mica-Based Pearlescent Pigments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of mica-based pearlescent pigments as color additives in contact lenses. This action is in response to a petition filed by Wesley Jessen Corp.

**DATES:** This regulation is effective November 26, 2002. Submit written or electronic objections and requests for a hearing by November 25, 2002. See Section VIII of the **SUPPLEMENTARY INFORMATION** section of this document for information on the filing of objections.

**ADDRESSES:** Submit written or electronic objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

**FOR FURTHER INFORMATION CONTACT:** Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3076.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

In a notice published in the **Federal Register** of June 7, 2000 (65 FR 36148), FDA announced that a color additive petition (CAP 0C0271) had been filed by Wesley Jessen, Corp., 333 East Howard Ave., Des Plaines, IL 60018 (now Ciba Vision Corp., 11460 Johns Creek Pkwy., Duluth, GA 30097–1556). The petition proposed to amend the color additive regulations in part 73 (21 CFR part 73 subpart D—Medical Devices) to provide for the safe use of mica to color contact lenses. During its subsequent review of the petition, the agency determined that the subject color additives are composite pigments composed of mica coated with iron oxides or mica coated with titanium dioxide. Therefore, in the **Federal Register** of May 20, 2002 (67 FR 35551), the agency published an amended filing notice to state that the petition proposes that the color additive regulations be amended to provide for the safe use of mica coated with iron oxides or mica coated with titanium dioxide, collectively identified as mica-based pearlescent pigments, in contact lenses.

### II. Identity and Manufacturing

Mica-based pearlescent pigments consist of either mica platelets coated with titanium dioxide or mica platelets coated with iron oxides. These color additives are manufactured by preparing a suspension of mica platelets, and then adding a solution of a soluble salt of titanium or of iron, and a base to precipitate titanium hydroxide or iron hydroxide onto the mica platelets. These particles are heated (calcined) at 800 to 900 °C to obtain mica coated with titanium dioxide or mica coated with iron oxides. These color additives create a pearlescent effect and are known commonly as pearlescent pigments. Therefore, the agency is establishing mica-based pearlescent pigments as the common or usual name of the color additives.

### III. Safety Evaluation

During its review of the safety of the use of mica-based pearlescent pigments in contact lenses, the agency considered the exposure to the color additives from the petitioned use. The agency notes that it is highly unlikely that the color additives or their components would migrate out of the contact lens into the aqueous environment of the eye, because: (1) These pigments are insoluble in aqueous media, and (2) they are an integral part of the contact lens. Therefore, the agency concludes that the exposure to the components of the color additives, including any impurities that may be present in them, from the petitioned use would be negligible (Ref. 1).

The agency notes that two of the components of the color additives, iron oxides (§ 73.3125) and titanium dioxide (§ 73.3126), already are listed for use as color additives in contact lenses. Therefore, the agency concludes that the use of iron oxides or titanium dioxide in mica-based pearlescent pigments does not present a safety concern (Ref. 2).

Although mica currently is not regulated for use as a color additive in contact lenses, it has been approved for safe use in coloring cosmetics generally, including those applied to the area of the eye, including the eyeball (§§ 73.2496 and 70.3(s)). Generally, the toxicological tests the agency requires to demonstrate that a color additive is safe for use in coloring cosmetics applied to the eye area are adequate to support the safety of a color additive used in contact lenses. In both cases, the tests must show that the color additive is safe and not expected to cause adverse effects under the conditions of use. This is reflected in the agency's current guidance document for contact lens manufacturers (Ref. 3).

In this case, the toxicological data which supported the approval of mica for use in eye area cosmetics are sufficient to support the safe use of mica in contact lenses. These data showed that instillation of a solution containing 5-percent mica directly into the eyes of rabbits did not produce any evidence of ocular or iridial irritation (Ref. 4). In contrast to this exaggerated and direct exposure to mica in the eye, the exposure to mica from its proposed use in contact lenses would be negligible, and if any incidental exposure to mica were to occur, it would not be a safety concern. Therefore, the agency concludes that mica also may be used safely to color contact lenses (Ref. 2).

The regulations listing mica for use in coloring drugs (§ 73.1496) and cosmetics (§ 73.2496) provide specifications to ensure the safe use of mica in those products. To ensure that the mica used in the manufacture of mica-based pearlescent pigments is of comparable purity to the already regulated mica, the agency is requiring in new § 73.3128 that mica used to manufacture the color additives meet the identity and specifications for mica in § 73.1496. The agency also has considered the need to establish purity specifications for the mica-based pearlescent pigments. As noted previously, the agency has determined that the exposure to the components of mica-based pearlescent pigments, including any impurities that may be present in them from the petitioned use, would be negligible. Given the negligible exposure to the color additive and the specifications that are being established for the mica component of the color additive, the agency concludes that it is not necessary to establish separate specifications for the mica-based pearlescent pigments in new § 73.3128.

### IV. Conclusion

Based on the data in the petition and other relevant material, FDA concludes that the petitioned use of mica-based pearlescent pigments as color additives in contact lenses is safe, the additives will achieve their intended technical effects, and thus, are suitable for this use. The agency concludes that part 73 should be amended as set forth in this document. In addition, based upon the factors listed in 21 CFR 71.20(b), the

agency concludes that certification of mica-based pearlescent pigments is not necessary for the protection of the public health.

### V. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

### VI. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for CAP 0C0271 (65 FR 36148, June 7, 2000). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

### VII. Paperwork Reduction Act of 1995

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

### VIII. Objections

Any person who will be adversely affected by this regulation may file with the Dockets Management Branch (see **ADDRESSES**) written objections by (see **DATES**). Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

### IX. References

1. Carberry, S. E., memorandum entitled ''Use of Mica-Based Pearlescent Pigments as Colorants for Contact Lenses'' from the Division of Petition Review (HFS–265) to the Division of Petition Review (HFS–265), Center for Food Safety and Applied Nutrition, FDA, March 28, 2002.

2. Johnson, C. B., memorandum entitled ''Use of Mica-Based Pearlescent Pigments to Color Contact Lenses: Toxicology Review'' from the Division of Petition Review (HFS–225) to the Division of Petition Review (HFS–215), Center for Food Safety and Applied Nutrition, FDA, November 9, 2001.

3. Center for Devices and Radiological Health, Premarket Notification (510(k)) Guidance Document for Daily Wear Contact Lenses, Addendum to Chemistry Guidance for Listing Color Additives in Contact Lenses, Part 5, p.149, (http://www.fda.gov/cdrh/ode/conta.html) May 1994.

4. Gittes, H. R., memorandum entitled ''Eye Area Studies'' from the Division of Toxicology (HFF–152) to the Petitions Control Branch (HFF–334), Center for Food Safety and Applied Nutrition, FDA, May 17, 1977.

### List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 73 is amended as follows:

## PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. The authority citation for 21 CFR part 73 continues to read as follows:

**Authority:** 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

2. Section 73.3128 is added to subpart D to read as follows:

#### § 73.3128 Mica-based pearlescent pigments.

(a) *Identity and specifications.* The color additive is formed by depositing titanium or iron salts from a basic solution onto mica, followed by calcination to produce titanium dioxide or iron oxides on mica. Mica used to manufacture the color additive shall conform in identity and specifications to the requirements of § 73.1496(a)(1) and (b).

(b) *Uses and restrictions.* (1) Mica-based pearlescent pigments listed in paragraph (a) of this section may be used as a color additive in contact lenses in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(2) Authorization and compliance with this use shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) with respect to the contact lenses in which the additive is used.

(c) *Labeling.* The label of the color additive shall conform to the requirements in § 70.25 of this chapter.

(d) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

Dated: September 30, 2002.

**L. Robert Lake,**

*Director, Office of Regulations and Policy, Center for Food Safety and Applied Nutrition.*

[FR Doc. 02–27048 Filed 10–23–02; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[TD 8869]**

**RIN 1545–AU77**

## Subchapter S Subsidiaries; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains corrections to final regulations (TD 8869), which were published in the **Federal Register** on Tuesday, January 25, 2000 (65 FR 3843), relating to the treatment of corporate subsidiaries of S corporations.

**EFFECTIVE DATE:** January 25, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jeanne M. Sullivan (202) 622–3070 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

The final regulations that are the subject of this correction are under section 1361 of the Internal Revenue Code.

**Need for Correction**

As published, final regulations (TD 8869) contains an error which may prove to be misleading and is in need of clarification.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

## PART 1—INCOME TAXES

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

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

**§ 1.1361–5 [Corrected]**

2. In § 1.1361–5, paragraph (c)(1), the first sentence is amended by removing the language ''paragraph (b) of this section)'' and adding the language ''§ 1.1362–5(b))'' in its place.

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).*

[FR Doc. 02–27042 Filed 10–23–02; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF DEFENSE

## Department of the Army; Corps of Engineers

## 33 CFR Part 334

## United States Navy Restricted Area, Narragansett Bay, East Passage, Coddington Cove, RI

**AGENCY:** United States Army Corps of Engineers, DoD.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Army Corps of Engineers is amending its regulations to establish a restricted area in waters adjacent to Naval Station Newport in Newport, Rhode Island. This amendment will close off an open area in Coddington Cove east of a line that connects Coddington Point at latitude 41° 31′ 24.0″ N, longitude 071° 19′ 24.0″ W; with the outer end of the Coddington Cove Breakwater on the north side of the cove at latitude 41° 31′ 55.7″ N, longitude 071° 19′ 28.2″ W. The regulations are necessary to safeguard Navy vessels and United States Government facilities from sabotage and other subversive acts, accidents, or incidents of similar nature. These regulations are also necessary to protect the public from potentially hazardous conditions which may exist as a result of Navy use of the area.

**EFFECTIVE DATE:** November 25, 2002.

**ADDRESSES:** U.S. Army Corps of Engineers, ATTN: CECW–OR, 441 G Street, NW., Washington, DC 20314–1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, DC at (202) 761–4618, or Mr. Richard Roach, Corps of Engineers, New England District, Regulatory Division, at (978) 318–8211 or (800) 343–4789.

**SUPPLEMENTARY INFORMATION:** Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and chapter XIX, of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3) the Corps is amending the restricted area regulations in 33 CFR part 334 by adding § 334.81 to establish a restricted area in waters adjacent to Naval Station Newport at Newport Rhode Island.

**Procedural Requirements**

*A. Review Under Executive Order 12866*

This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

*B. Review Under the Regulatory Flexibility Act*

This rule has been reviewed under the Regulatory Flexibility Act (Public Law 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The Corps expects that the economic impact of this restricted area will have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this rule will have no significant economic impact on small entities.

*C. Review Under the National Environmental Policy Act*

The New England District has prepared an Environmental Assessment (EA) for this action. We have concluded, based on the minor nature of the additional restricted area regulations, that this action will not have a significant impact to the quality of the human environment, and preparation of an Environmental Impact Statement (EIS) is not required. The EA may be reviewed at the New England District office listed at the end of **FOR FURTHER INFORMATION CONTACT,** above.

*D. Unfunded Mandates Act*

This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of section 202 or 205 of the Unfunded Mandates Act. We have also found under section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

*E. Submission to Congress and the General Accounting Office*

Pursuant to section 801(a)(1)(A) of the Administrative Procedure Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the Army has submitted a report containing this Rule to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office. This Rule is not a major Rule within the meaning of section 804(2) of the Administrative Procedure Act, as amended.

**List of Subjects in 33 CFR Part 334**

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

## PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

**Authority:** 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.81 is added to read as follows:

**§ 334.81 Narragansett Bay, East Passage, Coddington Cove, Naval Station Newport, Naval Restricted Area, Newport, Rhode Island.**

(a) *The area.* All of the navigable waters of Coddington Cove east of a line that connects Coddington Point at latitude 41° 31′ 24.0″ N, longitude 071° 19′ 24.0″ W; with the outer end of the Coddington Cove Breakwater on the north side of the cove at latitude 41° 31′ 55.7″ N, longitude 071° 19′ 28.2″ W.

(b) *The regulation.* All persons, swimmers, vessels and other craft, except those vessels under the supervision or contract to local military or Naval authority, vessels of the United States Coast Guard, and local or state law enforcement vessels, are prohibited from entering the restricted area without specific permission from the Commanding Officer, Naval Station Newport, USN, Newport, Rhode Island or his/her authorized representative.

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the United States Navy, Commanding Officer Naval Station Newport, and/or such agencies or persons as he/she may designate.

Dated: September 26, 2002.

**Michael G. Ensch,**

*Acting Chief, Operations Division, Directorate of Civil Works.*

[FR Doc. 02–26646 Filed 10–23–02; 8:45 am]

**BILLING CODE 3710–92–P**

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–2002–0235; FRL–7276–9]**

## Clopyralid; Pesticide Tolerance Technical Correction

**AGENCY:** Environmental Protection Agency (EPA).

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

**SUMMARY:** EPA issued a final rule in the **Federal Register** of September 25, 2002, establishing tolerances for clopyralid. This document is being issued to correct unnecessary tolerances for meat byproducts except kidney of cattle, goats, horses, and sheep at 1.0 parts per million.

**DATES:** This regulation is effective October 24, 2002.

**FOR FURTHER INFORMATION CONTACT:** By mail: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 305–6224; and e-mail address: miller.joanne@epamail.epa.gov

**SUPPLEMENTARY INFORMATION:**

### I. Does this Action Apply to Me?

The Agency included in the final rule a list of those who may be potentially affected by the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0235. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

### III. What Does this Technical Correction Do?

Tolerances for clopyralid on various commodities were published in the **Federal Register** on September 25, 2002 (67 FR 60152) (FRL–7198–4) including meat byproducts except liver of cattle, goats, horses and sheep at 36.0 parts per million. These tolerances superseded tolerances previously established for meat byproducts except kidney of cattle, goats, horses and sheep at 1.0 ppm. This technical correction removes the lower tolerances from § 180.431.

### IV. Why is this Correction Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's technical correction final without prior proposal and opportunity for comment, because EPA is merely correcting the section to remove certain commodities from the previously published final rule. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

### V. Do Any of the Regulatory Assessment Requirements Apply to this Action?

This action corrects tolerances established under section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this technical correction has been exempted from review under Executive Order 12866 due to its lack of significance, this technical correction is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). In addition, this technical correction does not contain any information collections subject to OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels, or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

## VI. Submission to Congress and the Comptroller General

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

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 4, 2002.

**Peter Caukins,**

*Acting Director, Registration Division, Office of Pesticide Programs*

Therefore, 40 CFR part 180 is corrected as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346(a) and 371.

### § 180.431 [Amended]

2. In § 180.431, in paragraph (a), the table is amended by removing the entries for ''cattle, meat byproducts, except kidney''; ''goats, meat byproducts, except kidney''; ''horses, meat byproducts, except kidney''; and ''sheep, meat byproducts, except kidney.''

[FR Doc. 02–27132 Filed 10–23–02; 8:45 am]

BILLING CODE 6560–50–S

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 300

**[FRL–7399–6]**

## National Priorities List for Uncontrolled Hazardous Waste Sites

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds one new site to the NPL; the Libby Asbestos site located in Libby, Montana. It is being added to the General Superfund Section of the NPL.

**EFFECTIVE DATE:** The effective date for this amendment to the NCP shall be November 25, 2002.

**ADDRESSES:** For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see section II, ''Availability of Information to the Public'' in the **SUPPLEMENTARY INFORMATION** portion of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center; Office of Emergency and Remedial Response (mail code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW; Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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## I. Background

### *A. What Are CERCLA and SARA?*

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act

(''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

*B. What Is the NCP?*

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' (''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases 42 U.S.C. 9601(23).)

*C. What Is the National Priorities List (NPL)?*

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

*D. How Are Sites Listed on the NPL?*

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on September 5, 2002 (67 FR 56757).

*E. What Happens to Sites on the NPL?*

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions * * *.'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

*F. How Are Site Boundaries Defined?*

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which that contamination has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is

not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the name ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the problem presented by the release'' will be determined by a remedial investigation/feasibility study (RI/FS) as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

*G. How Are Sites Removed From the NPL?*

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

As of October 1, 2002, the Agency has deleted 265 sites from the NPL.

*H. Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up?*

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of October 1, 2002, EPA has deleted 32 portions of 29 sites.

*I. What Is the Construction Completion List (CCL)?*

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL.

As of October 1, 2002, there are a total of 846 sites on the CCL. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund.*

## II. Availability of Information to the Public

*A. Can I Review the Documents Relevant to This Final Rule?*

Yes, documents relating to the Libby Asbestos site in this final rule are contained in dockets located both at EPA Headquarters and in the Region 8 office.

*B. What Documents Are Available for Review at the Headquarters and Region 8 Dockets?*

The Headquarters and Region 8 dockets for this rule contain the documents that formed the basis for Montana's decision to designate the site as its top priority. The Dockets also contain comments received, and the Agency's responses to those comments. The Agency's responses are contained in the ''Support Document for the Revised National Priorities List Final Rule—Libby Asbestos, October 2002.''

*C. How Do I Access the Documents?*

You may view the documents, by appointment only, after the publication of this document. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room B102, Washington, DC 20004, 202/566–0276.

The contact information for the Region 8 docket is: David Williams, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–SA, Denver, CO 80202–2466; 303/312–6757.

*D. How Can I Obtain a Current List of NPL Sites?*

You may obtain a current list of NPL sites via the Internet at *http://www.epa.gov/superfund/* (look under the Superfund sites category) or by contacting the Superfund Docket (see contact information above).

## III. Contents of This Final Rule

*A. Addition to the NPL*

This final rule adds one site to the NPL; the Libby Asbestos site located in Libby, Montana. It is being added to the General Superfund Section of the NPL based on its designation as a State top priority pursuant to CERCLA section 105(a)(8)(B) and section 300.425(c)(2) of the NCP.

*B. Status of NPL*

With the one new site added to the NPL in today's final rule; the NPL now contains 1,234 final sites; 1,076 in the General Superfund Section and 158 in the Federal Facilities Section. In addition, there are 61 sites proposed and awaiting final agency action, 55 in the General Superfund Section and 6 in

the Federal Facilities Section. Final and proposed sites now total 1,295. (These numbers reflect the status of sites as of October 1, 2002. Site deletions occurring after this date may affect these numbers at time of publication in the **Federal Register**.)

*C. What Did EPA Do With the Public Comments It Received?*

EPA reviewed all comments received on the Libby Asbestos site which was proposed to the NPL on February 26, 2002 (67 FR 8836).

EPA responded to all relevant comments received and EPA's responses to site-specific public comments are addressed in the ''Support Document for the Revised National Priorities List Final Rule—Libby Asbestos, October 2002.''

**IV. Executive Order 12866**

*A. What Is Executive Order 12866?*

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

*B. Is This Final Rule Subject to Executive Order 12866 Review?*

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

**V. Unfunded Mandates**

*A. What Is the Unfunded Mandates Reform Act (UMRA)?*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

*B. Does UMRA Apply to This Final Rule?*

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

**VI. Effect on Small Businesses**

*A. What Is the Regulatory Flexibility Act?*

Pursuant to 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 effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

*B. How Has EPA Complied With the Regulatory Flexibility Act?*

This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of a hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this rule does not impose any requirements on any small entities. For the foregoing reasons, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

## VII. Possible Changes to the Effective Date of the Rule

*A. Has This Rule Been Submitted to Congress and the General Accounting Office?*

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 has submitted 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 rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*B. Could the Effective Date of This Final Rule Change?*

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

*C. What Could Cause the Effective Date of This Rule to Change?*

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919,103 S. Ct. 2764 (1983) and Bd. of Regents of the University of *Washington* v. *EPA*, 86 F.3d 1214,1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

## VIII. National Technology Transfer and Advancement Act

*A. What Is the National Technology Transfer and Advancement Act?*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

*B. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?*

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

## IX. Executive Order 12898

*A. What Is Executive Order 12898?*

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

*B. Does Executive Order 12898 Apply to This Final Rule?*

No. While this rule revises the NPL, no action will result from this rule that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

## X. Executive Order 13045

*A. What Is Executive Order 13045?*

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. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is

preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

*B. Does Executive Order 13045 Apply to This Final Rule?*

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

**XI. Paperwork Reduction Act**

*A. What Is the Paperwork Reduction Act?*

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

*B. Does the Paperwork Reduction Act Apply to This Final Rule?*

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

**XII. Executive Orders on Federalism**

*What Are the Executive Orders on Federalism and Are They Applicable to This Final Rule?*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

**XIII. Executive Order 13084**

*What Is Executive Order 13084 and Is It Applicable to This Final Rule?*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Under section 3(b) of Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments, or EPA consults with those governments. The addition of sites to the NPL will not impose any substantial direct compliance costs on Tribes. While Tribes may incur costs from participating in the investigations and cleanup decisions, those costs are not compliance costs. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this final rule.

**XIV. Executive Order 13175**

*A. What Is Executive Order 13175?*

Executive Order 13175, entitled ''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.''

*B. Does Executive Order 13175 Apply to This Final Rule?*

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this final rule.

**XV. Executive Order 13211**

*A. What Is Executive Order 13211?*

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally

published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.''

*B. Is This Rule Subject to Executive Order 13211?*

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866 (See discussion of Executive Order 12866 above.)

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous substances, hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: October 18, 2002.

**Marianne Lamont Horinko,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

40 CFR part 300 is amended as follows:

## PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. Table 1 of Appendix B to part 300 is amended by adding the following site in alphabetical order to read as follows:

**Appendix B to Part 300—National Priorities List**

TABLE 1.—GENERAL SUPERFUND SECTION

| State | Site name | City/County | Notes [a] |
|---|---|---|---|
| * | * | * | * |
| MT | Libby Asbestos | Libby | S |
| * | * | * | * |

[a] A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (if scored, HRS score need not be ≤ 28.50).
C = Sites on construction completion list.
S = State top priority (included among the 100 top priority sites regardless of score).
P = Sites with partial deletion(s).

[FR Doc. 02–27127 Filed 10–23–02; 8:45 am]
BILLING CODE 6560–50–P

## GENERAL SERVICES ADMINISTRATION

## 41 CFR Part 302–3

**[FTR Amdt. 108; Correction]**

## Federal Travel Regulation; Corrections and Additions; Correction

**AGENCY:** Office of Governmentwide Policy, GSA.

**ACTION:** Final rule; correction.

**SUMMARY:** This is to correct the final rule published in the **Federal Register** at 67 FR 57963, September 13, 2002, by changing an entry and reference that was inadvertently revised.

**EFFECTIVE DATE:** October 24, 2002.

**FOR FURTHER INFORMATION CONTACT:** Ms. Laurie Duarte at (202) 501–4755, General Services Administration, Regulatory Secretariat, Washington, DC 20405.

**Correction**

In final rule document 02–22414 beginning on page 57963 in the issue of September 13, 2002, make the following correction:

**§ 302–3.101 [Corrected]**

On page 57969, in the first column below the table, correct amendatory instruction 58 to read as follows:

58. Amend § 302–3.101 by removing from Table A, column 2, entry 4, ''Use of relocation service companies (part 302–12 of this chapter)'' and adding ''Use of a relocation services company (part 302–12 of this chapter).'' in its place; and amending Table B, column 2, entry 5, by removing ''302–15'' and adding ''301.15'' in its place.

Dated: October 15, 2002.

**Rodney Lantier,**

*Director, Regulatory and Federal Assistance Publications Division.*

[FR Doc. 02–26842 Filed 10–23–02; 8:45 am]
BILLING CODE 6820–14–P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 11

**[EB Docket No. 01–66; DA 02–2312]**

## FCC Certification of Emergency Alert System (EAS) Decoder

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission announces that An equipment authorization for an EAS decoder unit has been granted to equipment Manufacturer TFT, Inc. Low Power FM (LPFM) stations and cable systems that serve fewer Than 5,000 subscribers may comply with EAS equipment requirement requirements by Installing an EAS decoder unit, rather than and EAS encoder/decoder unit.

**DATES:** Effective October 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** Bonnie Gay at (202) 418–1228.

**SUPPLEMENTARY INFORMATION:** In a Report and Order released on February 26, 2002, the Commission granted low power FM stations a temporary waiver of the requirement in the EAS rules to

install FCC-certified decoders. This Commission action was based upon the fact that, at that time, there were no FCC-certified EAS decoders on the market. The Commission, therefore, amended the EAS rules to exempt low power FM stations from installing FCC-certified EAS decoders until one year after the Commission published in the **Federal Register** a Public Notice indicating that at least one EAS decoder has been certified. The Commission also amended the EAS rules in the Report and Order to permit cable systems serving fewer than 5,000 subscribers to use an FCC-certified decoder, if such a device became available by October 1, 2002, in lieu of an encoder/decoder unit.

On July 23, 2002, the Commission staff granted an equipment authorization for an EAS decoder unit to equipment manufacturer TFT, Inc.

Accordingly, within one year of publication of this Public Notice in the **Federal Register**, LPFM station will be required to install certified EAS decoders. In addition, cable systems that serve fewer than 5,000 subscribers may comply with the Commission's requirement to install EAS equipment by October 1, 2002, by installing a certified EAS decoder, rather than both an encoder and a decoder.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02–27093 Filed 10–23–02; 8:45 am]

BILLING CODE 6712–02–P

# Proposed Rules

Federal Register
Vol. 67, No. 206
Thursday, October 24, 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 TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. 02–AEA–12]**

### Amendment to Class D Airspace, Norfolk NAS, VA

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed amendment would lower the upper limit of the Class D airspace at Norfolk NAS, Norfolk, VA. This action would lower the upper limits of the existing Class D airspace from 2,500 feet mean sea level (MSL) to up to but not including 2,000 feet MSL. This upper limit would coincide with the lower limit of the Norfolk, VA Class C airspace.

**DATES:** Comments must be received on or before December 1, 2002.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 02–AEA–12, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

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

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

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 02–AEA–12''. The postcard will be date/time stamped and returned to the commenter. All commenters received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket closing both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRMs

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

#### The Proposal

The FAA is considering an action to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to adjust the controlled airspace for Instrument Flight Rules (IFR) procedures at NAS Norfolk (Chambers), Norfolk, VA. This action would lower the upper limit of the Class D airspace from 2,500 feet MSL to 2,000 feet MSL. This lower ceiling of the Class D airspace would coincide with the lower limit of the Norfolk, VA Class C airspace and remove the overlap in airspace designations.

Class D airspace designations for airspace areas extending upward from the surface of the earth are published in Paragraph 5000 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

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

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

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

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

### PART 71—[AMENDED]

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

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

#### § 71.1 [Amended]

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

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

* * * * *

**AEA VA D Norfolk NAS, VA [Revised]**

NAS Norfolk (Chambers), Norfolk, VA
(Lat. 36°56′15″N., long. 76°17′25″W.)

That airspace extending upward from the surface to but not including 2,000 feet MSL within a 4.3-mile radius of NAS Norfolk (Chambers) excluding that airspace southeast of a line connecting the 4.3-mile radius of Norfolk NAS and the 5-mile radius of Norfolk International Airport.

* * * * *

Issued in Jamaica, New York, on October 9, 2002.

**John G. McCartney,**

*Acting Assistant Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 02–26582 Filed 10–23–02; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 02–AEA–03]**

## Proposed Amendment to Class E Airspace; Philadelphia, PA

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to amend the Class E airspace area at Philadelphia, PA. The proliferation of airports within a thirty seven mile radius of Philadelphia International Airport with approved Instrument Flight Rules (IFR) operations and the resulting overlap of designated Class E–5 airspace has made this proposal necessary. The proposal would consolidate the Class E–5 airspace designations for twenty six airports and result in the recision of fourteen separate Class E–5 descriptions through separate rulemaking action. The area would be depicted on aeronautical charts for pilot reference.

**DATES:** Comments must be received on or before November 25, 2002.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 02–AEA–03, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

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

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 02–AEA–03.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRMs

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

### The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Philadelphia, PA. The proposal would consolidate the following Class E–5 airspace designations into the Philadelphia, PA designation: Philadelphia International Airport, PA; North Philadelphia Airport, PA; Wings Airfield, PA; Willow Grove NAS, PA; Rhone-Poulenc Rorer Collegeville Heliport, PA; Pennridge Airport, PA; Quakertown Airport, PA; Doylestown Airport, PA; Collegeville/Perkiomen Valley Airport, PA; Pottstown-Limerick Airport, PA; Pottstown Municipal Airport, PA; Brandywine Airport, PA; Toughkennamon/New Garden Airport, PA; Chester County G. O. Carlson Airport, PA; New Castle County Airport, DE; Summit Airpark, DE; Trenton Mercer Airport, NJ; South Jersey Regional Airport, NJ; Flying W Airport, NJ; Cross Keys Airport, NJ; Red Lion Airport, NJ; Camden County Airport, NJ; Hammonton Municipal Airport, NJ; Rudy's Airport, NJ; Kroelinger Airport, NJ; and Millville Municipal Airport, NJ. This action would result in the recision of fourteen Class E–5 designations under a separate docket. The affected airspace would subsequently be incorporated into the Philadelphia, PA description. The airspace will be defined to accommodate the approaches and contain IFR operations to and from those airports. This change would have no impact on aircraft operations since the type of airspace designation is not changing. Furthermore, the IFR approach procedures for the individual airports within the area would not be affected. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

## PART 71—[AMENDED]

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

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

**§ 71.1 [Amended]**

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

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

* * * * *

**AEA PA E5 Philadelphia, PA [Revised]**

Philadelphia International Airport
(Lat. 39°52′19″ N., long. 75°14′28″ W.)
Chester County G. O. Carlson Airport, PA
(Lat. 39°58′44″ N., long. 75°51′56″ W.)
New Castle County Airport, DE
(Lat. 39°40′43″ N., long. 75°36′24″ W.)
Summit Airpark, DE
(Lat. 39°31′13″ N., long. 75°43′14″ W.)
Millville Municipal Airport, NJ
(Lat. 39°22′05″ N., long. 75°04′25″ W.)

That airspace extending upward from 700 feet above the surface within a 31-mile radius of Philadelphia International Airport extending clockwise from a 225° bearing to a 307° bearing from the airport and within a 37-mile radius of Philadelphia International Airport extending from a 307° bearing to a 053° bearing from the airport and within a 33-mile radius of Philadelphia International Airport extending from a 053° bearing to a 173° bearing from the airport and within a 10-mile radius of Philadelphia International Airport extending from a 173° bearing from the airport and within a 7-mile radius of Chester County G. O. Carlson Airport and within a 6.7-mile radius of New Castle County Airport and within a 8-mile radius of Summit Airpark and within a 6.5-mile radius of Millville Municipal Airport, excluding the airspace that coincides with the Wrightstown, NJ; Pittstown, NJ; Princeton, NJ; Reading, PA; and Allentown, PA Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on October 9, 2002.

**John G. McCartney,**

*Acting Assistant Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 02–26583 Filed 10–23–02; 8:45 am]

BILLING CODE 4910–13–M

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## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Part 240

**[Release Nos. 34–46685; IC–25773; File No. S7–39–02]**

**RIN 3235–AI67**

## Improper Influence on Conduct of Audits

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** As directed by Section 303(a) of the Sarbanes-Oxley Act of 2002, we are proposing rules to prohibit officers and directors of an issuer, and persons acting under the direction of an officer or director, from taking any action to fraudulently influence, coerce, manipulate or mislead the auditor of the issuer's financial statements for the purpose of rendering the financial statements materially misleading.

**DATES:** Comments should be received on or before November 25, 2002.

**ADDRESSES:** You should send three copies of your comments to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. You also may submit your comments electronically to the following address: *rule-comments@sec.gov.* Please use only one method of delivery. All comment letters should refer to File No. S7–39–02; this file number should be included in the subject line if you use electronic mail. Comment letters will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549–0102. We will post electronically-submitted comment letters on the Commission's Internet Web site (*http://www.sec.gov*). We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Kigin, Associate Chief Accountant, or Robert E. Burns, Chief Counsel, at (202) 942–4400, Office of the Chief Accountant, or Fiona A. Philip, Senior Counsel, or David M. Estabrook, Associate Chief Accountant, at (202) 942–4510, Division of Enforcement, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** We are proposing to redesignate rule 13b2–2 of Regulation 13B–2[1] as rule 13b2–2(a) and to add new rule 13b2–2(b).

### I. Executive Summary

On July 30, 2002, the Sarbanes-Oxley Act of 2002 (the ''Act'')[2] was enacted. Section 303(a) of the Act states:

> It shall be unlawful, in contravention of such rules or regulations as the Commission shall prescribe as necessary or appropriate in the public interest and for the protection of investors, for any officer or director of an issuer, or any other person acting under the direction thereof, to take any action to fraudulently influence, coerce, manipulate, or mislead any independent public or certified accountant engaged in the performance of an audit of the financial statements of that issuer for the purpose of rendering such financial statements materially misleading.

As mandated by the Act, the Commission is proposing rules to implement section 303(a).[3] The proposed rules, in combination with the existing rules under Regulation 13B–2, are designed to ensure that management makes open and full disclosures to, and has honest discussions with, the auditor of the issuer's financial statements. These rules prohibit officers or directors of an issuer,[4] or persons acting under

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[1] 17 CFR 240.13b2–1 *et seq.*

[2] Pub. L. 107–204, 116 Stat. 745 (2002).

[3] Section 303 of the Act states:

(a) RULES TO PROHIBIT.—It shall be unlawful, in contravention of such rules or regulations as the Commission shall prescribe as necessary or appropriate in the public interest and for the protection of investors, for any officer or director of an issuer, or any other person acting under the direction thereof, to take any action to fraudulently influence, coerce, manipulate, or mislead any independent public or certified accountant engaged in the performance of an audit of the financial statements of that issuer for the purpose of rendering such financial statements materially misleading.

(b) ENFORCEMENT.—In any civil proceeding, the Commission shall have exclusive authority to enforce this section and any rule or regulation issued under this section.

(c) NO PREEMPTION OF OTHER LAW.—The provisions of subsection (a) shall be in addition to, and shall not supersede or preempt, any other provision of law or any rule or regulation issued thereunder.

(d) DEADLINE FOR RULEMAKING.—The Commission shall ''

(1) propose the rules or regulations required by this section, not later than 90 days after the date of enactment of this Act; and

(2) issue final rules or regulations required by this section, not later than 270 days after that date of enactment.

[4] The proposed rules would be included in Regulation 13B–2 under the Securities Exchange

Continued

their direction, from subverting the auditor's responsibilities to investors to conduct a diligent audit of the financial statements and to provide a true report of the auditor's findings.

## II. Discussion of Proposed Rules

### *A. Introduction*

The proposed rules would supplement the rules currently in Regulation 13B–2. The current rules address the falsification of books, records and accounts [5] and false or misleading statements, or omissions to make certain statements, to accountants.[6] Proposed rule 13b2–2(b)(1), which substantially would mirror the language in section 303(a) of the Act, specifically would prohibit officers and directors, and persons acting under their direction, from fraudulently influencing, coercing, manipulating or misleading the auditor of the issuer's financial statements for the purpose of rendering the issuer's financial statements misleading. Proposed rule 13b2–2(b)(2) would provide examples of actions that improperly influence an auditor that could result in ''rendering the issuer's financial statements materially misleading.'' This paragraph also would clarify that such actions should not occur at any time in connection with the professional engagement.

### *B. Discussion*

Proposed rule 13b2–2(b)(1) would address activities by an officer or director of an issuer, or any other person acting under the direction of an officer or director. The Commission has defined the term ''officer'' to include the company's ''president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any person routinely performing corresponding functions with respect to any organization whether incorporated or unincorporated.'' [7] The term ''officer'' includes an issuer's chief executive officer and other executive officers.[8]

Should We Amend the Definition of ''Officer'' in Rule 3b–2 To Include Specific References to Additional Individuals and Entities Who May Perform ''Corresponding Functions''? Should We Amend Regulation 13B2 To Craft a Special Definition of a Public Company Officer for the Purposes of that Regulation? If We Amend Rule 3b–2 or Regulation 13B–2, Who Should Be Included or Excluded From the Definition of ''Officer''?

As noted above, proposed rule 13b2–2(b)(1) would cover the activities of not only officers and directors of the issuer who engage in an attempt to misstate financial statements but also ''any other person acting under the direction thereof.'' Activities by such ''other persons'' currently may constitute violations of the anti-fraud or other provisions of the securities laws [9] or aiding or abetting [10] or causing [11] an issuer's violations of the securities laws. Section 303(a) and the proposed rule would provide the Commission [12] with an additional means of addressing efforts by persons acting under the direction of an officer or director to improperly influence the audit process and the accuracy of the issuer's financial statements. We interpret Congress' use of the term ''direction'' to encompass a broader category of behavior than ''supervision.''[13] In other words, someone may be ''acting under the direction'' of an officer or director even if they are not under the supervision or control of that officer or director. Such persons might include not only the issuer's employees but also, for example, customers, vendors or creditors who, under the direction of an officer or director, provide false or misleading confirmations or other false or misleading information to auditors, or who enter into ''side agreements.'' In appropriate circumstances, persons acting under the direction of officers and directors also may include other partners or employees of the accounting firm (such as consultants or forensic accounting specialists retained by counsel for the issuer) and attorneys, securities professionals, or other advisers who, for example, pressure an auditor to limit the scope of the audit, to issue an unqualified report on the financial statements when such a report would be unwarranted,[14] to not object to an inappropriate accounting treatment, or not to withdraw an issued opinion on the issuer's financial statements. In the case of a registered investment company, persons acting under the direction of officers and directors of the investment company may include, among others, officers, directors, and employees of the investment company's investment adviser, sponsor, depositor, administrator, principal underwriter,

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Act of 1934 (''Exchange Act''). Section 3(a)(8) of the Exchange Act, 15 U.S.C. 78c(a)(8), defines ''issuer'' as follows:

The term ''issuer'' means any person who issues or proposes to issue any security; except that with respect to certificates of deposit for securities, voting trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or of the fixed, restricted management, or unit type, the term ''issuer'' means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; and except with respect to equipment-trust certificates or like securities, the term ''issuer'' means the person by whom the equipment or property is, or is to be, used.

[5] 17 CFR 240.13b2–1 states that no person shall, directly or indirectly, falsify or cause to be falsified, any book, record or account subject to section 13(b)(2)(A) of the Exchange Act. Section 13(b)(2) of the Exchange Act states:

Every issuer which has a class of securities registered pursuant to section 12 of this title and every issuer which is required to file reports pursuant to section 15(d) of this title shall (A) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

[6] 17 CFR 240.13b2–2 states that no director or officer of an issuer, in connection with an audit or examination of the issuer's financial statements or the preparation of any document or report to be filed with the Commission, directly or indirectly shall (a) make or cause to be made a materially false or misleading statement to an accountant or (b) omit to state, or cause another person to omit to state, any material fact necessary to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant.

[7] Rule 3b–2 under the Exchange Act, 17 CFR 240.3b–2. A person may be an ''officer'' for purposes of Rule 3b–2 regardless of the person's title or the legal entity with which he or she is associated. For example, officers of wholly owned subsidiaries of public companies and promoters may be ''officers'' of public companies.

The definition of ''director'' under the Exchange Act has a similar functional and flexible nature. *See* section 3(a)(7) of the Exchange Act, 15 U.S.C. 78c(a)(7), which states, ''The term 'director' means any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unicorporated.''

[8] Rule 3b–7 under the Exchange Act, 17 CFR 240.3b–7, states, ''The term ''executive officer,'' when used with reference to a registrant, means its president, vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration, or finance), any other officer who performs a policy making function or any other person who performs similar policy making functions for the registrant. Executive officers of subsidiaries may be deemed executive officers of the registrant if they perform such policy making functions for the registrant.''

[9] See, *e.g.*, Section 10(b) of the Exchange Act, 15 U.S.C. 78j, and Rule 10b–5 thereunder, 17 CFR 240.10b–5.

[10] See, *e.g.*, section 20(e) of the Exchange Act, 15 U.S.C. 78t(e).

[11] See, *e.g.*, section 21C of the Exchange Act, 15 U.S.C. 78u–3.

[12] Section 303(b) of the Act states, ''The Commission shall have exclusive authority to enforce this section and any rule or regulation issued under this section.''

[13] See, *e.g.*, Webster's Dictionary (9th edition), which defines ''direction'' to include not only guidance or supervision of action or conduct but also explicit instruction.

[14] ''An 'unqualified opinion' [or unqualified report] states that the financial statements present fairly, in all material respects, the financial position, results of operations, and cash flows of the entity in conformity with generally accepted accounting principles.'' AICPA, Statement on Auditing Standards No. (''SAS'') 58, ''Reports on Audited Financial Statements,'' ¶ 10; Codification of Statements on Auditing Standards (''AU'') § 508.10.

custodian, transfer agent, or other service providers.[15]

Should We Define by Rule the Scope of ''Any Other Person Acting Under the Direction'' of an Officer or Director?

Proposed rule 13b2–2(b)(1) addresses ''any action to fraudulently influence, coerce, manipulate, or mislead'' the auditor of the issuer's financial statements for the purpose of rendering the financial statements materially misleading. Much of the conduct addressed by this section, particularly efforts to ''manipulate or mislead'' the auditor, generally would be subject to other provisions of the securities laws and the Commission's regulations, including the existing rules in Regulation 13B–2. The proposed rule, however, would provide an additional means to address conduct to fraudulently influence,[16] coerce, manipulate, or mislead an auditor during his or her examination or review of the issuer's financial statements, including conduct that did not succeed in affecting the audit or review.[17] Types of conduct that the Commission believes might constitute improper influence include, but are not limited to, directly or indirectly:

- Offering or paying bribes or other financial incentives, including offering future employment or contracts for non-audit services,
- Providing an auditor with inaccurate or misleading legal analysis,
- Threatening to cancel or canceling existing non-audit or audit engagements if the auditor objects to the issuer's accounting,
- Seeking to have a partner removed from the audit engagement because the partner objects to the issuer's accounting,
- Blackmailing, and
- Making physical threats.

The facts and circumstances of each case, including the purpose of the conduct (as discussed below), would be relevant to determining whether the conduct would violate the proposed rule.

Should the Types of Conduct That Might Constitute Actions To Fraudulently Influence an Auditor Be Set Forth in the Rule? If so, Which Items Listed in the Preceding Paragraph Should Be Included or Excluded? What Additional Types of Conduct, if any, Should Be Included?

Proposed rule 13b2–2(b)(1) would address the improper influence of ''any independent public or certified public accountant'' engaged in the performance of an audit or review of an issuer's financial statements.[18] Prior to the adoption of the Act, similar phrases commonly were used in the securities laws and the Commission's regulations to refer to the accountant providing audit and review services to a Commission registrant. Although the Act, in anticipation of accounting firms registering with the Public Company Accounting Oversight Board (the ''Board''),[19] changed several of these references,[20] such terms continue to appear in certain sections of the securities law[21] and related schedules.[22] We believe that section 303 of the Act includes all accountants[23] engaged in auditing or reviewing an issuer's financial statements or issuing attestation reports[24] to be filed with the Commission. Once firms are required to register with the Board, the term ''independent public or certified public accountant,'' as used in the proposed rule, would include registered public accounting firms[25] and persons associated with such a public accounting firm,[26] as defined in the Act.

Should We Define by Rule the Phrase ''Independent Public or Certified Public Accountant''? The Rules Currently in Regulation 13B–2 Refer to ''Accountant'' as Opposed to ''Independent Public or Certified Public Accountant.'' Should These Rules, or the Proposed Rules, be Changed To Refer to the Same Term? Which Term Should Be Used?

Proposed rule 13b2–2(b)(1) tracks the language in section 303(a) of the Act regarding the improper influence of an accountant ''engaged in the performance of an audit'' of the issuer's financial statements. Both the Commission[27] and the accounting profession[28] have recognized that the need for an auditor to maintain an independent and unbiased attitude begins when the accountant is selected to perform audit

[15] Some of these individuals also would be covered under provisions of the rule tailored to investment companies. *See* section II.C. of this release, *Issues Related to Investment Companies*.

[16] We view ''fraudulently'' as modifying only ''influence.''

[17] It is the act of fraudulently influencing, coercing, manipulating, or misleading the auditor, for the purpose of rendering misleading financial statements, that is unlawful. There is no requirement in section 303(a) of the Act that the purpose be achieved.

[18] Section 303(a) uses the phrase ''independent public or certified accountant,'' which appears, for example, in items 25, 26 and 27 of Schedule A to the Securities Act of 1933. 15 U.S.C. 77aa(25), (26) and (27). Since the passage of the 1933 Act, however, the general reference to ''certified accountant'' has been replaced by ''certified public accountant.'' To avoid any possible confusion, we have used ''certified public accountant'' in the proposed rules.

[19] *See* section 102 of the Act, which provides that beginning 180 days after the Commission determines that the Board, as established by Title I of the Act, is appropriately organized and has the capacity to carry out and enforce the requirements of that title, it shall be unlawful for any person that is not a registered public accounting firm to prepare any audit report with respect to any issuer.

[20] *See, e.g.*, sections 205(b) and (c) of the Act.

[21] *See, e.g.*, section 13(a) of the Exchange Act, 15 U.S.C. 78m(a), and section 8(e) of the Securities Act of 1933 (the ''1933 Act''), 15 U.S.C. 77h(e).

[22] *See, e.g.*, items 25, 26 and 27 of Schedule A of the 1933 Act, 15 U.S.C. 77aa(25), (26) and (27).

[23] The rule would apply regardless of whether the accountant was a certified public accountant. For example, some states require accountants to have years of experience before being deemed to be a CPA. Efforts to mislead such an individual during his or her performance of audit procedures would fall within the proposed rules.

[24] *See, e.g.*, section 404 of the Act, which mandates that the Commission prescribe rules that require (1) each annual report filed under sections 13(a) and 15(d) of the Exchange Act contain a management statement of responsibilities for, and assessment of the effectiveness of, the issuer's internal control structure and procedures for financial reporting, and (2) the auditor to attest to, and report on, the assessment made by management.

[25] Section 2(a)(12) of the Act defines ''registered public accounting firm'' to mean ''a public accounting firm registered with the Board in accordance with this Act.''

[26] Section 2(a)(9)(A) of the Act defines ''person associated with a public accounting firm'' (or with a ''registered public accounting firm'') to mean ''any individual proprietor, partner, shareholder, principal, accountant, or other professional employee of a public accounting firm, or any other independent contractor or entity that, in connection with the preparation or issuance of any audit report—(i) shares in the profits of, or receives compensation in any other form from, that firm, or (ii) participates as agent or otherwise on behalf of such accounting firm in any activity of that firm.'' The Board, in section 2(a)(9)(B) of the Act, is given limited authority to exempt persons performing only ministerial tasks.

[27] Rule 2–01(f)(5)(ii) of Regulation S–X, 15 CFR 210.2–01(f)(5)(ii), which defines the ''professional engagement period'' to be: ''The period of the engagement to audit or review the audit client's financial statements or to prepare a report filed with the Commission,'' and states: ''(A) The professional engagement period begins when the accountant either signs an initial engagement letter (or other agreement to review or audit a client's financial statements) or begins audit, review, or attest procedures, whichever is earlier; and (B) The professional engagement period ends when the audit client or the accountant notifies the Commission that the client is no longer that accountant's audit client.''

[28] American Institute of Certified Public Accountants (''AICPA'') Code of Professional Conduct, ET § 101.02, which states:

The period of a professional engagement starts when the [AICPA] member begins to perform any professional engagement requiring independence for an enterprise, lasts for the entire duration of the professional relationship, which could cover many periods, and ends with the formal or informal notification of the termination of the professional relationship either by the member, by the enterprise, or by the issuance of a report, whichever is later. Accordingly, the professional engagement does not end with the issuance of a report and recommence with the signing of the following year's engagement.

or review services and continues until there is a formal or informal public notification that the professional relationship has ended.[29] To effectuate the intent of Congress, we believe the phrase ''engaged in the performance of an audit'' should be given a broad reading. We believe Congress intended that the phrase encompass the professional engagement period and any other time the auditor is called upon to make decisions regarding the issuer's financial statements, including during negotiations for retention of the auditor and subsequent to the professional engagement period when the auditor is considering whether to issue a consent on the use of prior years' audit reports. The proposed rules, therefore, would apply throughout the professional engagement and after the professional engagement has ended when the auditor is considering whether to consent to the use of, reissue, or withdraw prior audit reports. In limited circumstances, the proposed rules also may apply before the professional engagement period begins. For example, the proposed rules would apply if an officer, director, or person acting under the direction of an officer or director, offers to engage an accounting firm on the condition that the firm either issue an unqualified audit report on financial statements that do not conform with generally accepted accounting principles, or limit the scope or performance of audit or review procedures in violation of generally accepted auditing standards.

Should Proposed Rule 13b2–2(b)(2) Provide a Specific Definition of ''Engaged in the Performance of an Audit''?

To be actionable under section 303 of the Act, the conduct must be ''for the purpose of rendering [the issuer's] financial statements materially misleading.'' [30] Because the financial statements are prepared by management and the auditor conducts an audit or review of those financial statements, the auditor would not directly ''render [the] financial statements materially misleading.'' Rather, the auditor might be improperly influenced to, among other things, issue an unwarranted report on the financial statements,[31] including suggesting or acquiescing in the use of inappropriate accounting treatments [32] or not proposing adjustments required for the financial statements to conform with generally accepted accounting principles.[33] An auditor also might be fraudulently influenced, coerced, manipulated or misled not to perform audit or review procedures that, if performed, might divulge material misstatements in the financial statements. Other examples of activities that would fall within the proposed rule would be for an officer, director, or person acting under an officer or director's direction, to improperly influence an auditor either not to withdraw a previously issued audit report when required by generally accepted auditing standards,[34] or not to communicate appropriate matters to the audit committee.[35] Proposed rule 13b2–2(b)(2) would make it clear that subparagraph (b)(1) would apply in such circumstances. As noted, the proposed rule would not be limited to the audit of the annual financial statements, but would include, among other things, improperly influencing an auditor during a review of interim financial statements [36] or in connection with the issuance of a consent to the use of an auditor's report.[37] Conducting reviews of interim financial statements and issuing consents to use past audit reports are sufficiently connected to the audit process, and improper influences during those processes are sufficiently connected to the harms that the Act seeks to prevent, that they should be within the scope of the proposed rules. The list of examples in the proposed rule is only illustrative; other actions also could result in rendering the financial statements materially misleading.

Is Subparagraph (b)(2) of the Proposed Rule Helpful or Necessary? Should it Be Deleted? If Subparagraph (b)(2) Should Be Adopted, are the Examples Appropriately Illustrative? Should More, or Fewer, Examples Be Included in the Rule? If so, What Examples Should be Added or Removed?

Section 303(a) states that conduct by an officer, director, or person acting under the direction of the officer or director designed to improperly influence an issuer's auditor is actionable if undertaken ''for the purpose of'' rendering the issuer's financial statements materially misleading. Under the proposed rule, an officer, director, or person acting under the direction of the officer who engaged in conduct to improperly influence an auditor would be culpable if he or she knew, or was unreasonable in not knowing, that the improper influence could, if successful, result in rendering financial statements materially misleading.[38]

The Commission is considering strongly other wording changes to make the rule effective in preventing improper influences. There are several changes, individually or collectively, that could accomplish that objective, and we solicit comment on the best approach. For example:

1. Should we replace the statement in subparagraphs (b)(1) and (c) that no person acting ''under the direction'' of an officer or director shall improperly influence the auditors of the issuer's financial statements, with a statement that no person acting ''at the behest of'' or ''on behalf of'' an officer or director shall improperly influence the auditors. Such language might better indicate that no specific direction by an officer or

[29] Changes in the principal auditor of an issuer's financial statements are reported under item 4 of Form 8–K, 17 CFR 249.308. *See also* item 304 of Regulation S–K, 17 CFR 229.304, and item 304 of Regulation S–B, 17 CFR 228.304.

[30] There is no such requirement for Rule 13b2–1 or Rule 13b2–2.

[31] *See* Report of the Committee on Banking, Housing, and Urban Affairs, To Accompany S. 2673, ''Public Company Accounting Reform and Investor Protection Act of 2002,'' 107th Cong., 2d Sess., (S.R. 107–205), at 26 (Comm. Print, July 3, 2002), which states that section 303 makes it unlawful for any officer or director of an issuer, or any person acting under the direction of an officer or director, to fraudulently influence, coerce, manipulate, or mislead the auditor of the issuer's financial statements ''for the purpose of rendering the *audit report* misleading.'' (Emphasis added.)

[32] For example, an auditor might be fraudulently influenced to allow an issuer to correct material misstatements over time, or not to restate prior period financial statements, in violation of generally accepted accounting principles.

[33] *See* section 401(a) of the Act, which, among other things, adds section 13(i) to the Exchange Act, which requires that financial statements prepared in accordance with (or reconciled to) generally accepted accounting principles and filed with the Commission reflect all material correcting adjustments identified by a registered public accounting firm.

[34] *See, e.g.*, SAS 1, ''Subsequent Discovery of Facts Existing at the Date of the Auditor's Report,'' AU § 561.

[35] *See, e.g.*, section 204 of the Act, which adds section 10A(k) to the Exchange Act and requires each registered public accounting firm to report certain matters to the audit committee, and AICPA, SAS 61, ''Communication With Audit Committees'' (as amended by SAS 89 and SAS 90).

[36] *See* Rule 10–01(d) of Regulation S–X, 17 CFR 210.10–01(d).

[37] *See, e.g.*, section 7(a) of the Securities Act of 1933, 15 U.S.C. 77g, which states in part, ''If any accountant * * * is named as having prepared or certified any part of the registration statement, the written consent of such person shall be filed with the registration statement''; Rule 436 under the Securities Act of 1933, 17 CFR 230.436.

[38] We believe that the mental state requirements of the proposed rules generally should be construed consistently with the existing rules in Regulation 13B–2. Because there is no private right of action, among other reasons, the Commission believes that a lesser standard of liability is appropriate. See Release No. 34–15570 (Feb. 15, 1979); 44 **Federal Register** 10970. See also, Report of the Committee on Banking, Housing, and Urban Affairs, To Accompany S. 2673, ''Public Company Accounting Reform and Investor Protection Act of 2002,'' 107th Cong., 2d Sess., (S.R. 107–205), at 26 (Comm. Print, July 3, 2002), which cites as a reason for enacting section 303 the testimony of witnesses who were concerned with addressing fraud and other ''misconduct in the audit process.''

director is required to violate the proposed rules.

2. Should the word ''fraudulently'' in subparagraphs (b)(1) and (c)(2) be replaced with the word ''improperly'' or some other word to convey a mental state short of scienter?

3. Should the phrase in subparagraphs (b)(1) and (c)(2) that ''if the person knew or was unreasonable in not knowing that such action could, if successful, result in rendering such financial statements materially misleading'' be replaced with ''for the purpose of, or have the effect of, rendering the financial statements materially misleading'' or some other phrase to convey that proving a particular purpose or intent is not required?

*C. Issues Related to Investment Companies*

In contrast to other issuers, investment companies generally have contracts with service providers that perform virtually all of the management, administrative, and other services necessary to the investment company's operations, including preparation of the financial statements. These entities may include an investment company's investment adviser, sponsor, depositor, trustee, and administrator. For registered investment companies and business development companies,[39] the proposed prohibition on improper influence on the conduct of audits would cover not only officers and directors of the investment company itself, but also officers and directors of the investment company's investment adviser, sponsor, depositor, trustee, and administrator.[40] We are also proposing to amend existing rule 13b2–2 to cover officers and directors of these entities.[41]

Is it Necessary or Appropriate To Expressly Extend the Prohibition on Improper Influence on the Conduct of Audits, and Existing Rule 13b2–2, to Officers and Directors of the Investment Company's Service Providers? If so, Which Service Providers Should Be Covered?

## III. General Request for Comments

We invite any interested person wishing to submit written comments on the proposed rules to do so. We specifically request comments from investors, accounting firms and registrants. We solicit comment on each component of the proposal.

[39] Business development companies are a category of closed-end investment companies that are not required to register under the Investment Company Act of 1940. See 15 U.S.C. § 80a-2(a)(48) (defining business development companies).

[40] Proposed rule 13b2–2(c)(2).

[41] Proposed rule 13b2–2(c)(1).

## IV. Paperwork Reduction Act

The Paperwork Reduction Act is not applicable to the proposed rules because they do not impose any collection of information requirements.

## V. Costs and Benefits

The proposed rules implement a Congressional mandate. We recognize, however, that any implementation of the Act likely will result in costs and benefits and have an effect on the economy.

Because much of the conduct addressed by Section 303(a) and the proposed rules generally was prohibited under provisions of the securities laws that existed before enactment of the Sarbanes-Oxley Act, we do not anticipate that the proposed rules would increase significantly costs for issuers or accounting firms. Nonetheless, the Act and proposed rules might prompt some issuers to adopt procedures or guidelines that would assure additional care would be used by an issuer's officers and directors, and others acting under their direction, in communicating with auditors of the issuer's financial statements. For example, some issuers might require that more discussions include members of senior management or the issuer's legal counsel. Because no particular procedures related to such communications are required, and the nature and scope of those procedures are likely to vary among issuers, it is difficult to provide an accurate cost estimate.

As noted above, in some circumstances the proposed rules might apply before the professional engagement period begins. For example, the proposed rules would apply if an officer, director, or person acting under the direction of an officer or director, offers to engage an accounting firm on the condition that the firm either issue an unqualified audit report on financial statements that do not conform with generally accepted accounting principles, or limit the scope or performance of audit or review procedures in violation of generally accepted auditing standards. We believe, however, that such conduct would not be permitted under existing laws and regulations and, accordingly, the proposed rules should not result in a significant increase in costs for issuers.

Potential benefits of the proposed rules include increased investor confidence in the integrity of the audit process and, in turn, in the reliability of reported financial information. One of the most important factors in the successful operation of our securities markets is the trust that investors have in the reliability of the information used to make voting and investment decisions.[42]

Section 303(a) and the proposed rules are designed to provide added assurance that the full-disclosure purposes of the securities laws are fulfilled,[43] and to help restore the faith of America's investors in the integrity of the audit process and in the reliability of reported financial information. If section 303 of the Act and the proposed rules lead to increased investor confidence in financial reporting, they also may facilitate capital formation. An increased willingness of investors to participate in the securities markets might result in issuers being able to lower their cost of capital.

## VI. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Act Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to the proposed revisions to rule 13b2–2 of Regulation 13B–2. The proposals would implement the statutory prohibition on officers and directors of an issuer, and persons acting under

[42] *See* Accounting Series Release No. 296 (Aug. 20, 1981), which states in part: (T)he capital formation process depends in large part on the confidence of investors in financial reporting. An investor's willingness to commit his capital to an impersonal market is dependent on the availability of accurate, material and timely information regarding the corporations in which he has invested or proposes to invest. The quality of information disseminated in the securities markets and the continuing conviction of individual investors that such information is reliable are thus key to the formation and effective allocation of capital. Accordingly, the audit function must be meaningfully performed and the accountant's independence not compromised.

[43] *See, e.g.*, H.R. Rep. No. 1383, 73rd Cong., 2d Sess., 11 (1934), which states: Just as artificial manipulation tends to upset the true function of an open market, so the hiding and secreting of important information obstructs the operation of the markets as indices of real value. There cannot be honest markets without honest publicity. Manipulation and dishonest practices of the market place thrive upon mystery and secrecy.

This House Report also includes a letter from the Executive Assistant of the Committee on Stock List for the New York Stock Exchange, which recognizes management's need for accurate financial information and then states: [U]nder the conditions of today, the next object in order of importance has become to give stockholders, in understandable form, such information in regard to the business as will avoid misleading them in any respect and as will put them in possession of all information needed, and which can be supplied in financial statements, to determine the true value of their investments. * * * The exchange is interested in the accounts of companies as a source of reliable information for those who deal in stocks. It is not sufficient for the stock exchange that the accounts should be in conformity with law or even that they should be conservative; the stock exchange desires that they should be fully and fairly informative. *Id.* at 12.

their direction, improperly influencing the conduct of an audit or review of the issuer's financial statements.

*A. Reasons for, and Objectives of, the Proposed Rules*

The purpose of the proposed rules is to implement section 303(a) of the Act. The proposed rules would prohibit officers and directors of issuers, including ''small businesses,'' and persons acting under their direction, from improperly influencing an accounting firm's audit or review of the issuer's financial statements. Today, it could be alleged generally that such conduct violated the anti-fraud or other provisions of the securities laws or aided and abetted or caused the issuer's violations of those sections. The proposed rules, and section 303(a) of the Act, would provide the Commission with an additional means to address such conduct and are intended to enhance the credibility of financial statements.

*B. Legal Basis*

We are proposing the amendments under the authority set forth in sections 3(a) and 303 of the Act; Schedule A and sections 5, 6, 7, 8, 10 and 19 of the 1933 Act; Sections 3, 10A, 12, 13, 14, 15, 17 and 23 of the Exchange Act; and Sections 6, 8, 20, 30, 31 and 38 of the Investment Company Act of 1940.

*C. Small Entities Subject to the Proposed Rules*

The proposals would affect small registrants that are small entities. Exchange Act Rule 0–10(a) [44] and 1933 Act Rule 157 [45] define a company to be a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that approximately 2,500 companies are small entities, other than investment companies.

For purposes of the Investment Company Act, Rule 0–10 [46] defines ''small business'' to be an investment company with net assets of $50 million or less as of the end of its most recent fiscal year. We estimate that approximately 225 investment companies meet this definition.

*D. Reporting, Recordkeeping and Other Compliance Requirements*

The enactment of section 303(a) of the Act and the adoption of the proposed rules might result in some issuers adopting more detailed procedures for communications between the company and the accounting firm that audits the company's financial statements. These procedures might increase costs associated with compliance with the securities laws.

At this time, we cannot estimate the likely burden that would be incurred by small businesses, although we assume the burden would be minor for most issuers.

*E. Duplicative, Overlapping or Conflicting Federal Rules*

We are not aware of any federal rules that conflict with the proposed rules. The improper conduct directly addressed in section 303(a) and the proposed rules, however, also under certain circumstances may constitute violations of the existing rules in Regulation 13B–2 or other sections of the securities laws. We were directed by Congress to perform this rulemaking, and section 303(c) of the Act expressly states that rules adopted under the section are in addition to and do not preempt or supersede any other rule or regulation.

*F. Significant Alternatives*

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities;
2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rules for small entities;
3. The use of performance rather than design standards; and
4. An exemption from coverage of the proposed amendments, or any part thereof, for small entities.

Section 303(a) of the Act does not provide an exemption for small businesses. The section does provide, however, that the rules adopted by the Commission should be ''as necessary and appropriate in the public interest and for the protection of investors.'' We are inclined to apply the proposals to small business issuers. We believe investors in small companies, just as investors in large companies, would want and benefit from the added confidence in reported financial information that comes from knowing that efforts to fraudulently influence the performance of the audit have been prohibited.

We are using a performance standard rather than a design standard. In addition, Congress has dictated the timetable for this rulemaking.

We request comment on whether it is feasible to further clarify, consolidate, or simplify the proposed rules for small entities.

*G. Solicitation of Comments*

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. Specifically, we request comments regarding the number of small entities that may be affected by the proposed rules and the existence or nature of the potential impact on those small entities.

Commenters are requested to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rules are adopted, and will be placed in the same public file as comments on the proposed rules.

## VII. Consideration of Impact on the Economy, Burden on Competition, and Promotion of Efficiency, Competition and Capital Formation

For the purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[47] we are requesting information regarding the impact of the proposed rules on an annual basis. Commenters should provide empirical data to support their views.

Section 23(a)(2) of the Exchange Act [48] requires us, when adopting rules under the Exchange Act, to consider the impact on competition of any rule we adopt. Section 2(b) of the 1933 Act,[49] section 3(f) of the Exchange Act,[50] and section 2(c) of the Investment Company Act of 1940,[51] require us, when engaging in rulemaking where we are required to consider or determine whether the action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

The proposed rules would prohibit improper influences on auditors in connection with their reviews and

[44] 17 CFR 240.0–10(a).

[45] 17 CFR 230.157.

[46] 17 CFR 270.0–10.

[47] Pub. L. 104–121, title II, 110 Stat. 857 (1996).

[48] 15 U.S.C. 78w(a)(2).

[49] 15 U.S.C. 77b(b).

[50] 15 U.S.C. 78c(f).

[51] 15 U.S.C. 80a–2(c). to be filed with the Commission if that person knew or was unreasonable in not knowing that such action could, if successful, result in rendering such financial statements materially misleading.

audits of financial statements filed with the Commission. The proposals, therefore, should enhance investor confidence in the audit process and in the quality of information available to them, and lead to a more efficient market.

Because of the nature of the proposed rules, we do not believe that they would impose any burden on competition. They prohibit equally all officers and directors of public companies (and persons acting under their direction) from improperly influencing the auditor.

As noted in the cost-benefit section, if section 303 of the Act and the proposed rules lead to increased investor confidence in financial reporting, they also may facilitate capital formation. An increased willingness of investors to participate in the securities markets might result in issuers being able to lower their cost of capital. The possible effects of the proposed rules on efficiency, competition, and capital formation, however, are difficult to quantify. We request comment on these matters in connection with our proposed rules.

## VIII. Statutory Authority

We are proposing the new rules under the authority set forth in sections 3(a) and 303 of the Act; Schedule A and sections 5, 6, 7, 8, 10 and 19 of the 1933 Act; Sections 3, 10A, 12, 13, 14, 15, 17 and 23 of the Exchange Act; and Sections 6, 8, 20, 30, 31 and 38 of the Investment Company Act of 1940.

## Text of Proposed Rules and Amendments

## List of Subjects in 17 CFR Part 240

Securities.

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

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.13b2–2 is revised to read as follows:

**§ 240.13b2–2 Issuer's representations and conduct in connection with the preparation of required reports and documents.**

(a) No director or officer of an issuer shall, directly or indirectly:

(1) Make or cause to be made a materially false or misleading statement; or

(2) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with:

(i) Any audit or examination of the financial statements of the issuer required to be made pursuant to this subpart; or

(ii) The preparation or filing of any document or report required to be filed with the Commission pursuant to this subpart or otherwise.

(b)(1) No officer or director of an issuer, or any other person acting under the direction thereof, shall directly or indirectly take any action to fraudulently influence, coerce, manipulate, or mislead any independent public or certified public accountant engaged in the performance of an audit or review of the financial statements of that issuer that are required to be filed with the Commission if that person knew or was unreasonable in not knowing that such action could, if successful, result in rendering such financial statements materially misleading.

(2) For purposes of paragraphs (b)(1) and (c)(2) of this section, actions that ''could, if successful, result in rendering such financial statements materially misleading'' include, but are not limited to, actions taken at any time with respect to the professional engagement period to fraudulently influence, coerce, manipulate, or mislead an auditor:

(i) To issue a report on an issuer's financial statements that is not warranted in the circumstances (due to material violations of generally accepted accounting principles, generally accepted auditing standards, or other standards);

(ii) Not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;

(iii) Not to withdraw an issued report; or

(iv) Not to communicate matters to an issuer's audit committee.

(c) In addition, in the case of an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), no officer or director of the company's investment adviser, sponsor, depositor, trustee, or administrator (or, in the case of paragraph (c)(2) of this section, any other person acting under the direction thereof) shall, directly or indirectly:

(1)(i) Make or cause to be made a materially false or misleading statement; or

(ii) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with:

(A) Any audit or examination of the financial statements of the investment company required to be made pursuant to this subpart; or

(B) The preparation or filing of any document or report required to be filed with the Commission pursuant to this subpart or otherwise; or

(2) Take any action to fraudulently influence, coerce, manipulate, or mislead any independent public or certified public accountant engaged in the performance of an audit or review of the financial statements of that investment company that are required to be filed with the Commission if that person knew or was unreasonable in not knowing that such action could, if successful, result in rendering such financial statements materially misleading.

Dated: October 18, 2002.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–27115 Filed 10–23–02; 8:45 am]

BILLING CODE 8010–01–P

## DEPARTMENT OF DEFENSE

## Department of the Army; Corps of Engineers

## 33 CFR Part 334

## United States Navy Restricted Area, Radio Island, Beaufort, NC

**AGENCY:** United States Army Corps of Engineers, DoD.

**ACTION:** Notice of proposed rulemaking and request for comments.

**SUMMARY:** The U.S. Army Corps of Engineers is proposing regulations to establish a restricted area in the vicinity of Radio Island, Beaufort, North Carolina. These regulations will enable the Navy to enhance security for Navy property, vessels, and personnel. The

regulations are necessary to safeguard Navy vessels and United States government facilities from sabotage and other subversive acts, accidents, or incidents of similar nature. These regulations are also necessary to protect the public from potentially hazardous conditions which may exist as a result of Navy use of the area.

**DATES:** Written comments must be submitted on or before November 25, 2002.

**ADDRESSES:** Send comments to U.S. Army Corps of Engineers, ATTN: CECW–OR, 441 G Street, NW, Washington, DC 20314–1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, DC at (202) 761–4618, or Mr. Scott McLendon, Corps of Engineers, Wilmington District, Regulatory Division, at (910) 251–4725.

**SUPPLEMENTARY INFORMATION:** Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and chapter XIX, of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3) the Corps proposes to amend the restricted area regulations in 33 CFR part 334 by adding § 334.435 which establishes a restricted area adjacent to Radio Island, between the Morehead City Channel and the Beaufort Channel, Beaufort, North Carolina. The public currently has unrestricted access to surrounding waters. To better protect vessels and personnel during loading and unloading operations, the Commander, Navy Region, Mid-Atlantic has requested the Corps of Engineers establish a Restricted Area which will enable the Navy to implement a waterside security program that is currently not available at the facility.

**Procedural Requirements**

*A. Review Under Executive Order 12866*

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

*B. Review Under the Regulatory Flexibility Act*

These proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small Governments). The Corps expects that the economic impact of the establishment of this restricted area would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

*C. Review Under the National Environmental Policy Act*

An environmental assessment has been prepared for this action. We have concluded, based on the minor nature of the proposed additional restricted area regulations, that this action, if adopted, will not have a significant impact to the quality of the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the District office listed at the end of **FOR FURTHER INFORMATION CONTACT,** above.

*D. Unfunded Mandates Act*

This proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of section 202 or 205 of the Unfunded Mandates Act. We have also found under section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

**List of Subjects in 33 CFR Part 334**

Danger zones, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334, as follows:

## PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

**Authority:** 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.435 is added to read as follows:

**§ 334. 435 Radio Island, Beaufort, North Carolina, Naval Restricted Area.**

(a) *The area.* Beginning at a point at latitude 34°42′21″ N., longitude 76°40′50.4″ W.; thence southwesterly to latitude 34°42′20.4″ N., longitude 76°40′53.4″ W.; thence southeasterly to latitude 34°42′15″ N., longitude 76°40′51.6″ W.; thence southeasterly to latitude 34°42′13.6″ N., longitude 76°40′49.4″ W., thence northeasterly to latitude 34°42′15.6″ N., longitude 76°40′41.4″ W.; thence northwesterly to latitude 34°42′22.8″ N., longitude 76°40′44.4″ W.; thence southwesterly to the point of beginning.

(b) *The regulation.* During those times when the U.S. Navy is conducting loading and unloading operations at the Radio Island Loading Ramp, no vessel or persons may enter the Restricted Area unless specific authorization is granted by the Commander, Navy Region, Mid-Atlantic and/or other persons or agencies as he/she may designate.

(c) *Enforcement.* The regulation in this section shall be enforced by the Commander, Navy Region, Mid-Atlantic, and/or persons or agencies as he/she may designate.

Dated: September 11, 2002.

**Michael G. Ensch,**

*Acting Chief, Operations Division, Directorate of Civil Works.*

[FR Doc. 02–26647 Filed 10–23–02; 8:45 am]

BILLING CODE 3710–92–P

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## DEPARTMENT OF DEFENSE

## Department of the Army; Corps of Engineers

## 33 CFR Part 334

## United States Navy Restricted Area, Naval Air Station North Island, San Diego, CA

**AGENCY:** United States Army Corps of Engineers, DoD.

**ACTION:** Notice of Proposed rulemaking and request for comments.

**SUMMARY:** The U.S. Army Corps of Engineers is proposing to amend its regulations to establish a new restricted area in waters adjacent to the Naval Air Station North Island (NASNI), San Diego, California. This amendment will restrict activities by the public on the northeast side of the base. The regulations are necessary to safeguard Navy vessels and United States Government facilities from sabotage and other subversive acts, accidents, or incidents of a similar nature.

**DATES:** Written comments must be submitted by November 25, 2002.

**ADDRESSES:** Send comments to U.S. Army Corps of Engineers, ATTN: CECW–OR, 441 G Street, NW., Washington, DC 20314–1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, DC, at (202) 761–4618, or Mr. Russell L. Kaiser, Corps of Engineers, Los Angeles District, Regulatory Branch, at (213) 452–3293.

**SUPPLEMENTARY INFORMATION:** Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. V1) and chapter XIX, of the Army Appropriations Act of 1919

(40 Stat. 892; 33 U.S.C. 3) the Corps is proposing to amend the restricted area regulations in 33 CFR part 334 by adding a restricted area at § 334.865. The proposed restricted area is being established for safety and security purposes in support of accommodating the homeport of a third aircraft carrier at NASNI. The proposed restricted area is adjacent to a current U.S. Coast Guard security zone, which is enclosed by latitude/longitude coordinates: 32°42′52.5″ N, 117°11′45.0″ W; 32°42′55.3″ N, 117°11′45.0″ W; 32°42′55.0″ N, 117°11′30.5″ W; 32°42′40.0″ N, 117°11′06.5″ W; 32°42′37.2″ N, 117°11′06.8″ W; 32°42′28.5″ N, 117°11′ 11.0″ W; 32°42′21.5″ N, 117°10′47.7″ W; and 32°42′13.1″ N, 117°10′51.2″ W. The proposed connection of the restricted area with the security zone would occur at the following coordinates: 32°42′55.0″ N, 117°11′30.5″ W and 32°42′40.0″ N, 117 °11′06.5″ W.

**Procedural Requirements**

*A. Review Under Executive Order 12866*

This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

*B. Review Under the Regulatory Flexibility Act*

This rule has been reviewed under the Regulatory Flexibility Act (Public Law 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The Corps expects that the economic impact of this new restricted area would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal will have no significant economic impact on small entities.

*C. Review Under the National Environmental Policy Act*

The Los Angeles District is preparing an Environmental Assessment (EA) for this action. Although not expected at this time, based on the minor nature of the proposed additional restricted area regulations, an Environmental Impact Statement (EIS) would be prepared if determined appropriate. When the NEPA documentation is completed, it will be available for review at the Los Angeles District office listed at the end of **FOR FURTHER INFORMATION CONTACT,** above.

*D. Unfunded Mandates Act*

This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of section 202 or 205 of the Unfunded Mandates Act. We have also found under section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

**List of Subjects in 33 CFR Part 334**

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

## PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

**Authority:** 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.865 is added to read as follows:

### § 334.865 Naval Air Station North Island, San Diego, California, Restricted Area.

(a) *The area.* The waters within an area beginning at 32°42′55.0″ N, 117°11′30.5″ W; thence running easterly to 32°42′57.0″ N, 117°11′22.5″ W; thence running easterly to 32°42′56.0″ N, 117°11′19.0″ W; thence running southeasterly to 32°42′49.0″ N, 117°11′08.5″ W; thence running southeasterly to 32°42′44.5″ N, 117°11′06.5″ W; thence running southerly to 32°42′40.0″ N, 117°11′06.5″ W.

(b) *The regulation.* (1) The restricted area shall not be open to swimming, fishing, water-skiing, mooring or anchorage.

(2) Dragging, seining, other fishing operations, and other activities not under the direction of the United States, which might foul underwater installations within the restricted area, are prohibited.

(3) All tows entering the restricted area shall be streamed and shortened to the seaward of the area and towing appendages and catenaries shall not be dragged along the bottom while proceeding through the area.

(4) All vessels entering the restricted area shall proceed across the area by the most direct route and without unnecessary delay.

(5) No vessel or craft of any size shall lie-to or anchor in the restricted area at any time other than a vessel operated by or for the U.S. Navy, U.S. Coast Guard, other authorized military components, or other vessels authorized by Commander, Navy Region Southwest, or his/her designee.

(6) When security conditions dictate, Naval security forces may impose strict enforcement of stand-off distances within the restricted area. This enforcement will not prevent utilization of navigable channels, but will serve to control its use in order to protect vital National interests.

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the Commander, Navy Region Southwest, and such agencies or persons as he/she may designate.

Dated: September 17, 2002.

**Michael G. Ensch,**

*Acting Chief, Operations Division, Directorate of Civil Works.*

[FR Doc. 02–26645 Filed 10–23–02; 8:45 am]

BILLING CODE 3710–92–P

# Notices

Federal Register

Vol. 67, No. 206

Thursday, October 24, 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.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Resource Advisory Committee Meeting

**AGENCY:** North Central Idaho Resource Advisory Committee, Grangeville, Idaho, Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Nez Perce and Clearwater National Forests' North Central Idaho Resource Advisory Committee will meet Wednesday, November 20, 2002 in Pierce, Idaho for a business meeting. The meeting is open to the public.

**SUPPLEMENTARY INFORMATION:** The business meeting on November 20 begins at 10 a.m. at the Pierce Community Center, Pierce, Idaho. Agenda topics will include discussion of potential projects. A public forum will begin at 2:30 p.m. (PST).

**FOR FURTHER INFORMATION CONTACT:** Ihor Mereszczak, Staff Officer and Designated Federal Officer, at (208) 983–1950.

Dated: October 17, 2002.

**Ihor Mereszczak,**

*Acting Forest Supervisor.*

[FR Doc. 02–27114 Filed 10–23–02; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### National Agricultural Library

### Notice of Intent To Seek Approval To Collect Information

**AGENCY:** Agricultural Research Service, National Agricultural Library, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Library's intent to request approval for a new electronic mailing list subscription form from those working with nutrition and food safety.

**DATES:** Comments on this notice must be received by December 30, 2002 to be assured of consideration.

**ADDRESSES:** Address all comments concerning this notice to Janice Schneider, Information Specialist Food and Nutrition Information Center, National Agricultural Library, 10301 Baltimore Avenue, Beltsville, MD, 20705–2351, comments may be sent by facsimile to (301) 504–6047, or fax (301) 504–6409. Submit electronic comments to: *jschneid@nal.usda.gov*

**FOR FURTHER INFORMATION CONTACT:** Janice Schneider, (301) 504–6047.

**SUPPLEMENTARY INFORMATION:**

*Title:* Electronic Mailing List Subscription Form.

*OMB Number:* Not yet assigned.

*Expiration Date:* N/A.

*Type of Request:* Approval for data collection from individuals working in the areas of nutrition and food safety.

*Abstract:* The form would include the following items:

This form contains seven items and is used to collect information about participants who are interested in joining an electronic discussion group. The form collects data to see if a person is eligible to join the discussion group. Because these electronic discussion groups are only available to people who work in the areas of nutrition and food safety it is necessary to gather this information. The questionnaire asks for the person's name, email address, job affiliation, phone number and address.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 1 minute per response.

*Respondents:* Individuals who are interested in joining an electronic discussion group.

*Estimated Number of Respondents:* 1000 per year.

*Estimated Total Annual Burden on Respondents:* 1000 Minutes or 16.66 hours.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: October 12, 2002.

**Caird E. Rexroad,**

*Acting Associate Administrator, ARS.*

[FR Doc. 02–27099 Filed 10–23–02; 8:45 am]

BILLING CODE 3410–03–P

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Information Collection Activity; Comment Request

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

**DATES:** Comments on this notice must be received by December 23, 2002.

**FOR FURTHER INFORMATION CONTACT:** F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036, South Building, Washington, DC 20250–1522. Telephone: (202) 720–9550. Fax: (202) 720–4120.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for reinstatement.

*Comments are invited on:* (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, 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, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. Fax: (202) 720–4120.

*Title:* 7 CFR Part 1724, Electric Engineering, Architectural Services and Design Policies and Procedures.

*OMB Control Number:* 0572–0118.

*Type of Request:* Reinstatement of a previously approved collection.

*Abstract:* The rule requires borrower to use three RUS contract forms under certain circumstances. The use of standard forms helps assure RUS that:

- Appropriate standards and specifications are maintained;
- RUS loan security is not adversely affected; and
- Loan and loan guarantee funds are used effectively and for the intended purpose.

Standardization of forms by RUS results in substantial savings to:

- Borrowers—If standard forms were not used, borrowers would need to prepare their own documents at significant expense; and
- Government—If standard forms were not used, each document submitted by a borrower would require extensive and costly review by both RUS and the Office of General Counsel.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 1 hour per response.

*Respondents:* Businesses, not-for-profit institutions and others.

*Estimated Number of Respondents:* 155.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 155 hours.

Copies of this information collection can be obtained from Dawn Wolfgang, Program Development and Regulatory Analysis, at (202) 720–0812. Fax: (202) 720–4120.

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

Dated: October 17, 2002.

**Hilda Gay Legg,**

*Administrator, Rural Utilities Service.*

[FR Doc. 02–27063 Filed 10–23–02; 8:45 am]

BILLING CODE 3410–15–P

## DEPARTMENT OF COMMERCE

**[I.D. 101802C]**

### Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency*: National Oceanic and Atmospheric Administration (NOAA).

*Title*: Survey to Measure Effectiveness of Community-Oriented Policing for Endangered Species Act Enforcement.

*Form Number(s)*: None.

*OMB Approval Number*: 0648–0435.

*Type of Request*: Regular submission.

*Burden Hours*: 316.

*Number of Respondents*: 787.

*Average Hours Per Response*: 45 minutes for a survey of Washington State Department of Fish and Wildlife and NOAA personnel; 60 minutes for an interview of public officials, managers, and key stakeholders; and 20 minutes for a survey of citizens.

*Needs and Uses*: Community-oriented policing (COP) promotes the use of various resources and policing-community partnerships for developing strategies to identify, analyze, and address community problems at their source. Recognizing the significant role non-traditional enforcement efforts will play in Endangered Species Act enforcement in the Northwest, a measurement tool has been developed to ensure that the performance outcomes of these non-traditional enforcement (COP) efforts are effectively measured. Through this instrument, COP efforts can be evaluated for success and elements essential for achieving successful outcomes in future programs can be identified and quantified. Anadromous species enforcement will be the focus of the survey.

*Affected Public*: Individuals or households, Federal, State, Local or Tribal Government.

*Frequency*: One-time.

*Respondent's Obligation*: Voluntary.

*OMB Desk Officer*: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 17, 2002.

**Gwellnar Banks,**

*management Analyst, Office of the Chief Information Officer.*

[FR Doc. 02–27164 Filed 10–23–02; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

**[I.D. 101802E]**

### Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency*: National Oceanic and Atmospheric Administration (NOAA).

*Title*: Economic Performance Data for West Coast (California-Alaska) Commercial Fisheries.

*Form Number(s)*: None.

*OMB Approval Number*: 0648–0369.

*Type of Request*: Regular submission.

*Burden Hours*: 7,074.

*Number of Respondents*: 2,278.

*Average Hours Per Response*: 3 hours for catcher vessels; 8 hours for processors; and 1 hour for charter boat operators.

*Needs and Uses*: This proposed collection of economic performance

data for West Coast and Alaska fisheries supports a cooperative agreement between NOAA and the Pacific States Marine Fisheries Commission. The data will be used to: monitor economic performance of these fisheries, analyze the economic effects of current and alternative management measures, and to meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act, National Environmental Policy Act, the Regulatory Flexibility Act, and Executive Order 12866. Data will also be used in support of State fishery management activities, by the industry, and the general public.

*Affected Public*: Business or other for-profit organizations.

*Frequency*: On occasion.

*Respondent's Obligation*: Voluntary.

*OMB Desk Officer*: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 17, 2002.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 02–27165 Filed 10–23–02; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Initiation of Antidumping and Countervailing Duty Administrative Reviews

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

**ACTION:** Notice of initiation of antidumping and countervailing duty administrative reviews.

**SUMMARY:** The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

**EFFECTIVE DATE:** October 24, 2002.

**FOR FURTHER INFORMATION CONTACT:** Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

**SUPPLEMENTARY INFORMATION:**

### Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates.

### Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than September 30, 2003.

| | Period to be reviewed |
|---|---|
| *Antidumping Duty Proceedings:* | |
| Latvia: Steel Concrete Reinforcing Bars A–449–804 | 1/30/01–8/31/02 |
| Joint Stock Company Liepajas Metalurgs. | |
| South Africa: Certain Hot-Rolled Carbon Steel Flat Products, A–791–809 | 5/3/01–8/31/02 |
| Iscor, Ltd. | |
| Highveld Steel and Vanadium Corp., Ltd. | |
| Saldanha Steel, Ltd. | |
| South Korea: Stainless Steel Wire Rod, A–580–829 | 9/1/01—8/31/02 |
| Changwon Specialty Steel Co., Ltd. | |
| Dongbang Special Steel Co., Ltd. | |
| South Korea: Steel Concrete Reinforcing Bars, A–580–844 | 1/30/01–8/31/02 |
| Dongkuk Steel Mill Co., Ltd. | |
| Spain: Stainless Steel Wire Rod, A–469–807 | 9/1/01–8/31/02 |
| Roldan, S.A. | |
| The People's Republic of China: Foundry Coke [1], A–570–862 | 3/8/01–8/31/02 |
| CITIC Trading Co., Ltd. | |
| The People's Republic of China: Freshwater Crawfish Tail Meat [2], A–570–848 | 9/1/01–8/31/02 |

| | Period to be reviewed |
|---|---|
| China Everbright | |
| China Kingdom Import & Export Co., Ltd., aka China Kingdoma Import & Export Co., Ltd., aka Zhongda Import & Export Co., Ltd. | |
| Fujian Pelagic Fishery Group Co. | |
| Huaiyin Foreign Trade Corporation (5) | |
| Jiangsu Hilong International Trading Co., Ltd. | |
| Huaiyin Foreign Trade Corporation (30) | |
| Jiangsu Cereals, Oils, & Foodstuffs Import & Export Corp. | |
| Nantong Delu Aquatic Food Co., Ltd. | |
| Nantong Shengfa Frozen Food Co., Ltd. | |
| Ningbo Nanlian Frozen Foods Co., Ltd. | |
| North Supreme Seafood (Zhejiang) Co., Ltd. | |
| Qingdao Rirong Foodstuff Co., Ltd., aka Qingdao Rirong Foodstuffs | |
| Qingdao Zhengri Seafood Co., Ltd., aka Qingdao Zhengri Seafoods | |
| Shanghai Taoen International Trading Co., Ltd. | |
| Shantou SEZ Yangfeng Marine Products Co. | |
| Shouzhou Huaxiang Foodstuffs Co., Ltd. | |
| Suqian Foreign Trade Corp., aka Suqian Foreign Trading | |
| Weishan Fukang Foodstuffs Co., Ltd. | |
| Weishan Zhenyu Foodstuff Co., Ltd. | |
| Yancheng Baolong Biochemical Products Co., Ltd. | |
| Yancheng Foreign Trade Corp., aka Yancheng Foreign Trading, aka Yang Chen Foreign Trading | |
| Yancheng Haiteng Aquatic Products & Foods Co., Ltd. | |
| Yancheng Yaou Seafoods | |
| Yangzhou Lakebest Foods Co., Ltd. | |

[1] If one of the above named companies does not qualify for a separate rate, all other exporters of foundry coke from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of freshwater crawfish tail meat from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

| | |
|---|---|
| *Countervailing Duty Proceedings:* | |
| Argentina: Certain Hot-Rolled Steel Flat Products, C–357–815 | 1/1/01–12/31/01 |
| Siderar S.A.I.C. | |
| Italy: Stainless Steel Wire Rod, C–475–821 | 1/1/01–12/31/01 |
| Acciaierie Valbruna S.P.A. | |

*Suspension Agreements*

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under § 351.211 or a determination under § 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: October 18, 2002.

**Holly A. Kuga,**

*Senior Office Director, Group II, Office 4, Import Administration.*

[FR Doc. 02–27145 Filed 10–23–02; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–507–502]**

## Administrative Review of Certain In-Shell Raw Pistachios From Iran: Extension of Time Limit for Final Results of New Shipper Review

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

**EFFECTIVE DATE:** October 24, 2002.

**FOR FURTHER INFORMATION CONTACT:** Phyllis Hall at (202) 482–1398, or Donna Kinsella at (202) 482–0194, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

### Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (''the Department'') to issue a final results of review within 90 days after the date on which the preliminary results were issued. However, if the Secretary concludes that a new shipper review is extraordinary complicated, the Secretary may extend the 90-day period to 150 days from the date of issuance of the preliminary results of review.

### Background

On July 29, 2002, the Department issued the preliminary results of antidumping duty new shipper review on certain in-shell raw pistachios from Iran, covering the period July 1, 2000 through June 30, 2001. The final results are currently due no later than October 27, 2002.

**Extension of Time Limit for Preliminary Results of Review**

The instant new shipper review is extraordinarily complicated (*e.g.*, exchange rates, and cost of production issues) and a greater amount of time is necessary in order to complete this review. Therefore, pursuant to section 751(a)(2)(B)(iv) of the Act, the Department is extending the time limit for completion of the final results to 150 days from the issuance of the preliminary results, until December 26, 2002.

This extension of the time limit is in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 214(i)(2).

Dated: October 17, 2002.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Import Administration, Group III.*

[FR Doc. 02–27144 Filed 10–23–02; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 101502A]**

## New England Fishery Management Council; Public Meeting

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

**ACTION:** Public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) will hold a 3–day Council meeting from November 5–7, 2002, to consider actions affecting New England fisheries in the U.S. exclusive economic zone (EEZ).

**DATES:** The meeting will be held on Tuesday, Wednesday, and Thursday, November 5, 6, and 7, 2002. The meeting will begin at 9 a.m. on Tuesday and at 8:30 a.m. on Wednesday and Thursday.

**ADDRESSES:** The meeting will be held at the Gloucester High School (Field House), 32 Leslie O. Johnson Road, Gloucester, MA 01930; telephone (978) 281–9870. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

**SUPPLEMENTARY INFORMATION:**

**Tuesday, November 5, 2002**

Following introductions, the Council will consider and approve a list of management actions for 2003. A report from the Whiting Committee will follow, during which the committee will recommend final approval of Framework 37 to Northeast Multispecies Fishery Management Plan (FMP), an action that will affect small mesh multispecies, a group that includes whiting, red hake and offshore hake. The framework includes options to eliminate the year 4 default measures now specified in the FMP, increase opportunities to participate in the Cultivator Shoal fishery and adjust other measures in the northern and southern stock areas. The Council also will consider approving a new control date to determine future participation in the small mesh multispecies fishery. The Monkfish Committee report will follow beginning with a presentation of the Stock Assessment and Fishery Evaluation (SAFE) Report for the 2001 fishing year. The Council will then consider final approval of Framework Adjustment 2 to the Monkfish FMP. Measures would mirror those contained in the NMFS 2002 emergency rule, including a revision to the overfishing definition reference points and control rule, and adjustments to the days-at-sea allocations and/or trip limits to achieve monkfish targets for fishing year 2003.

The Council may also consider removing the default provision from the FMP, measures that would otherwise eliminate the directed monkfish fishery, and extending the effectiveness of Framework Adjustment 2 beyond the 2003 fishing year, until modified by the next plan amendment. The Skate Committee will request final approval of measures for inclusion in the FMP for the Northeast Skate Complex. These include, but are not limited to federal permits and reporting requirements, a prohibition on the possession, landing or sale of some skate species, and possession limits for the skate wing fishery. Before adjournment for the day, the Dogfish Committee will ask the Council to approve the 2003–2004 specifications, which may include a quota and trip limits. They will also review and ask for approval of a list of issues to be considered for inclusion in Amendment 1 to the Spiny Dogfish FMP.

**Wednesday and Thursday, November 6–7, 2002**

The Council meeting will re-convene on Wednesday to address issues related to groundfish management, beginning with a NMFS presentation on the results of a recent meeting entitled Workshop on Trawl Effects on Fishing Gear Performance. A report from the Groundfish Assessment Review meeting will follow. Once these briefings have occurred, the Council will receive an enforcement analysis for the draft Amendment 13 to the Northeast Multispecies FMP. The last agenda item will concern approval of the Amendment 13 draft measures, including a Draft Supplemental Environmental Impact Statement. The Council meeting will adjourn on Thursday once any other outstanding business has been addressed.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

The Council will consider public comments at a minimum of two Council meetings before making recommendations to the National Marine Fisheries Service Regional Administrator on any framework adjustment to a fishery management plan. Documents pertaining to framework adjustments are available for public review 7 days prior to a final vote by the Council.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: October 18, 2002.

**Bruce C. Morehead,**

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

[FR Doc. 02–27163 Filed 10–23–02; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration Science Advisory Board

**AGENCY:** Office of Oceanic and Atmospheric Research, NOAA, Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for research, education, and application of science to resource management and environmental assessment and prediction. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

*Time and Date:* The meeting will be held Tuesday, November 5, 2002, from 8:30 a.m. to 12 p.m.; Wednesday, November 6, 2002, from 1:30 p.m. to 5 p.m.; and Thursday, November 7, from 8:30 a.m. to 12 p.m. These times and the agenda topics described below may be subject to change. Refer to the web page listed below for a final meeting agenda.

*Place:* The meeting will be held on Tuesday, November 5 in Conference Room A at the Oklahoma College of Continuing Education Forum at 1700 Asp Avenue in Norman, OK. On Wednesday November 6 and Thursday November 7 the meeting will be held in Conference Rooms D and E at the United States Postal Service National Center for Employee Development, Training and Conference Center, 2805 Highway 9 East, in Norman.

*Status:* The meeting will be open to public participation with two 30-minute time periods set aside for direct verbal comments or questions from the public. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 35 copies) should be received in the SAB Executive Director's Office by Monday October 28, 2002, to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after October 28, 2002, will be distributed to the SAB, but may not be reviewed prior to the meeting date. Approximately thirty (30) seats will be available for the public including five (5) seats reserved for the media. Seats will be available on a first-come, first-served basis.

*Matters to be Considered:* The meeting will include the following topics: (1) The NOAA Climate Change Research Initiative, (2) reports on program and laboratory reviews conducted under the auspices of the SAB, (3) briefings and discussions on activities of SAB subcommittees and working groups, (4) the NOAA National Severe Storms Laboratory, (5) the Cooperative Institute for Mesoscale Meteorological Studies (6) House of Representatives proposed language to institutionalize the SAB, (7) Fiscal Year 2003 Appropriations for NOAA, (8) the National Weather Service—NOAA Research Technology Transfer Program, and (9) public statements.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael Uhart, Executive Director, Science Advisory Board, NOAA, Rm. 11142, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–9121, Fax: 301–713–0163, E-mail: *Michael.Uhart@noaa.gov*); or visit the NOAA SAB website at *http://www.sab.noaa.gov.*

**Louisa Koch,**

*Acting Assistant Administrator, OAR.*

[FR Doc. 02–27166 Filed 10–23–02; 8:45 am]

BILLING CODE 3510–KD–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

October 18, 2002.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits.

**EFFECTIVE DATE:** January 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.ustreas.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Bangladesh and exported during the period January 1, 2003 through December 31, 2003 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 2003 period. Certain 2003 limits have been reduced for carryforward applied to the 2001 limits. Also, special carryforward that was applied to the 2002 limit for Category 347/348, in the amount of 175,230 dozen, is being deducted as 525,690 dozen from the 2003 limit, reflecting the 3:1 payback penalty.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the availability of the 2003 CORRELATION will be published in the **Federal Register** at a later date.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 18, 2002.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Pursuant to Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Bangladesh and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following levels of restraint:

| Category | Twelve-month restraint limit |
|---|---|
| 237 | 782,722 dozen. |
| 331pt. [1] | 184,031 dozen pairs. |
| 334 | 252,195 dozen. |
| 335 | 428,749 dozen. |
| 336/636 | 767,257 dozen. |
| 338/339 | 2,222,663 dozen. |
| 340/640 | 5,024,468 dozen. |
| 341 | 4,334,870 dozen. |
| 342/642 | 720,146 dozen. |
| 347/348 | 3,220,394 dozen. |
| 351/651 | 1,207,941 dozen. |

| Category | Twelve-month restraint limit |
|---|---|
| 352/652 | 17,063,426 dozen. |
| 363 | 42,631,995 numbers |
| 369–S [2] | 2,857,654 kilograms. |
| 634 | 835,419 dozen. |
| 635 | 541,253 dozen. |
| 638/639 | 2,818,745 dozen. |
| 641 | 1,742,878 dozen. |
| 645/646 | 665,210 dozen. |
| 647/648 | 2,356,029 dozen. |

[1] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[2] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated November 21, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–27090 Filed 10–23–02; 8:45 am]

**BILLING CODE 3510–DR–M**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

October 18, 2002.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels.

**EFFECTIVE DATE:** January 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and Guaranteed Access Levels (GALs) for textile products, produced or manufactured in the Dominican Republic and exported during the period January 1, 2003 through December 31, 2003 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2003 limits and guaranteed access levels.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the availability of the 2003 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 18, 2002.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in the Dominican Republic and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following levels of restraint:

| Category | Restraint limit |
|---|---|
| 338/638 | 1,433,879 dozen. |
| 339/639 | 1,706,313 dozen. |
| 340/640 | 1,476,099 dozen. |
| 342/642 | 1,038,765 dozen. |
| 347/348/647/648. | 3,533,491 dozen of which not more than 1,866,747 dozen shall be in Categories 647/648. |
| 351/651 | 1,769,590 dozen. |
| 433 | 23,721 dozen. |
| 442 | 80,534 dozen. |
| 443 | 147,338 numbers. |
| 444 | 80,534 numbers. |
| 448 | 41,488 dozen. |
| 633 | 216,587 dozen. |

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated November 14, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC, and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), effective on January 1, 2003, you are directed to establish guaranteed access levels for properly certified textile products in the following categories which are assembled in the Dominican Republic from fabric formed and cut in the United States and re-exported to the United States from the Dominican Republic during the period January 1, 2003 through December 31, 2003:

| Category | Guaranteed access level |
|---|---|
| 338/638 | 1,150,000 dozen. |
| 339/639 | 1,150,00 dozen. |
| 340/640 | 1,000,000 dozen. |
| 342/642 | 1,000,000 dozen. |
| 347/348/647/648. | 8,050,000 dozen. |
| 351/651 | 1,000,000 dozen. |
| 433 | 21,000 dozen. |
| 442 | 65,000 dozen. |
| 443 | 50,000 numbers. |
| 444 | 30,000 numbers. |
| 448 | 40,000 dozen. |
| 633 | 60,000 dozen. |

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of February 25, 1987 (52 FR 6595), as amended, shall be denied entry unless the Government of the Dominican Republic authorizes the entry and any charges to the appropriate specific limits. Any shipment which is declared for entry under the Special

Access Program but found not to qualify shall be denied entry into the United States.

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–27091 Filed 10–23–02; 8:45 am]

BILLING CODE 3510–DR–S

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of an Import Restraint Limit and Guaranteed Access Level for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

October 18, 2002.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing an import limit and guaranteed access level.

**EFFECTIVE DATE:** January 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limit and Guaranteed Access Level (GAL) for textile products in Categories 340/640, produced or manufactured in El Salvador and exported during the period January 1, 2003 through December 31, 2003 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limit and guaranteed access level for 2003.

This specific limit and guaranteed access level do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the availability of the 2003 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 18, 2002.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in El Salvador and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of 1,853,185 dozen.

The limit set forth above is subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in Categories 340/640 exported during 2002 shall be charged to the applicable category limit for that year (see directive dated November 16, 2001) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

Also pursuant to the ATC, and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), effective on January 1, 2003, a guaranteed access level of 1,000,000 dozen is being established for properly certified textile products in Categories 340/640 assembled in El Salvador from fabric formed and cut in the United States which are re-exported to the United States from El Salvador during the period beginning on January 1, 2003 and extending through December 31, 2003.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of January 6, 1995 (60 FR 2740), as amended, shall be denied entry unless the Government of El Salvador authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

This specific limit and guaranteed access level do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–27092 Filed 10–23–02; 8:45 am]

BILLING CODE 3510–DR–S

## DEPARTMENT OF DEFENSE

### Department of the Army

### Prospective Grant of Exclusive Patent License

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 35 U.S.C. 209 and 37 CFR 404.7, U.S. Army Soldier and Biological Chemical Command (SBCCOM) hereby gives notice that it is contemplating the grant of an exclusive license in the United States to practice the below referenced inventions owned by the U.S. Government to CBTEK, L.L.C., 2607 Holman Avenue, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Biffoni, Intellectual Property Attorney, U.S. Army Soldier and Biological Chemical Command, ATTN: AMSSB–CC (Bldg E4435), Aberdeen Proving Ground, MD 21010–5424, Phone: (410) 436–1158; Fax: 410–436–2534 or E-mail: *John.Biffoni@sbccom.apgea.army.mil*.

**SUPPLEMENTARY INFORMATION:** The prospective exclusive license may be granted, unless SBCCOM receives written evidence and argument to establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7 on or before November 8, 2002. The following Patent Numbers, Titles and Issue dates are provided:

1. *Title:* ''Hand-Held Temperature programmable Modular Gas Chromatograph.''

*Description:* The present invention relates to a gas chromatograph system of reduced size, weight and low power consumption for hand-held field applications. More particularly, to a modular gas chromatography system, which is capable of being interfaced with other portable analyzers.

*Patent Number:* 5,856,616.

*Issue Date:* January 5, 1999.

2. *Title:* ''Biological Classification System.''

*Description:* The present invention relates to a hand-held chemical vapor detector for detecting biological substances in an indoor and outdoor setting. More specifically, the invention relates to a plasma chromatograph (PC) vapor detector that is interfaced to a biological sample processing and transfer introduction system.

*Patent Application Number:* 10/205,356.

*Filed:* 07/25/2002.

3. *Title:* ''Injection Valves.''

*Description:* The present invention relates generally to the field of valves and, in particular, to an alternative method for injecting sample fluids into chromatography columns.

*Patent Application Number:* Not yet assigned.

*Filed:* 09/11/02.

**Luz D. Ortiz,**

*Army Federal Register Liaison Officer.*

[FR Doc. 02–27154 Filed 10–23–02; 8:45 am]

**BILLING CODE 3710–08–M**

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## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Intent To Prepare a Draft Environmental Impact Statement Titled: St. Charles International Airport Project, St. Charles Parish, LA

**AGENCY:** Department of the Army, Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The U.S. Army Corps of Engineers, New Orleans District (MVN), has received an application from St. Charles International Airport, LLC, 3453 Meadow Lane, Houston, TX 77027 to build an international airport facility in St. Charles Parish, in the vicinity of the highway I–10/I–310 interchange near Kenner, Louisiana. The MVN is initiating this study under the authority of 30 CFR part 230. This study will investigate the feasibility of constructing an international airport faculty in St. Charles Parish.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning the Environmental Impact Statement (EIS) should be addressed to Mr. Gib Owen at U.S. Army Corps of Engineers, PM–RS, P.O. Box 60267, New Orleans, LA 70160–0267, phone (504) 862–1337, fax number (504) 862–2572 or by E-mail at *gib.a.owen@mvn02.usace.army.mil.*

**SUPPLEMENTARY INFORMATION:** 1. Applicant proposes to construct an international airport facility and appurtenant structures on approximately 8,153 acres of which approximately 4,253 acres is plaustrine 1 and emergent wetland and 3,900 acres of open water. Facility would consist of the construction of: (1) Five runways (9,000 to 12,000 feet long) and accompanying taxiways; (2) taxiway over I–310; (3) overpass and access roadway from Highway I–10 to terminal facilities; (4) intermodal freight center including facilities for the handling, processing and storage of cargo; (5) passenger terminal; (6) grade reduction of Canadian National-Illinois Central railroad track; (7) flood protection levee approximately 56,829 feet in length; and (8) hurricane protection levee approximately 29,823 feet in length. Applicant proposes to demuck approximately 23,981,558 cubic yards of material from site. Applicant further proposes to fill area using approximately 59,032,115 cubic yards of material obtained from dredging the Mississippi River, the Bonnet Carre Floodway and commercial sources.

2. Scoping is the process for determining the range of alternatives and significant issues to be addressed in the EIS. For this analysis, a letter will be sent to all parties believed to have an interest in the analysis, requesting their input on alternatives and issues to be evaluated. The letter will also notify interested parties of public scoping meetings that will be held in the local area. Notices will also be sent to local news media. All interested parties are invited to comment at this time, and anyone interested in this study should request to be included in the study mailing list.

A public scoping meeting will be held in November or December 2002 at the Lake Pontchartrain Center 4545 Williams Boulevard in Kenner Louisiana. Additional meetings could be held, depending upon interest and if it is determined that further public coordination is warranted.

3. Significant Issues. The tentative list of resources and issues to be evaluated in the *EIS includes:* Wetlands (marshes and swamps); bottomland hardwoods; wildlife resources; aquatic resources including fisheries and essential fish habitat; coastal zone impacts; water quality; air quality; threatened and endangered species; recreation resources; cultural resources; aircraft noise; solid waste impacts; storm water runoff; and transportation impacts. Socioeconomic items to be evaluated in the EIS include: need for project; flood protection; business and industrial activity; employment; land use; property values; public/community facilities and services; tax revenues; population; community and regional growth; transportation; housing; community cohesion; and noise. Additionally, a No-Action alternative will be evaluated.

4. Cooperating Agency. The Federal Aviation Administration (FAA) will be a cooperating agency in the preparation of a draft EIS (DEIS) and will provide guidance and comment for areas within the expertise of the FAA.

5. Environmental Consultation and Review. The U.S. Fish and Wildlife Service (USFWS) will be assisting in the documentation of existing conditions and the assessment of effects of project alternatives through the Fish and Wildlife Coordination Act consultation procedures. The USFWS will provide a Fish and Wildlife Coordination Act report. Consultation will be accomplished with the USFWS and the National Marine Fisheries Service (NMFS) concerning threatened and endangered species and their critical habitat. The NMFS will be consulted on the effects of this proposed action on Essential Fish Habitat. The DEIS or a notice of its availability will be distributed to all interested agencies, organizations, and individuals.

6. Estimated Date of Availability. Funding levels will dictate the date when the DEIS is available. The earliest that the DEIS is expected to be available in the fall of 2004.

Dated: October 1, 2002.

**Peter J. Rowan,**

*Colonel, U.S. Army, District Engineer.*

[FR Doc. 02–27157 Filed 10–23–02; 8:45 am]

**BILLING CODE 3710–84–P**

## DEPARTMENT OF DEFENSE

### Department of Army; Corps of Engineers

### Intent To Prepare a Draft Supplemental Environmental Impact Statement for the Design Modifications and Recreational Enhancements to the Wyoming Valley Levee Raising Project at the Wilkes-Barre, PA Historic River Commons

**AGENCY:** Department of the Army, Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (Corps), Baltimore District, will prepare a Draft Supplemental Environmental Impact Statement (DSEIS). The DSEIS will evaluate the potential impacts to the natural, physical, and human environment resulting from the proposed Design Modifications and Recreational Enhancements to the Wyoming Valley Levee Raising Project at the Wilkes-Barre, PA Historic River Commons. The project goal is to reconnect Wilkes-Barre's urban district to the Susquehanna River reclaiming the river as a civic resource for the daily life of the inhabitants and visitors and making the river an identifying topographic symbol of the city.

The DSEIS will include documentation of baseline conditions, an evaluation of the no action alternative, and an evaluation of the proposed project features and associated impacts. The features to be evaluated for the proposed project include two portals (i.e., pedestrian gates) through the levee, a river landing, a boat dock/pier, and an amphitheater. Details concerning these features are provided in Section 4 below.

**DATES:** A public scoping meeting is scheduled for November 6, 2002, at 7 p.m., Kings College Burke Auditorium in the McGowan Building, on the corner of River and Union Streets in Wilke-Barre.

**ADDRESSES:** Send written comments and suggestions concerning the scope of the DSEIS, requests to speak at the public scoping meeting, or special requests to enable participation at the scoping meeting (e.g., interpreter for the hearing-impaired) to: Amy M. Guise, CENAB–PL, U.S. Army Corps of Engineers, Baltimore District, 10 South Howard Street, P.O. Box 1715, Baltimore, MD, 21203–1715. Telephone (410) 962–2941 or Electronic Mail: *amy.m.guise@usace.army.mil.* Requests to be placed on the mailing list or receive a copy of the DSEIS should also be sent to this address.

**FOR FURTHER INFORMATION CONTACT:** To obtain additional information about the proposed project, contact Patricia Coury, CENAB–PL, U.S. Army Corps of Engineers, Baltimore District, 10 South Howard Street, P.O. Box 1715, Baltimore, MD, 21203–1715. Telephone (410) 962–2668 or Electronic Mail: *patricia.coury@usace.army.mil.*

**SUPPLEMENTARY INFORMATION:**

**1. Public Participation**

a. The Corps will conduct a public scoping meeting (see **DATES**) to gain input from interested agencies, organizations, and the general public concerning the content of the DSEIS, issues and impacts to be addressed in the DSEIS, and alternatives that should be analyzed.

b. The Corps invites full public participation to promote open communication and better decision-making. All persons and organizations that have an interest in the Design Modifications and Recreational Enhancements to the Wyoming Valley Levee Raising Project as they affect the community of Wilkes-Barre, Pennsylvania and the affected environment are urged to participate in this NEPA environmental analysis process. Assistance will be provided upon request to anyone having difficulty with learning how to participate.

c. Public comments are welcomed anytime throughout the NEPA process. Formal opportunities for public participation include: (1) The public scoping meeting to be held near the project site; (2) anytime during the NEPA process via mail, telephone or e-mail; (3) during the 45-day comment period on the Draft Environmental Impact Statement—approximately April to May, 2003; and, (4) review of the Final SEIS—August/September, 2003. Schedules and locations will be announced in local news media. Interested parties may also request to be included on the mailing list for public distribution of meeting announcements and documents. (See **ADDRESSES**).

d. To ensure that all issues related to the proposed project are addressed, the Corps will conduct an open process to define the scope of the DSEIS. Recommendations from interested agencies, local and regional stakeholders and the general public are encouraged to provide input in identifying areas of concern, issues and impacts to be addressed in the DSEIS, and the alternatives that should be analyzed. Scoping for the DSEIS will continue to build upon the knowledge and information developed by the Corps' investigations of flooding in the Wyoming Valley and the Susquehanna River basin.

e. Environmental issues will focus on, but are not limited to, effects on air quality, wetlands, water quality; fish and wildlife resources (including threatened and endangered species); hazardous, toxic, and radioactive waste; traffic; aesthetic resources; and cultural resources (including archaeological sites and historic architecture). The team will evaluate the environmental impacts (both adverse and beneficial) of the proposed actions.

**2. Background**

a. In 1999, the Luzerne County Flood Control Authority sponsored a citizens' participatory planning workshop to develop a community-based concept plan for the downtown Wilkes-Barre Susquehanna riverfront. This workshop culminated in a recommendation to the Authority that addressed how to develop the Wilkes-Barre Historic River Commons waterfront near the Market Street Bridge. The River Commons is part of the River Street Historic District and was listed on the National Register of Historic Places in 1980. Established in the 18th Century as the Central locale for the town, the River Commons is the area where both Fort Wyoming and Wilkes-Barre Fort were most likely located.

b. Based on the input, the Authority retained the services of a consultant to take the community's recommendations and develop them into a conceptual plan with preliminary drawings and a preliminary cost estimate. The project covers approximately 25 acres and runs over 4,200 feet from South Street at the west end at the Wilkes University campus to the Veterans Memorial Bridge and Luzerne County Courthouse near Kings College at its east end.

c. The Luzerne County Flood County Authority requested the Wilkes-Barre Riverfront Plan be added to the Wilkes-Barre section of the ongoing Wyoming Valley Levee Raising Project. Congressman Kanjorski also contacted the Corps requesting an evaluation of whether the features identified in the Riverfront Plan could be incorporated into the ongoing project. The Corps confirmed that they had the authority to undertake several of the proposed provisions, provided that they were technically feasible, environmentally acceptable, and economically justified.

**3. Purpose and Need**

a. The ongoing Wyoming Valley Levee Raising Project will project protection

against flood flows that would be caused by a reoccurrence of Tropical Storm Agnes (June 1972). The project consists of raising existing levees and floodwalls between three and five feet; modifying closure structures, drainage structures, and pump stations; relocating utilities; adding minor recreation facilities; and providing some new levees, closure structures, and floodwalls to maintain the integrity of the existing flood control system.

b. The Wyoming Valley Levee Raising Project's 1996 Phase II General Design Memorandum/Environmental Impact Statement recognized that there would be detrimental impacts to communities where flood protection passed through residential and commercial areas. Where possible, the levee raising design was to be sensitive to aesthetic, recreation, and environmental consideration. Contemporary Corps' projects incorporate a number of design features within urban areas to minimize the effects of large flood control projects on urban waterfronts. The purpose of modifying the Levee Raising Project through the Historic River Commons is to reconnect Wilkes-Barr's downtown to the Susquehanna River. These modifications will help reclaim the river as a civic resource for the daily life of residents and visitors and to make the river a unique amenity for the city.

**4. Proposed Action and Alternatives**

a. The proposed action is to modify flood damage reduction structures (*e.g.,* floodwall, levee, *etc.*) along the downtown Wilkes-Barre waterfront featuring more current urban flood protection design practices, methods, and materials. The features being considered for the proposed action include:

(1) Upstream Portal—An approximately 60-foot wide and 12-foot high upstream portal through the levee and a bridge above would provide pedestrian and emergency access to the Susquehanna River just upstream of the Market Street Bridge at the same grade as the Historic River Commons. During a flood event the portal would be closed with flood gates.

(2) Downstream Portal—An approximately 60-foot wide and 12-foot high downstream portal across from the Northampton Street and River Street intersection that would provide similar pedestrian and emergency access to the Susquehanna River. During a flood event the portal would also be closed with flood gates.

(3) River Landing—Upstream of the Market Street Bridge, a River Landing would be constructed upon the existing stability berm (approximately 900 feet long x 70 feet wide) that was previously constructed in 1999. When completed, this River Landing would create a concrete-surfaced, 1.2-acre riverfront plaza for people to congregate for waterfront events (*e.g.,* concerts, 4th of July fireworks, art shows, ethnic food festivals, *etc.*). A series of bollards, or similar structures, at the edge of the River Landing would provide for pedestrian safety. The River Landing would require limited re-grading, reconfiguring, and a riverside expansion of the rock stability berm to accommodate the necessary features.

(4) Pier/Dock—Connected to the River Landing would be a 340-foot long and 12-foot wide boating/fishing pier. Access to the pier would be via a fixed ramp directly from the River Landing. The dock itself would not have permanent boat slips, but would have adequate fendering to provide a location where boats could temporarily tie-up for a few hours at a time (public landing). The feature would compliment the existing boat launch in Nesbitt Park, across the river in Kingston, by providing additional areas for public access for fishing and recreational boating.

(5) Amphitheater and Stage—The amphitheater and stage would be constructed just downstream of the Market Street Bridge but upstream of the Downstream Portal. The amphitheater would consist of large stones or reinforced concrete blocks placed into the slope to provide bench seating for approximately 750 people. One row of seats would be above the existing riverside access road and the majority of the rows would be below the riverside access road grade. The performance stage would be built of sheetpile and concrete slightly above the existing grade near the river's edge.

(6) Paving Riverside Access Road—At the completion of the levee raising and the Riverfront Plan, the riverside access road at the base of the riverside of the levee would be paved as an element to the riverfront development plan. The paving of this road would be an improvement for recreational purposes and provide a biking/jogging/walking trail along the riverside toe of the levee.

(7) Miscellaneous Recreational Accoutrements—The flood control project—as designed and constructed throughout the Wyoming Valley—includes recreational features in the basic design. This reach of the Wilkes-Barre levee would include similar recreational features such as lights, seating areas with benches, trees/vegetation, educational kiosks, and trash receptables.

b. Alternatives for Evaluation. (1) The DSEIS will describe and assess the following 5 alternatives: No Action; Portals Only; Portals and River Landing; Portals, River Landing, and Boat Dock/Pier; Portals, River Landing, Boat Dock/Pier, and Amphitheater; and Stage.

(2) These alternatives, along with no action, will be the alternatives the Corps initially proposes to evaluate in the DSEIS. As necessary, reasonable alternatives that may become apparent as the evaluation proceeds will be addressed.

(3) The Miscellaneous Recreational Accoutrements and Paving of the Riverside Access Road will be evaluated in the DSEIS, but would be evaluated separately as actions to be conducted regardless of the alternative selected.

**Luz D. Ortiz,**

*Army Federal Register Liaison Officer.*

[FR Doc. 02–27156 Filed 10–23–02; 8:45 am]

BILLING CODE 3710–41–M

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Inland Waterways Users Board

**AGENCY:** Department of the Army, Army Corps of Engineers, DoD.

**ACTION:** Notice of open meeting.

**SUMMARY:** In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the forthcoming meeting.

*Name of Committee:* Inland Waterways Users Board (Board).

*Date:* November 21, 2002.

*Location:* Tremont House Hotel, 2300 Ship's Mechanic Row, Galveston, TX (1–409–763–0300).

*Time:* Registration will begin at 7:30 a.m. and the meeting is scheduled to adjourn at 1 p.m.

*Agenda:* The Board will hear briefings on navigation projects administered by the U.S. Army Corps of Engineers, Galveston District.

**FOR FURTHER INFORMATION CONTACT:** Mr. Norman T. Edwards, Headquarters, U.S. Army Corps of Engineers, CECW–PD, 441 G Street, NW., Washington, DC 20314–1000; Ph: 202–761–4559.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Any interested person may attend, appear before, or file statements with the

committee at the time and in the manner permitted by the committee.

**Luz D. Ortiz**

*Army Federal Register Liaison Officer.*

[FR Doc. 02–27155 Filed 10–23–02; 8:45 am]

BILLING CODE 3710–92–M

## DEPARTMENT OF ENERGY

### Energy Information Administration

### Policy Statement; Solicitation Of Comments On The Proposed Policy For Information In Statistical Tables Based On Confidential Historical Electric Power Survey Data

**AGENCY:** Energy Information Administration (EIA), Department of Energy (DOE).

**ACTION:** Policy Statement; Solicitation of Comments on the Proposed Policy for Information in Statistical Tables Based on Confidential Historical Electric Power Survey Data.

**SUMMARY:** The EIA is requesting comments on a proposed policy to discontinue the use of disclosure limitation methods for information in statistical tables derived from confidential historical electric power survey data. This request is based on the need to provide additional tabulations that will improve and broaden the understanding of the electric power industry by releasing additional information. These data may be released at the national, State, or regional level. For this policy, confidential historical electric power survey data are defined as any electric power data collected in an EIA survey under a pledge of confidentiality during a survey period at least 3 years prior to the time of dissemination. These statistical tables are disseminated in various EIA products, including the Electric Power Monthly, Electric Power Annual, Coal Industry Annual, Quarterly Coal Report, Renewable Energy Annual, Natural Gas Monthly, Natural Gas Annual, Petroleum Marketing Monthly, Petroleum Supply Monthly, Petroleum Marketing Annual, Petroleum Supply Annual, Volumes 1 and 2, and Annual Energy Review. (EIA's electric power data are available on the web at *http://www.eia.doe.gov/*).

**DATES:** Comments must be filed by December 23, 2002. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

**ADDRESSES:** Comments on this proposed policy should be directed to Dean Fennell. To ensure receipt of the comments by the due date, submission by FAX (202–287–1934) or e-mail (*Dean.Fennell@eia.doe.gov*) is recommended. The mailing address is Energy Information Administration, EI–53, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–0650. Alternatively, Mr. Fennell may be contacted by telephone at 202–287–1744.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Mr. Fennell at the address listed above.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Current Actions
III. Request for Comments

## I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer-term domestic demands.

The EIA provides the public and other Federal agencies with opportunities to comment on collections of energy information conducted by EIA. As appropriate, EIA also requests comments on important issues relevant to the dissemination of energy information. Comments received help the EIA when preparing information collections and information products necessary to support EIA's mission.

The EIA collects survey information about the electric power industry from companies and organizations involved in the generation, transmission, distribution, and sales of electric power. This survey information is disseminated in a variety of information products and electronic data files used by government and private sector policymakers and analysts.

## II. Current Actions

EIA is requesting public comments on a proposed policy to discontinue the use of disclosure limitation methods for information in statistical tables derived from confidential historical electric power survey data. This request is based on the need to provide additional tabulations that will improve and broaden the understanding of the electric power industry. These data may be released at the national, State, or regional level. (An example of this is publishing national level fuel consumption data in the Annual Energy Review, or publishing State or regional level data for fuel consumption, useful thermal output, or generation in reports such as the Electric Power Monthly or Natural Gas Annual.)

For this policy, confidential historical electric power survey data are defined as any electric power data collected in an EIA survey under a pledge of confidentiality during a survey period at least 3 years prior to the time of dissemination. The 3-year period includes the reporting year (the year for which data are currently being collected) and two prior years where data have been finalized. In the case of annual data, the EIA would disseminate information for 1998 and prior years without suppressing individual sensitive data cells in summary tables. For monthly data, historical data would be disseminated for 1999 and prior years without suppressing individual sensitive data cells in summary tables. While EIA will continue to maintain the confidentiality of individual data forms, EIA believes that the release of these historical data in tabular form (State, regional, or national level) will not affect the competitiveness of an individual company. EIA will continue to use its disclosure rules, which are designed to protect confidential data, and withhold sensitive data in summary level tables for the years that remain protected. At present, EIA will withhold sensitive annual data for 1999, 2000, and 2001 and sensitive monthly data for 2000, 2001, and 2002.

With respect to the confidentiality of information collected in EIA's electric power surveys, there are two categories. Some information is collected under a pledge of confidentiality and EIA takes various actions to ensure the protection of such information. Those steps include access controls on the individually-identifiable information, as well as the use of disclosure limitation methods to ensure statistical tables based on the confidential information do not have sensitive data cell values. A sensitive data cell value is one that could be used by a knowledgeable person to estimate too closely the confidential information reported by an individual survey respondent. EIA never publicly releases individually-identifiable information collected under a pledge of confidentiality.

Other electric power survey information is considered nonconfidential because EIA has determined that the public release of the information would not cause substantial

competitive harm to the survey respondents. EIA uses nonconfidential survey information in its products and may also make the information publicly available in individually-identifiable form.

EIA's proposed policy would eliminate the use of disclosure limitation methods on information displayed in statistical tables based on confidential historical electric power survey data if the survey data is at least 3 years old. EIA believes that because the data are old, this policy would not cause substantial competitive harm to the competitive position of any electric power survey respondent. This policy would expand the electric power information that could be provided in EIA information products by eliminating the requirement to withhold sensitive cells and other nonsensitive cells necessary to ensure protection of sensitive information.

### III. Request for Comments

The public should comment on the actions discussed in item II. The questions below are general issues on which EIA is seeking public comments.

*General Issues:*

A. Is the proposed policy appropriate for EIA's confidential historical electric power survey data?

B. Is the assumption that the proposed policy would not cause substantial competitive harm to the competitive position of any survey respondent reasonable?

Comments submitted in response to this notice will be considered during development of EIA's final policy regarding the use of disclosure limitation methods for information in statistical tables with confidential historical electric power survey data. The comments will also become a matter of public record.

After EIA has completed development, a **Federal Register** notice will be issued announcing the policy.

**Statutory Authority:** Section 52 of the Federal Energy Administration Act (Pub. L. 93–275, 15 U.S.C. 790a).

Issued in Washington, DC, October 18, 2002.

**Guy F. Caruso,**

*Administrator, Energy Information Administration.*

[FR Doc. 02–27123 Filed 10–23–02; 8:45 am]

**BILLING CODE 6450–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7398–7]**

## Agency Information Collection Activities OMB Responses

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notices.

**SUMMARY:** This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). 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.

**FOR FURTHER INFORMATION CONTACT:** Susan Auby at (202) 566–1672, or email at *Auby.susan@epa.gov.* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

**SUPPLEMENTARY INFORMATION:**

### OMB Responses to Agency Clearance Requests

*OMB Approvals*

EPA ICR No. 1617.04; Stratospheric Ozone Protection, Servicing of Motor Vehicle Air Conditions; in 40 CFR part 82, subpart B; was approved 09/24/2002; OMB No. 2060–0247; expires 09/30/2005.

EPA ICR No. 1811.03; NESHAP for Polyether Polyols Production; in 40 CFR part 63, subpart PPP; was approved 09/26/2002; OMB No. 2060–0415; expires 09/30/2005.

EPA ICR No. 1856.03; NESHAP for Primary Lead Smelters; in 40 CFR part 63, subpart TTT; was approved 10/03/2002; OMB No. 2060–0414; expires 10/31/2005.

EPA ICR No. 1656.09; Information Collection Requirements for Registration and Documentation of Risk Management Plans under Section 112r of the Clean Air Act; in 40 CFR part 68; was approved 10/08/2002; OMB No. 2050–0144; expires 10/31/2005.

EPA ICR No. 1081.07; NESHAP for Inorganic Arsenic Emissions from Glass Manufacturing Plants; in 40 CFR Part 61, subpart N; was approved 10/04/2002; OMB No. 2060–0043; expires 10/31/2005.

EPA ICR No. 1821.03; NESHAP for Steel Pickling; in 40 CFR part 63, subpart CCC; was approved 10/04/2002; OMB No. 2060–0419; expires 10/31/2005.

EPA ICR No. 0222.06; Investigation into Possible Noncompliance of Motor Vehicles; was approved 10/03/2002; OMB No. 2060–0086; expires 08/31/2003.

*Comments Filed*

EPA ICR No. 2022.01; Reporting and Recordkeeping Requirements for the Brick and Structural Clay Products Manufacturing NESHAP; on 10/03/2002 OMB filed a comment.

Dated: October 17, 2002.

**Doreen Sterling,**

*Acting Director, Collection Strategies Division.*

[FR Doc. 02–27137 Filed 10–23–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7398–8]**

## Agency Information Collection Activities: Submission for OMB Review; Comment Request, Synopses of Proposed Contract Actions and Market Research Activity

**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: Synopses of Proposed Contract Actions and Market Research Activity, OMB Control Number 2060–0039, expiration date December 31, 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 November 25, 2002.

**ADDRESSES:** Send comments, referencing EPA ICR No. 1910.02 and OMB Control No. 2030–0039, 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. 1910.02, OMB No. 2030–0039. For technical questions about the ICR contact Jill Robbins at (202) 564–1052.

**SUPPLEMENTARY INFORMATION:**

*Title:* Synopses of Proposed Contract Actions and Market Research Activity, OMB Control Number 2060–0039, EPA ICR Number 1910.02, expiration date December 31, 2002. This is a request for extension of a currently approved collection.

*Abstract:* EPA's Office of Acquisition Management is required by the Federal Acquisition Regulation (FAR), parts 5 and 10, to publicize certain contract actions, and to conduct market research activity prior to solicitation of certain contract requirements. In addition to the mandated requirements, the FAR encourages the publication of contract actions and the conduct of market research in other instances. The information collected from these activities is used to make procurement decisions such as: the supply or service to procure, which sources to utilize, extent of small business participated, contract type, etc. Response to synopses notices and market research inquiries are voluntary, but may be required in order to be considered for the award of an Agency contract.

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 07/05/2002, 67 FR 44828. No comments were received.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2.75 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:* Businesses involved in EPA Procurement.

*Estimated Number of Respondents:* 9,746.

*Frequency of Response:* One time.

*Estimated Total Annual Hour Burden:* 28,316.

*Estimated Total Annualized Capital, O&M Cost Burden:* $0.

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. 1910.02 and OMB Control No. 2030–0039 in any correspondence.

Dated: October 15, 2002.

**Oscar Morales, Director,**

*Collection Strategies Division.*

[FR Doc. 02–27138 Filed 10–23–02; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7398–9]**

## Agency Information Collection Activities: Submission for OMB Review; Comment Request, General Administrative Requirements for Assistance Programs

**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: General Administrative Requirements for Assistance Programs, OMB Control Number 2030–0020, expiration date December 31, 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 November 25, 2002.

**ADDRESSES:** Send comments, referencing EPA ICR No. 0938.09 and OMB Control No. 2030–0020, 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 it off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 0938.09. For technical questions about the ICR, contact William Hedling at 202–564–5377.

**SUPPLEMENTARY INFORMATION:**

*Title:* General Administrative Requirements for Assistance Programs, OMB Control Number 2030–0020, EPA ICR Number 0938.09, expiration date December 31, 2002. This is a request for extension of a currently approved collection.

*Abstract:* The information is collected from applicants/recipients of EPA assistance to monitor adherence to the programmatic and administrative requirements of the Agency's financial assistance program. It is used to make awards, pay recipients, and collect information on how Federal funds are being spent. EPA needs this information to meet its Federal stewardship responsibilities. This ICR renewal requests authorization for the collection of information under EPA's General Regulation for Assistance programs, which establishes minimum management requirements for all recipients of EPA grants or cooperative agreements (assistance agreements). Recipients must respond to these information requests to obtain and/or retain a benefit (Federal funds). 40 CFR part 30, ''Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations,'' includes the management requirements for potential grantees from non-profit organizations. 40 CFR part 31, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' includes the management responsibilities for potential state and local government grantees. These regulations include only those provisions mandated by statute, required by OMB Circulars, or added by EPA to ensure sound and effective financial assistance management. The information required by these regulations will be used by EPA award officials to make assistance awards and

assistance payments and to verify that the recipient is using Federal funds appropriately to comply with OMB Circulars A–21, A–87, A–102, A–110, A–122, A–128, and A–133, which set forth the pre-award, post-award, and after-the-grant requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on June 10, 2002; no comments were received.

*Burden Statement:* The annual public reporting and record keeping burden for this collection of information is estimated to average 33 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, 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:* Not-for-profit institutions.

*Estimated Number of Respondents:* 5,100.

*Frequency of Response:* On occasion, quarterly, and annually.

*Estimated Total Annual Hour Burden:* 166,037.

*Estimated Total Annualized Capital, O&M Cost Burden:* $0.

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 the use of automated collection techniques, to the addresses listed above. Please refer to EPA ICR No. 0938.09 and OMB Control No. 2030–0020 in any correspondence.

Dated: October 17, 2002.

**Doreen Sterling,**

*Acting Director, Collection Strategies Division.*

[FR Doc. 02–27139 Filed 10–23–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7399–5]**

## Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 104 (k); ''Announcement of Proposal Deadlines for the Competition for the 2003 National Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants''

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of the availability of Brownfields Grant Application Guidelines and deadlines for submissions of proposals.

**SUMMARY:** The United States Environmental Protection Agency (EPA) will begin to accept proposals for the National Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants on October 24, 2002. This notice provides information on how to obtain the application guidelines. These grants may be used to address sites contaminated by petroleum and hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum). The brownfields assessment grants (each funded up to $200,000 over two years) provide funding for a grant recipient to inventory, characterize, assess, and conduct planning and community involvement related to brownfield sites. The brownfields revolving loan fund grants (each funded up to $1,000,000 over five years) provide funding for a grant recipient to capitalize a revolving loan fund and to provide subgrants to carry out cleanup activities at brownfield sites that are owned by the subgrant recipient. The brownfields cleanup grants (each funded up to $200,000 over two years) provide funding for a grant recipient to carry out cleanup activities at brownfield sites that are owned by the grant recipient. (See Catalogue of Federal Domestic Assistance Number: 66.811; a revised CFDA number entry has been submitted for approval).

For the brownfields assessment grants, an applicant may request a waiver of the $200,000 limits and obtain funding up to $350,000 based on the anticipated level of contamination, size, or ownership status of the site. The revolving loan fund and cleanup grants require a 20 percent cost share, which may be in the form of a contribution of money, labor, material, or services from a non-federal source. If the cost share is in the form of contribution of labor, material, or other services, it must be incurred for an eligible and allowable cost under the grant and not for ineligible costs. An applicant may request a waiver of the 20 percent cost share requirement based on hardship.

The National brownfields assessment, revolving loan fund, and cleanup grants will be awarded on a competitive basis using a two-step proposal selection process. To ensure a fair selection process, evaluation panels consisting of EPA Regional and Headquarters staff and other federal agency representatives will assess how well the proposals meet the selection criteria outlined in the application booklet, *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants (October 2002).* Initial Proposals will be evaluated and ranked by Regional evaluation panels. EPA will determine those Initial Proposals that have the highest rankings, and then invite those applicants to prepare and submit Final Proposals, the second step in the two-part proposal process. Final Proposals will be evaluated and ranked by National Evaluation Panels. Final selections will be made by EPA senior management based upon the ranking of Final Proposals by the National Evaluation Panels. EPA decisions may also take into account other statutory and policy considerations, such as urban and non-urban distribution and other geographic factors; compliance with the statutory petroleum funding allocation; the benefits of promoting the long-term availability of funds under the RLF grants; designation as a federal Empowerment Zone, Enterprise Community, or Renewal Community; population; and whether the applicant is a federally recognized Indian tribe. Applicants are encouraged to contact and, if possible, meet with EPA Regional Brownfields Contacts.

**DATES:** This action is effective as of October 24, 2002. EPA expects to make up to 200 grant awards in fiscal year 2003, contingent upon the availability of funds. The application deadline for Initial Proposals for the 2003 assessment, revolving loan fund, and cleanup grants is December 16, 2002. All Initial Proposals must be postmarked by USPS or delivered at the appropriate U.S. EPA Regional Office by other means, no later than December 16, 2002, and a duplicate copy sent to U.S. EPA Headquarters. The application deadline for applicants who are invited to submit a Final Proposal is March 5, 2003. All Final Proposals must be postmarked by USPS or delivered at the appropriate U.S. EPA Regional Office by other means, no later than March 5,

2003, and a duplicate copy sent to U.S. EPA Headquarters.

**ADDRESSES:** Mailing addresses for U.S. EPA Regional Offices and U.S. EPA Headquarters are provided in the Proposal Guidelines.

Obtaining Proposal Guidelines: The proposal guidelines are available via the Internet: *http://www.epa.gov/brownfields/*. Copies of the Proposal Guidelines will also be mailed upon request. Requests should be made by calling the U.S. EPA Call Center at the following numbers: Washington, DC Metro Area at 703–412–9810, Outside Washington, DC Metro at 1–800–424–9346, TDD for the Hearing Impaired at 1–800–553–7672.

In order to ensure that the Guidelines are received in time to be used in the preparation of the proposal, applicants should request a copy as soon as possible and in any event no later than seven (7) working days before the proposal due date. Applicants who request copies after that date might not receive the proposal guidelines in time to prepare and submit a responsive proposal.

**FOR FURTHER INFORMATION CONTACT:** The U.S.EPA's Office of Solid Waste and Emergency Response, Office of Brownfields Cleanup and Redevelopment, (202) 566–2777.

**SUPPLEMENTARY INFORMATION:** On January 11, 2002, President George W. Bush signed into law the Small Business Liability Relief and Brownfields Revitalization Act. This act amended the Comprehensive Environmental Response, Compensation and Liability Act to authorize federal financial assistance for brownfields revitalization, including grants for assessment, cleanup, and job training.

Funding for the brownfields grants is authorized under Section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9604(k). Eligibility for brownfields assessment and revolving loan fund grants is limited to ''eligible entities'' as defined in section 104(k)(1) of CERCLA. These include a General Purpose Unit of Local Government; Land Clearance Authority or other quasi-governmental entity that operates under the supervision and control of, or as an agent of, a general purpose unit of local government; Governmental Entity Created by State Legislature; Regional council or group of general purpose units of local government; Redevelopment Agency that is chartered or otherwise sanctioned by a state; State; Indian Tribe other than in Alaska; and Alaska Native Regional Corporation, Alaska Native Village Corporation, and Metlakatla Indian Community. Eligibility for brownfields cleanup grants is limited to ''eligible entities'' and nonprofits. For the purposes of the brownfields grant program, EPA will use the definition of nonprofit organizations contained in Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999, Public Law 106–107. The term ''nonprofit organization'' means any corporation, trust, association, cooperative, or other organization that is operated primarily for scientific, educational, service, charitable, or similar purpose in the public interest; is not organized primarily for profit; and uses net proceeds to maintain, improve, or expand the operation of the organization.

In addition, Intertribal Consortia, other than those composed of ineligible Alaskan tribes, are eligible to apply for the brownfields assessment, revolving loan fund, and cleanup grants. Coalitions of eligible governmental entities are eligible to apply for the brownfields revolving loan fund grants, but only one member of the coalition may receive a cooperative agreement.

The evaluation panels will review the proposals carefully and assess each response based on how well it addresses the criteria, briefly outlined below. There are two different types of criteria—threshold criteria and ranking criteria. Responses to the criteria will be utilized to determine whether to make an award and the amount of funds to be awarded. There is no guarantee of an award.

**Assessment Grants—Initial Proposal**

*Threshold Criteria*

A. Applicant Eligibility

B. Community Notification

C. Letter from the State or Tribal Environmental Authority

D. Description of Sites

*Ranking Criteria*

A. Community Need (a maximum of 40 points may be received for this criterion)

B. Leveraging of Additional Resources (a maximum of 40 points may be received for this criterion)

C. Ability to Manage Grants (a maximum of 20 points may be received for this criterion)

D. Site Selection Process (a maximum of 30 points may be received for this criterion)

**Revolving Loan Fund Grants—Initial Proposal**

*Threshold Criteria*

A. Applicant Eligibility
B. Community Notification
C. Legal Authority to Manage a Revolving Loan Fund
D. Cleanup Authority and Oversight Structure
E. Cost Share
F. Letter from the State or Tribal Environmental Authority
G. Description of Sites

*Ranking Criteria*

A. Community Need (a maximum of 40 points may be received for this criterion)
B. Leveraging of Additional Resources (a maximum of 40 points may be received for this criterion)
C. Ability to Manage Grants/Management Structure (a maximum of 20 points may be received for this criterion)
D. Description of Target Market for RLF Loans and Subgrants (a maximum of 40 points may be received for this criterion)

**Cleanup Grants—Initial Proposal**

*Threshold Criteria*

A. Applicant Eligibility
B. Community Notification
C. Description of Sites
D. Cleanup Authority and Oversight Structure
E. Cost Share
F. Letter from the State or Tribal Environmental Authority

*Ranking Criteria*

A. Community Need (a maximum of 40 points may be received for this criterion)
B. Leveraging of Additional Resources (a maximum of 40 points may be received for this criterion)
C. Ability to Manage Grants (a maximum of 20 points may be received for this criterion)

**Assessment Grants—Final Proposal (By Invitation Only)**

Budget (a maximum of 15 points may be received for this criterion)

*Ranking Criteria*

A. Sustainable Reuse of Brownfields/Development Potential (a maximum of 15 points may be received for this criterion)
B. Reduction of Threats to Human Health and the Environment (a maximum of 20 points may be received for this criterion)
C. Reuse of Existing Infrastructure (a maximum of 15 points may be received for this criterion)

D. Greenspace/Open Space (a maximum of 15 points may be received for this criterion)
E. Community Involvement (a maximum of 20 points may be received for this criterion)

**Revolving Loan Fund Grants—Final Proposal (By Invitation Only)**

Budget (a maximum of 15 points may be received for this criterion)

*Ranking Criteria*

A. Business Plan (a maximum of 20 points may be received for this criterion)
B. Sustainable Reuse of Brownfields/Development Potential (a maximum of 15 points may be received for this criterion)
C. Reduction of Threats to Human Health and the Environment (a maximum of 20 points may be received for this criterion)
D. Reuse of Existing Infrastructure (a maximum of 15 points may be received for this criterion)
E. Greenspace/Open Space (a maximum of 15 points may be received for this criterion)
F. Community Involvement (a maximum of 20 points may be received for this criterion)

**Cleanup Grants—Final Proposal (By Invitation Only)**

Budget (a maximum of 15 points may be received for this criterion)

*Ranking Criteria*

A. Sustainable Reuse of Brownfields/Development Potential (a maximum of 15 points may be received for this criterion)
B. Reduction of Threats to Human Health and the Environment (a maximum of 20 points may be received for this criterion)
C. Reuse of Existing Infrastructure (a maximum of 15 points may be received for this criterion)
D. Greenspace/Open Space (a maximum of 15 points may be received for this criterion)
E. Community Involvement (a maximum of 20 points may be received for this criterion)

EPA decisions may take into account other statutory and policy considerations, such as urban and non-urban distribution and other geographic factors; compliance with the statutory petroleum funding allocation; the benefits of promoting the long-term availability of funds under the RLF grants; designation as a federal Empowerment Zone, Enterprise Community, or Renewal Community; population; and whether the applicant is a federally recognized Indian tribe.

Dated: October 15, 2002.

**Linda Garczynski,**

*Director, Office of Brownfields Cleanup and Redevelopment, Office of Solid Waste and Emergency Response.*

[FR Doc. 02–27126 Filed 10–23–02; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2002–0271; FRL–7276–5]**

## Pesticide Product Registrations; Conditional Approval

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces Agency approval of an application submitted by Camas Technologies, Inc., to conditionally register the pesticide product Qwel (CTI 13-19B) Liquid Concentrate containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**FOR FURTHER INFORMATION CONTACT:** Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: waller.mary@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0271. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. The request should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

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. Although not all docket materials may

be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

## II. Did EPA Conditionally Approve the Application?

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of Macleaya extract, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of Macleaya extract during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C) of FIFRA, the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

## III. Conditionally Approved Registrations

EPA issued a notice, published in the **Federal Register** of January 19, 2000 (65 FR 2948) (FRL–6485–1), which announced that Camas Technologies, Inc., P.O. Box 1357, Broomfield, CO 80038–1357, had submitted an application to conditionally register the pesticide product, Qwel Fungicide (EPA File Symbol 69876–R), containing Macleaya extract at 1.5% an active ingredient not included in any previously registered product.

The application was conditionally approved on September 19, 2002, as Qwel (CTI 13-19B) Liquid Concentrate, an end-use product; for foliar application to ornamental crops in enclosed greenhouses for the control of powdery mildew and *Alternaria* and *Septoria* leaf spots (EPA Registration Number 69876–1).

### List of Subjects

Environmental protection, Pesticides and pest.

Dated: October 6, 2002.

**Debra Edwards,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 02–27128 Filed 10–23–02; 8:45 am]

BILLING CODE 6560–50–S

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2002–0267; FRL–7276–2]**

## Thymol and Eucalyptus Oil; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received a specific exemption request from the Maine Department of Agriculture, Food, and Rural Resources to use the pesticide thymol and eucalyptus oil (CAS numbers 89–83–8 and 8000–48–4, respectively) to treat up to 13,000 hives of honey and beeswax to control Varroa mite. The Applicant proposes the use of the new chemical, eucalyptus oil which has not been registered by EPA and the Applicant proposes a first food use of thymol. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

**DATES:** Comments, identified by docket ID number OPP–2002–0267, must be received on or before November 8, 2002.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; fax number: (703) 308–5433; e-mail address: Sec-18-Mailbox@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are a federal or state government agency involved in administration of environmental quality programs. Potentially affected entities may include, but are not limited to:

Federal or state government entity, (NAICS 9241), e.g., Department of Agriculture, Environment, etc.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

### *B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0267. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

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 ID 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 Unit I.B.1. 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.

*C. How and To Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID 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 wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, 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.

i. *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. Once in the system, select ''search,'' and then key in docket ID number OPP–2002–0267. 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.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0267. 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.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0267.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0267. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

*D. 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. 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 listed under **FOR FURTHER INFORMATION CONTACT.**

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**II. Background**

*A. What Action is the Agency Taking?*

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a federal or state agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Maine Department of Agriculture, Food, and Rural Resources has requested the Administrator to issue a specific exemption for the use of thymol and eucalyptus oil on honey and beeswax to control Varroa mite. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that Varroa mites were first detected in Maine in November of 1987. Since 1988, beekeepers have treated their colonies with fluvalinate to control Varroa. Varroa mite resistance to fluvalinate is widespread in Maine. In 1999, a section 18 emergency exemption was granted by EPA for the treatment of Varroa and the small hive beetle. During the fall of 2001, a Florida-Maine migratory beekeeping operation was determined to have Varroa with resistance to coumaphos and fluvalinate. Maine produced 231,000 pounds of honey in 2000 valued at $173,000 wholesale. The honey bee and beekeeping industry is essential for crop pollination. Maine is the primary producer of blueberries in the world, an industry that contributes $75 - 100 million to the state's annual economy. Honey bees also pollinate the state's apple crop and other fruits and vegetables with an estimated value of over $30 million per year.

The Applicant proposes to treat 13,000 hives in late summer or fall at least 5 months prior to harvesting the honey. A maximum of 26,000 tablets weighing 11 grams each will be used.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient) which has not been registered by EPA, as well as a first food use of a chemical. The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the Maine Department of Agriculture, Food, and Rural Resources.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: October 6, 2002.

**Debra Edwards,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 02–27129 Filed 10–23–02; 8:45 am]

BILLING CODE 6560–50–S

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7398–3]**

## Proposed Prospective Purchaser Agreement under CERCLA for the Midwest Portland Cement Superfund Site

**AGENCY:** United States Environmental Protection Agency (''USEPA'').

**ACTION:** Proposal of CERCLA prospective purchaser agreement for the Midwest Portland Cement Superfund Site.

**SUMMARY:** USEPA is proposing to execute a Prospective Purchaser Agreement (''PPA'') under authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA''), 42 U.S.C. 9601 *et seq.*, as amended, and under the inherent authority of the Attorney General of the United States to compromise and settle claims of the United States, for the transfer of title to property at the Midwest Portland Cement Superfund Site, located in East Fultonham, Ohio, to a purchaser who will obtain title to the Site through the judicial sale process. The PPA is intended to resolve the liability under CERCLA of the purchaser for costs incurred by USEPA in conducting response actions at the Site. In return for a covenant not to sue and contribution protection from USEPA, subject to standard reservations of rights, the purchaser will pay $350,000 in reimbursement of USEPA's response costs.

The Site was operated by the Midwest Portland Cement Company (''MPC'') as a cement manufacturing and limestone mining facility until ceasing operations in March, 1993. USEPA's response action at the Site was completed on January 20, 1998. The Site is not on the National Priorities List. No further response activities by USEPA are anticipated at the Site at this time. The MPC estate is being liquidated under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Pennsylvania (Case No. 97–23098–JLC). MPC's real estate was the subject of a judicial sale that took place on June 18, 2002.

**DATES:** Comments on this proposed PPA must be received by November 25, 2002.

**ADDRESSES:** A copy of the proposed PPA is available for review at USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Kevin C. Chow at (312) 353–6181, prior to visiting the Region 5 office. Comments on the proposed PPA should be addressed to Kevin C. Chow, Office of Regional Counsel (C–14J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Kevin C. Chow, Office of Regional Counsel, at (312) 353–6181.

**SUPPLEMENTARY INFORMATION:** In accordance with CERCLA, notice is hereby given of a proposed Prospective Purchaser Agreement concerning the Midwest Portland Cement Superfund Site, located at 6400 Maysville Pike, East Fultonham, Muskingum County, Ohio. The proposed PPA has been signed and approved by USEPA and the Department of Justice, subject to review by the public pursuant to this Notice. The purchaser—Belmont Leasing, Inc. (''Belmont Leasing'')—participated in the judicial sale of the Site and successfully bid for title to the property. Belmont Leasing will be required to execute the signature page for the PPA at the closing of the sale. Under the proposed PPA, the Settling Respondent will pay $350,000 in reimbursement of USEPA's response costs, and will

provide for the productive re-use of the property. In addition, the Settling Respondent will: provide future access to the Site; exercise due care with respect to any existing contamination; covenant not to sue USEPA; cooperate with USEPA and the State of Ohio; comply with all relevant environmental laws and regulations, including conducting closure of any remaining hazardous waste management units identified by the Ohio Environmental Protection Agency (''OEPA'') by meeting OEPA's closure performance standards in Ohio Administrative Code 3745–66–12 through 3745–66–20; and put notice of the PPA in the title records for the MPC real estate. USEPA believes the PPA is fair and in the public interest.

A 30-day period, beginning on the date of publication of this Notice, is open for comments on the proposed Prospective Purchaser Agreement.

**William E. Muno,**

*Director, Superfund Division, United States Environmental Protection Agency, Region 5.*

[FR Doc. 02–27131 Filed 10–23–02; 8:45 am]

BILLING CODE 6560–50–P

## EXECUTIVE OFFICE OF THE PRESIDENT

### Council on Environmental Quality

### Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information

**AGENCY:** Council on Environmental Quality, Executive Office of the President.

**ACTION:** Notice of availability of final guidelines.

**SUMMARY:** This notice announces the availability of final guidelines. These guidelines implement Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2002 (Pub. L. 106–554; H.R. 5658). Section 515 directs the Office of Management and Budget (OMB) to issue government-wide guidelines, followed by individual agency guidelines, to ensure and maximize the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by the agency and to establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with such guidelines. Each agency must also report periodically to the OMB director on the number, nature, and resolution of complaints received by the agency in regards to these requirements.

The Council on Environmental Quality (CEQ) has promulgated guidelines implementing these requirements. They are available at CEQ's offices at 722 Jackson Place, NW., Washington, DC 20503, and at the CEQ web site at *http://www.whitehouse.gov/ceq.* The final guidelines are intended to comply with both the statutory requirements noted above and the final guidelines published by OMB on February 22, 2002 (67 FR 36, 8452).

**DATES:** Effective October 18, 2002.

**FOR FURTHER INFORMATION CONTACT:** Dinah Bear, General Counsel, Council on Environmental Quality. Telephone: (202) 395–7421 or by e-mail to *dinah_bear@ceq.eop.gov.*

Dated: October 18, 2002.

**James L. Connaughton,**

*Chairman, Council on Environmental Quality.*

[FR Doc. 02–27066 Filed 10–23–02; 8:45 am]

BILLING CODE 3125–01–M

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 2580]**

### Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

October 18, 2002.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by November 8, 2002. *See* Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

*Subject:* Amendment of the FM Table of Allotments (MM Docket No. 98–112, RM–9027, RM–9268, RM–9384).

*Number of Petitions Filed:* 1.

*Subject:* In the Matter of the Establishment of Policies and Service Rules for the Non-Geostationary Satellite Orbit, Fixed Satellite Service in the Ku-Band (IB Docket No. 01–96).

*Number of Petitions Filed:* 1.

*Subject:* Amendment of the FM Table of Allotments (MM Docket No. 01–104, RM–10103, RM–10323, RM–10324.

*Number of Petitions Filed:* 1.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02–27094 Filed 10–23–02; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL ELECTION COMMISSION

### Sunshine Act Notices

**AGENCY:** Federal Election Commission.

*Date & Time:* Tuesday, October 29, 2002 at 10 a.m.

*Place:* 999 E Street, NW., Washington, DC.

*Status:* This Meeting Will be Closed to the Public.

*Items to be Discussed:*

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

*Date & Time:* Thursday, October 31, 2001 at 10 a.m.

*Place:* 999 E Street, NW., Washington, DC (Ninth Floor)

*Status:* This Meeting Will be Open to the Public.

*Items to be Discussed:*

Correction and Approval of Minutes.

Final Rules and Explanation and Justification on Contribution Limitations and Prohibitions.

Administrative Matters.

*Person to Contact for Information:* Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

**Mary W. Dove,**

*Secretary of the Commission.*

[FR Doc. 02–27213 Filed 10–22–02; 11:31 am]

BILLING CODE 6715–01–M

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or

the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 18, 2002.

**A. Federal Reserve Bank of Cleveland** (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

*1. KeyCorp*, Cleveland, Ohio, and Buffalo Acquiror Sub, Inc., Cleveland, Ohio; to acquire 100 percent of the voting shares of Union Bankshares, Ltd., Denver, Colorado, and thereby indirectly acquire voting shares of Union Bank & Trust, Denver, Colorado.

**B. Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

*1. Backlund Investment Co.*, Peoria, Illinois; to merge with Astoria Investment Company, Astoria, Illinois, and thereby indirectly acquire Farmers State Bank, Astoria, Astoria, Illinois; Bartonville Investment Co., Peoria, Illinois, and thereby indirectly acquire Bartonville Bank, Bartonville, Illinois; Backlund–White, Inc., Peoria, Illinois, and thereby indirectly acquire Glasford State Bank, Glasford, Illinois; Backlund–Scott Company, Wyoming, Illinois and thereby indirectly acquire Wyoming Bank & Trust Company, Wyoming, Illinois.

*2. Backlund Investment Co.*, Peoria, Illinois; to acquire 100 percent of the voting shares of Dunlap Bank, Dunlap, Illinois.

*3. Backlund Investment Co.*, Peoria, Illinois; to acquie at least 25 percent of the voting shares of Hopedale Investment Company, Hopedale, Illinois, and thereby indirectly acquire Community Bank of Hopedale, Hopedale, Illinois.

**C. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

*1.First Banks, Inc.*, St. Louis, Missouri; to acquire 100 percent of the voting shares of Bank of Ste. Genevieve, Ste. Genevieve, Missouri.

**D. Federal Reserve Bank of San Francisco** (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

*1. BankWest Nevada Corporation*, Las Vegas, Nevada; to acquire 100 percent of the voting shares of Alliance Bank of Arizona, Phoenix, Arizona, (in organization).

Board of Governors of the Federal Reserve System, October 18, 2002.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 02–27065 Filed 10–23–02; 8:45 am]

BILLING CODE 6210–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

**[ATSDR–186]**

### Availability of the Draft Online Learning Program, The Public Health Assessment Process and the Community, Public Comment Release

**AGENCY:** Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

**ACTION:** Notice of availability and request for public comment on the draft online learning program, The Public Health Assessment Process and the Community. This program was developed to provide community members with information about the ATSDR public health assessment process through interactive learning using the Internet. The program also provides a tool that ATSDR's cooperative agreement partners (agents of ATSDR) can use to introduce new staff members to concepts used in the public health assessment process and to facilitate communications with community members when discussing the public health assessment process.

**SUMMARY:** ATSDR conducts public health assessments to evaluate whether people have come in contact with hazardous substances released into the environment and whether contact with the substances has affected the health of those people exposed to the hazardous substances.

The process used to conduct public health assessments includes gathering information from community members about how they might have come in contact with hazardous substances released into the environment and the concerns they have about the effect of the substances on their health. In addition to information gathered from community members, ATSDR also evaluates environmental data pertaining to a particular release, evaluates toxicologic and epidemiologic data relevant to exposures, and evaluates existing health outcome data if appropriate. Recommendations might be made to eliminate or reduce exposure to harmful levels of hazardous substances that have been released into the environment. The online learning program provides information on the basic concepts used by ATSDR staff and agents of ATSDR in conducting public health assessments.

This online learning program is intended to assist community members in understanding the ATSDR public health assessment process and to provide additional information concerning the process that may not be available through other forums. Because interaction with community members is a critical component of the public health assessment process, ATSDR believes that public comments may help us improve the quality of the program. All comments received during the public comment period will be considered when making improvements to the program.

*Availability:* The draft online program, The Public Health Assessment Process and the Community, will be available to the public on or about October 15, 2002. The close of the comment period will be 60 days from the date of publication of this notice in the **Federal Register** and will be indicated on the first page of the Web site. Comments received after close of the public comment period will be considered at the discretion of ATSDR based upon what is deemed to be in the best interest of the general public.

**ADDRESSES:** Requests for more information about accessing the online learning program should be sent to Chief, Program Evaluation, Records, and Information Services Branch; Agency for Toxic Substances and Disease Registry; 1600 Clifton Road, NE, MS E–56; Atlanta, GA 30333. The online learning program may be accessed at the ATSDR

home page Training section at *www.atsdr.cdc.gov/training/public-health-assessment-overview/.*

Comments may be submitted online through the ''Feedback'' section of the program, which is accessible through a link at the top of each page. You may also send written comments and supporting documents to the address provided in the previous paragraph. Comments should be received by the end of the comment period. All written comments and data submitted in response to this notice and the draft online learning program should bear the docket control number ATSDR–186.

**FOR FURTHER INFORMATION CONTACT:** Information may be obtained by contacting Bob Kay, telephone (404) 498–0382, ATSDR (Mailstop E–56) or Gail Godfrey, telephone (404) 498–0432, (Mailstop E–32), 1600 Clifton Road, NE, Atlanta, Georgia 30333, or call toll free 1–888–42-ATSDR, 1–888–422–8737. You may also e-mail Bob Kay at *bkay@cdc.gov* or Gail Godfrey at *ggodfrey@cdc.gov.*

**SUPPLEMENTARY INFORMATION:** ATSDR is mandated to conduct public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) [42 U.S.C. 9604(i)] and the Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6939a(c)].

The general procedures for the conduct of public health assessments are included in the ATSDR Final Rule on Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities (55 FR 5136, February 13, 1990, codified at 42 CFR part 90).

Areas emphasized in the online learning program include community involvement, exposure assessment, weight-of-evidence approaches to decision making, and developing public health action plans to address any public health hazards found during investigations.

The online learning program may be used by individuals to learn more about the public health assessment process, by community groups during meetings, and by individuals and groups as a communication tool when discussing concerns with the public health assessment team assigned to a site in their community. The program may also be used by agents of ATSDR to introduce new staff to the concepts of the public health assessment process and as a tool to stimulate communications with community members.

This notice announces the projected availability of the draft online learning program. The program has undergone extensive internal review.

ATSDR encourages the public's participation and comment on the further development of this online learning program.

Dated: October 18, 2002.

**Georgi Jones,**

*Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.*

[FR Doc. 02–27084 Filed 10–23–02; 8:45 am]

**BILLING CODE 4163–70–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

**[ATSDR–188]**

### Availability of Final Toxicological Profiles

**AGENCY:** Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the availability of seven updated final toxicological profiles of priority hazardous substances comprising the fourteenth set prepared by ATSDR.

**FOR FURTHER INFORMATION CONTACT:** Ms. Franchetta Stephens, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 1–888–422–8737 or (404) 498–0720.

**SUPPLEMENTARY INFORMATION:** The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for ATSDR and the U.S. Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority lists of hazardous substances. These lists identified 275 hazardous substances that ATSDR and EPA determined pose the most significant potential threat to human health. The availability of the revised list of the 275 priority substances was announced in the **Federal Register** on October 25, 2001 (66 FR 54014). For prior versions of the list of substances see **Federal Register** notices dated April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); February 28, 1994 (59 FR 9486); April 29, 1996 (61 FR 18744; November 17, 1997 (62 FR 61332) and October 21, 1999 (64 FR 56792).

Notice of the availability of drafts of these seven updated toxicological profiles for public review and comment was published in the **Federal Register** on October 11, 2000, (65 FR 60444), with notice of a 90-day public comment period for each profile, starting from the actual release date. Following the close of the comment period, chemical-specific comments were addressed, and where appropriate, changes were incorporated into each profile. The public comments and other data submitted in response to the **Federal Register** notices bear the docket control number ATSDR–162. This material is available for public inspection at the Division of Toxicology, Agency for Toxic Substances and Disease Registry, 1825 Century Boulevard, Atlanta, Georgia, (not a mailing address) between 8 a.m. and 4:30 p.m., Monday through Friday, except legal holidays.

### Availability

This notice announces the availability of seven updated final toxicological profiles comprising the fourteenth set prepared by ATSDR. The following toxicological profiles are now available through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, telephone 1–800–553–6847. There is a charge for these profiles as determined by NTIS.

*Fourteenth Set:*

| Toxicological profile | NTIS Order No. | CAS No. |
|---|---|---|
| 1. Aldrin | PB2003–100134 | 000060–57–1 |
| Dieldrin | | 000309–00–2 |
| 2. Beryllium | PB2003–100135 | 007440–41–7 |

| Toxicological profile | NTIS Order No. | CAS No. |
|---|---|---|
| 3. Creosote | PB2003–100136 | 008001–58–9 |
| Coal Tars | | 008007–45–2 |
| Coal Tar Pitch | | 065996–93–2 |
| 4. DDT | PB2003–100137 | 000050–29–3 |
| DDD | | 000072–54–8 |
| DDE | | 000072–55–9 |
| 5. Di (2-ethylhexyl) phthalate | PB2003–100138 | 000117–81–7 |
| 6. Hexachlorobenzene | PB2003–100139 | 000118–74–1 |
| 7. Methoxychlor | PB2003–100140 | 000072–43–5 |

Dated: October 18, 2002.

**Georgi Jones,**

*Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.*

[FR Doc. 02–27085 Filed 10–23–02; 8:45 am]

**BILLING CODE 4163–70–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

**[ATSDR–187]**

### Availability of Draft Toxicological Profiles

**AGENCY:** Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

**ACTION:** Notice of availability.

**SUMMARY:** The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), section 104(i)(3) (42 U.S.C. 9604(i)(3)) directs the Administrator of ATSDR to prepare toxicological profiles of priority hazardous substances and to revise and publish each updated toxicological profile as necessary. This notice announces the availability of the 16th set of toxicological profiles, which consists of two new drafts and three updated drafts, prepared by ATSDR for review and comment.

**DATES:** In order to be considered, comments on these draft toxicological profiles must be received on or before February 24, 2003. Comments received after the close of the public comment period will be considered at the discretion of ATSDR based upon what is deemed to be in the best interest of the general public.

**ADDRESSES:** Requests for printed copies or CD-ROMs of the draft toxicological profiles should be sent to the attention of Ms. Franchetta Stephens, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE, Atlanta, Georgia 30333. Electronic access to these documents is also available at the ATSDR website: *http://www.atsdr.cdc.gov/toxpro2.html.*

Comments regarding the draft toxicological profiles should be sent to the attention of Ms. Lori Miller, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Requests for printed copies or CD-ROMs of the draft toxicological profiles must be in writing, and must specifically identify the hazardous substance(s) profile(s) that you wish to receive. ATSDR reserves the right to provide only one copy of each profile requested, free of charge. In case of extended distribution delays, requestors will be notified.

Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR–187. Send one copy of all comments and three copies of all supporting documents to Ms. Lori Miller at the above stated address by the end of the comment period. Because all public comments regarding ATSDR toxicological profiles are available for public inspection, no confidential business information or other confidential information should be submitted in response to this notice.

**FOR FURTHER INFORMATION CONTACT:** Ms. Franchetta Stephens, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 1–888–422–8737 or (404) 498–0720.

**SUPPLEMENTARY INFORMATION:** The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain responsibilities for the ATSDR and the U.S. Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these responsibilities is that the Administrator of ATSDR prepare toxicological profiles for substances included on the priority lists of hazardous substances. These lists identified 275 hazardous substances that ATSDR and EPA determined pose the most significant potential threat to human health. The availability of the revised priority list of 275 hazardous substances was announced in the **Federal Register** on October 25, 2001 (66 FR 54014). For prior versions of the list of substances see **Federal Register** notices dated April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); February 28, 1994 (59 FR 9486); April 29, 1996 (61 FR 18744); November 17, 1997 (62 FR 61332) and October 21, 1999 (64 FR 56792). (CERCLA also requires ATSDR to assure the initiation of a research program to fill data needs associated with the substances.)

Section 104(i)(3) of CERCLA (42 U.S.C. 9604(i)(3)) outlines the content of these profiles. Each profile will include an examination, summary and interpretation of available toxicological information and epidemiologic evaluations. This information and these data are to be used to identify the levels of significant human exposure for the substance and the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or in the process of development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to assure the initiation of research to determine these health effects.

Although key studies for each of the substances were considered during the profile development process, this **Federal Register** notice seeks to solicit any additional studies, particularly unpublished data and ongoing studies,

which will be evaluated for possible addition to the profiles now or in the future.

The following draft toxicological profiles will be made available to the public on or about October 17, 2002.

| Document No. and hazardous substance | CAS No. |
|---|---|
| 1. Ammonia and | 007664–41–7 |
| ammonia compounds | various |
| 2. Chlorine dioxide | 10049–04–4 |
| 3. Copper | 007440–50–8 |
| cupric sulfate | 007758–98–7 |
| 4. Polybrominated biphenyls and | 067774–32–7 |
| polybrominated diphenyl ethers | various |
| 5. Synthetic vitreous fibers | various |

All profiles issued as ''Drafts for Public Comment'' represent ATSDR's best efforts to provide important toxicological information on priority hazardous substances. We are seeking public comments and additional information which may be used to supplement these profiles. ATSDR remains committed to providing a public comment period for these documents as a means to best serve public health and our clients.

Dated: October 18, 2002.

**Georgi Jones,**

*Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.*

[FR Doc. 02–27086 Filed 10–23–02; 8:45 am]

**BILLING CODE 4163–70–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 84F–0331]**

### Quest International; Withdrawal of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 4A3817) proposing that the food additive regulations be amended to provide for the safe use of white mineral oil as a component of defoaming agents for use in the brewing of beer.

**FOR FURTHER INFORMATION CONTACT:** Andrew Zajac, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy, College Park, MD 20740, 202–418–3095.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of October 25, 1984 (49 FR 42985), FDA announced that a food additive petition (FAP 4A3817) had been filed by J. E. Siebel Sons' Co., 4055 West Peterson Ave., Chicago, IL 60646. The petition proposed to amend the food additive regulations in § 173.340 *Defoaming agents* (21 CFR 173.340) to provide for the safe use of white mineral oil as defined by § 172.878(a) as a component of defoaming agents for use in the brewing of beer. On June 5, 2002, Quest International, 5115 Sedge Blvd., Hoffman Estates, IL 60192, informed FDA in writing that they had acquired J. E. Siebel Sons' Co. and had rights to FAP 4A3817. Quest International has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: October 9, 2002.

**Alan M. Rulis,**

*Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.*

[FR Doc. 02–27047 Filed 10–23–02; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 01E–0363]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; MIFEPREX; Amendment

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is amending a previous determination of the regulatory review period for MIFEPREX that appeared in the **Federal Register** of January 25, 2002 (67 FR 3724). The agency is taking this action in response to received comments. FDA is publishing notice of that amendment as required by law.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

**FOR FURTHER INFORMATION CONTACT:** Claudia V. Grillo, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4565.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of January 25, 2002 (67 FR 3724), FDA published its determination of the regulatory review period for MIFEPREX. On June 10, 2002, Corcept Therapeutics, Inc., (Corcept) filed a request for revision of the regulatory review period. On July 2, 2002, the applicant filed a comment, disagreeing with Corcept's request and maintaining that FDA's initial determination was correct.

The basis of Corcept's request is that August 4, 1994, is not the correct date an investigational new drug application (IND) covering the approved drug product became effective. Corcept asserts that June 13, 1983, is the appropriate date. FDA has re-examined its records and has determined that Corcept is correct. The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective is June 13, 1983.

The agency, the applicant, and Corcept agree that the relevant IND is IND 22,047. All agree that IND 22,047 became effective in 1983.

The applicant's argument for keeping the initial determination is based on the claim that August 4, 1994, represents the date the IND first covered the ''approved human drug product.'' While acknowledging that IND 22,047 became effective in 1983, the applicant observes that during the next several years the only studies conducted were studies of mifepristone alone, that is, not in conjunction with the administration of other drugs. The 1994 date is when the applicant submitted an amendment to IND 22,047 to initiate studies of mifepristone when followed by the later

administration of misoprostol. The final approved MIFEPREX labeling recommends that patients taking mifepristone take 400 micrograms of misoprostol 2 days after taking mifepristone unless a complete abortion has already been confirmed before that time. The applicant argues from these facts that the submission of the 1994 amendment represents the first time an IND for the ''approved human drug product,'' as set forth in 21 CFR 60.22(a)(1), became effective.[1]

The investigational path of a new drug is rarely straightforward. From the time of the first submission of an IND to the time, usually years later, of final approval for marketing, the course of drug investigation goes up many blind alleys and frequently takes off in new directions. Rarely, if ever, is a drug approved under precisely the same conditions (i.e., indication(s), patient population(s), dosing regimen(s), duration of treatment, use in conjunction with other drugs, etc.) for which it is initially investigated. The decision to investigate MIFEPREX in conjunction with misoprostol under certain circumstances is typical of the kind of change that can occur in the investigation of a new drug.[2]

The applicant misperceives the nature of FDA's task in this kind of proceeding, one FDA has performed hundreds of times since 1984. A determination of the regulatory review period under 35 U.S.C. 156(g)(1)(B) is straightforward and largely ministerial in nature. Our role is not to probe a drug's investigational course and determine at what point in that course emerges the ''approved human drug product.'' To do so would be to insert into a purely ministerial function an arbitrary element of uncertainty that would clearly subvert the purpose of the statute.[3]

The relevant IND became effective on June 13, 1983. That fact, upon which everyone agrees, is all that FDA need or should find in conducting the relevant portion of its regulatory review determination of MIFEPREX.[4]

Therefore, FDA has determined that the applicable regulatory review period for MIFEPREX is 6,318 days. Of this time, 4,662 days occurred during the testing phase of the regulatory review period, while 1,656 days occurred during the approval phase.

These periods of time were derived from the following dates, summarized from the January 25, 2002, notice and modified by this amendment:

1. *The date an exemption under section 505 of the act (21 U.S.C. 355) became effective*: June 13, 1983. The applicant claims August 3, 1994, as the date the IND became effective. However, for the reasons discussed previously, FDA has determined the IND effective date was June 13, 1983.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: March 18, 1996. FDA has verified the applicant's claim that the new drug application (NDA) for MIFEPREX (NDA 20–687) was initially submitted on March 18, 1996.

3. *The date the application was approved*: September 28, 2000. FDA has verified the applicant's claim that NDA 20–687 was approved on September 28, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. In its application for patent extension, the applicant seeks 1,825 days of patent term extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension.

Dated: October 16, 2002.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. 02–27096 Filed 10–22–02; 8:45 am]

**BILLING CODE 4160–01–S**

[1] For purposes of part 60 (21 CFR part 60), ''human drug product'' is defined as ''the active ingredient of a new drug or human biologic product (as those terms are used in the act and the Public Health Service Act), including any salt or ester of the active ingredient, as a single entity or in combination with another active ingredient.'' (See 21 CFR 60.3(b)(10).)

[2] The applicant tries to characterize MIFEPREX as mifepristone ''in combination with another active ingredient'' in an attempt to take advantage of portions of the definition of ''human drug product'' in 35 U.S.C. 156(f), that is, a human drug product means ''the active ingredient of a new drug * * * as a single entity or in combination with another active ingredient.'' The applicant points to the definition of ''combination product'' at 21 CFR 3.2(e)(3) in this effort. A more useful description of a drug ''in combination with another active ingredient'' is found at 21 CFR 300.50 (two or more drugs combined in a single dosage form). MIFEPREX is not mifepristone ''in combination with another active ingredient.'' MIFEPREX is single entity mifepristone.

[3] Indeed, using the kind of scrutiny recommended by the applicant, one could argue that the testing phase should be entirely disregarded for purposes of regulatory review period determinations because final labeling of any product, an essential element of an approved human drug product, is not established until well after the testing phase is complete.

[4] In our initial determination, we did not take into account the effect of 35 U.S.C. 156(g)(4)(C) and, instead, accepted as harmless the applicant's request for a later date.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Development of Donor Screening Assays for West Nile Virus; Public Workshop

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Development of Screening Assays for West Nile Virus.'' The objectives of the workshop are to review current developments in West Nile Virus (WNV) transmission in the United States and to explore strategies to address issues related to the development of donor screening tests and the utility of virus inactivation methods.

*Date and Time*: The workshop will be held November 4 and 5, 2002, from 8 a.m. to approximately 5 p.m. on both days.

*Location*: The workshop will be held at the Hyatt Regency Bethesda, One Metro Center, Bethesda, MD.

*Contact Person*: Joseph Wilczek, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–6129, FAX 301–827–2843, e-mail: *wilczek@cber.fda.gov*.

**SUPPLEMENTARY INFORMATION:** FDA, Office of the Secretary/Office of Public Health and Science, the Centers for Disease Control and Prevention, the National Heart, Lung and Blood Institute at the National Institutes of Health, and the Health Resources Services Administration are co-sponsoring a public workshop to focus on scientific issues related to the development of tests that are suitable for screening blood and organ/tissue donors for WNV. The ongoing epidemic of WNV infections has raised concerns that WNV can be transmitted through blood transfusions and organ/tissue donations. Currently, there are no tests available to screen blood and organ/tissue donors for WNV nor are there data available about the stability of WNV in such tissues.

On the first day, the workshop will deal with the topics of WNV pathogenicity and epidemiology, methodologies suitable for screening WNV in blood and organ/tissue donors, and development of WNV screening assays for future large-scale implementation in a donor screening setting. On the second day, it will focus on the prospective studies for establishing the transmission to

recipients of blood, or human cells, tissues, and cellular or tissue based products, issues relevant to implementation of WNV tests, FDA's expectation for licensure of WNV tests, and strategies for inactivation.

*Registration*: Because seating space is limited, we recommend early registration. Mail, fax, or e-mail your registration information (including name, title, firm name, address, telephone, and fax number) to Joseph Wilczek (see *Contact Person*). Registration at the site will be done on a space available basis on the days of the workshop, beginning at 7:30 a.m. There is no registration fee for the workshop. If you need special accommodations due to a disability, please contact Joseph Wilczek at least 7 days in advance.

*Transcripts*: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. In addition, the transcript will be placed on the FDA Web site at *http://www.fda.gov/cber/minutes/workshop-min.htm*.

Dated: October 17, 2002.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 02–27097 Filed 10–23–02; 8:45 am]

**BILLING CODE 4160–01–S**

## 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 November 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. The Commission meeting will focus on housing and homelessness, among other issues.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Additional information and a roster of Commission members may be obtained either by accessing the Commission website, *www.mentalhealthcommission.gov*, or by communicating with the contact whose name and telephone number is listed below.

*Committee Name:* The President's New Freedom Commission on Mental Health.

*Meeting Date/Time:* Open: November 13, 2002, 9:45 a.m. to 4:30 p.m., Open: November 14, 2002, 9:30 a.m. to 12 Noon.

*Place:* Le Meridien Hotel, 465 S. La Cienega Boulevard, Los Angeles, California 90048.

**FOR FURTHER INFORMATION CONTACT:** Claire Heffernan, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 13C–26, Rockville, MD 20857, Telephone: (301) 443–1545; Fax: (301) 480–1554 and e-mail: *Cheffern@samhsa.gov*, website: *www.mentalhealthcommission.gov.*

Dated: October 18, 2002.

**Toian Vaughn,**

*Committee Management Officer, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 02–27049 Filed 10–23–02; 8:45 am]

**BILLING CODE 4162–20–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–990 (Final)]**

### Non-Malleable Cast Iron Pipe Fittings From China

**AGENCY:** International Trade Commission.

**ACTION:** Scheduling of the final phase of an antidumping investigation.

**SUMMARY:** The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–990 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of non-malleable cast iron pipe fittings, provided for in subheadings 7307.11.00 and 7307.19.30 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**EFFECTIVE DATE:** September 25, 2002.

**FOR FURTHER INFORMATION CONTACT:** Valerie Newkirk ((202) 205–3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*.

**SUPPLEMENTARY INFORMATION:**

*Background.*—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of non-malleable cast iron pipe fittings from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on February 21, 2002, by Anvil International, Inc., Portsmouth, NH, and Ward Manufacturing, Inc., Blossburg, PA.

*Participation in the investigation and public service list.*—Persons, including

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as ''finished and unfinished non-malleable cast iron pipe fittings with an inside diameter ranging from ¼ inch to 6 inches, whether threaded or un-threaded, regardless of industry or proprietary specifications. The subject fittings include elbows, ells, tees, crosses, and reducers as well as flanged fittings. These pipe fittings are also known as cast iron pipe fittings or gray iron pipe fittings. These cast iron pipe fittings are normally produced to ASTM A–126 and ASME B.16.4 specifications and are threaded to ASME B1.20.1 specifications. Most building codes require that these products are Underwriters Laboratories (UL) certified. The scope does not include cast iron soil pipe fittings or grooved fittings or grooved couplings.

Fittings that are made out of ductile iron that have the same physical characteristics as the gray or cast iron fittings subject to the scope above or which have the same physical characteristics and are produced to ASME B.16.3, ASME B.16.4, or ASTM A–395 specifications, threaded to ASME B1.20.1 specifications and UL certified, regardless of metallurgical differences between gray and ductile iron, are also included in the scope. These ductile fittings do not include grooved fittings or grooved couplings. Ductile cast iron fittings with mechanical joint ends (MJ), or push on ends (PO), or flanged ends and produced to American Water Works Associations (AWWA) specifications AWWA C110 or AWWA C153 are not included.''

industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Staff report.*—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on January 29, 2003, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

*Hearing.*—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on February 11, 2003, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before February 3, 2003. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on February 6, 2003, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

*Written submissions.*—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is February 5, 2003. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is February 19, 2003; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before February 19, 2003. On March 5, 2003, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 7, 2003, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: October 21, 2002.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 02–27147 Filed 10–23–02; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 2, 2002, a proposed Consent Decree in *United States* v. *Agri Energy, L.L.C., Broin and Associates, Inc., and Broin Management, L.L.C.,* (''Agri-Energy'') Civil Action No. CV02–3787 MJD/JGL was lodged with the United States District Court for the District of Minnesota.

In this action the United States sought to resolve claims against the owners and operators of an ethanol dry mill in Luverne, Minnesota, pursuant to section 113(b) of the Clean Air Act (''Act''), 42 U.S.C. 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991). The United States sought injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration (''PSD'') provisions of the Act and regulations promulgated thereunder. In addition, the Compliant alleges that the plant is in violation of the New Source Performance Standards (''NSPS''), 40 CFR part 60, Subparts Db, Dc, DD, Kb, and VV; National Emission Standards for Hazardous Air Pollutants (''NESHAP''), 40 CFR part 63, pursuant to sections 112(d) and 112(g) of the Act; and the Minnesota state implementation plan (''SIP'') which incorporates and/or implements the above-listed federal regulations. Under the proposed settlement, Agri-Energy will install air pollution control technology, comply with new, more stringent emission limits, and pay a civil penalty of $31,598. The Minnesota Pollution Control Agency has joined in the settlement as a signatory to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Agri-Energy Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to: *United States* v. *Agri-Energy, L.L.C., Broin and Associates, Inc., and Broin Management, L.L.C.,* D.J. Ref. 90–5–2–1–07784.

The Consent Decree may be examined at the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 55101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $13.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**William Brighton,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 02–27071 Filed 10–23–02; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 2, 2002, a proposed Consent Decree in *United States* v. *Al-Corn Clean Fuel Cooperative*, (''Al-Corn''), Civil Action No. CV02–3792 DWF/SRN was lodged with the United States District Court for the District of Minnesota.

In this action the United States sought to resolve claims against the owners and operators of an ethanol dry mill in Claremont, Minnesota, pursuant to section 113(b) of the Clean Air Act (''Act''), 42 U.S.C. 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991). The United States sought injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration (''PSD'') provisions of the Act; the New Source Performance Standards (''NSPS''), 40 CFR part 60, subparts Db, Dc, DD, Kb, and VV; and the National Emission Standards for Hazardous Air Pollutants (''NESHAP''), 40 CFR part 63, pursuant to sections 112(d) and 112(g) of the Act; and the Minnesota state implementation plan (''SIP'') which incorporates and/or implements the above-listed federal regulations. Under the proposed settlement, Al-Corn will install air pollution control technology, comply with new, more stringent emission limits, and pay a civil penalty of $36,800. The Minnesota Pollution Control Agency has joined in the settlement as a signatory to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Heartland Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Al-Corn Clean Fuel Cooperative*, D.J. Ref. 90–5–2–1–07784/1.

The Consent Decree may be examined at the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 55101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $15.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**William Brighton,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 02–27079 Filed 10–23–02; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree and Stipulation of Settlement and Order of Dismissal Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on September 30, 2002, two proposed settlement agreements were lodged with the United District Court of the Northern District of Indiana in the matter of *United States* v. *American Standard, Inc. et al.*, Civil No. 3:01CV0513RM. One proposed agreement is titled ''Consent Decree with Perma-Fix Environmental Services of Michigan'' (''Consent Decree'') and the other is titled ''Stipulation of Settlement and Order of Dismissal Between United States and LTV Steel Company'' (''Stipulation of Dismissal'').

In its Complaint, the United States sought to recover response costs incurred by the United States in connection with the Four County Landfill Site in Fulton County, Indiana (the ''Site''). The complaint alleges that the United States undertook response actions as a result of releases or threatened releases of hazardous substances at the Site, and that Perma-Fix Environmental Services of Michigan (''Perma-Fix'') and LTV Steel Company, Inc. (''LTV''), among other named defendants, were jointly and severally liable for the costs of such response actions.

Under the proposed Consent Decree, Perma-Fix will pay $153,585 to the Hazardous Substances Superfund as partial reimbursement of response costs that the United States paid in connection with the Site through April 30, 2002. Under the proposed Stipulation of Settlement, LTV has agreed to the entry of judgment against it for $63,389 in settlement of the United States' claims for recovery of response cost that the United States paid in connection with the Site through April 30, 2002. Since LTV filed a voluntary petition for bankruptcy in the Northern District of Ohio in December of 2000, which was docketed as *In Re LTV Steel Company, Inc.*, Bankruptcy No. 00–43866, the Stipulation of Settlement must be submitted to the bankruptcy court or approval pursuant to Bankruptcy Rule 9019. Under the terms of the Stipulation of Settlement, the United States shall be allowed a general unsecured claim for the agreed judgment amount of $63,389. Only the amount of cash received by EPA on its general unsecured claim shall be credited by EPA to the Hazardous Substance Superfund.

The Department of Justice will receive, for a period of 30 days from the date of this publication, comments relating to the proposed Consent Decree and the proposed Stipulation of Settlement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *American Standard, Inc., et al.*, D.J. Ref. 90–11–3–07510.

The proposed Consent Decree and the proposed Stipulation of Settlement may be examined at the Office of the United States Attorney, 204 S. Main Street, South Bend, Indiana, 46601, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed Consent Decree, the proposed Stipulation of Settlement, or both, may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the consent Decree, please enclose a check in the amount of $7.25

(25 cents per page reproduction cost) payable to the U.S. Treasury. In requesting a copy of the Stipulation of Settlement, please enclose a check of $5.75 (25 cents per page) payable to the U.S. Treasury.

**William D. Brighton,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 02–27067 Filed 10–23–02; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 2, 2002, a proposed Consent Decree in *United States* v. *Central MN Ethanol Co-op*, (''Central MN''), Civil Action No. CV02–3786 PAM/RLE was lodged with the United States District Court for the District of Minnesota.

In this action the United States sought to resolve claims against the owners and operators of an ethanol dry mill in Little Falls, Minnesota, pursuant to Section 113(b) of the Clean Air Act (''Act''), 42 U.S.C. 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991). The United States sought injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration (''PSD'') provisions of the Act; the New Source Performance Standards (''NSPS''), 40 CFR pat 60, subparts Db, Dc, DD, Kb, and VV; and the National Emission Standards for Hazardous Air Pollutants (''NESHAP''), 40 CFR part 63, pursuant to sections 112(d) and 112(g) of the Act; and the Minnesota state implementation plan (''SIP'') which incorporates and/or implements the above-listed federal regulations. Under the proposed settlement, Central MN will install air pollution control technology, comply with new, more stringent emission limits, and pay a civil penalty of $29,656. The Minnesota Pollution Control Agency has joined in the settlement as a signatory to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Central MN Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Central MN Ethanol Co-op*, D.J. Ref. 90–5–2–1–07784/2.

The Consent Decree may be examined at the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 555101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $16.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**William Brighton,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 02–27076 Filed 10–23–02; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 2, 2002, a proposed Consent Decree in *United States* v. *Chippewa Valley Ethanol Company, L.L.P., and Glacial Plains Cooperative,* (''CVEC'') Civil Action No. CV02–3794 DSD/SRN was lodged with the United States District Court for the District of Minnesota.

In this action the United States sought to resolve claims against the owners and operators of an ethanol dry mill in Benson, Minnesota, pursuant to section 113(b) of the Clean Air Act (''Act''), 42 U.S.C. 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991). The United States sought injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration (''PSD'') provisions of the Act and regulations promulgated thereunder. In addition, the Complaint alleges that the plant is in violation of the New Source Performance Standards (''NSPS''), 40 CFR part 60, subparts Db, Dc, DD, Kb, and VV; National Emission Standards for Hazardous Air Pollutants (''NESHAP''), 40 CFR part 63, pursuant to sections 112(d) and 112(g) of the Act; and the Minnesota state implementation plan (''SIP'') which incorporates and/or implements the above-listed federal regulations. Under the proposed settlement, CVEC will install air pollution control technology, comply with new, more stringent emission limits, and pay a civil penalty of $38,624. The Minnesota Pollution Control Agency has joined in the settlement as a signatory to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the CVEC Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Chippewa Valley Ethanol Company, L.L.P., and Glacial Plains Cooperative,* D.J. Ref. 90–5–2–1–07784/3.

The Consent Decree may be examined at the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 55101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $14.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**William Brighton,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 02–27077 Filed 10–23–02; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 2, 2002, a proposed Consent Decree in *United States* v. *Corn Plus*, (''Corn Plus'') Civil Action No. CV02–3785 RHK/AJB was lodged with the United States District Court for the District of Minnesota.

In this action the United States sought to resolve claims against the owners and operators of an ethanol dry mill in Winnebago, Minnesota, pursuant to section 113(b) of the Clean Air Act (''Act''), 42 U.S.C. 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991). The United States sought injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration (''PSD'') provisions of the Act and regulations promulgated thereunder. In addition, the Complaint alleges that the plant is in violation of the New Source Performance Standards (''NSPS''), 40 CFR part 60, Subparts Db, Dc, DD, Kb,

and VV; National Emission Standards for Hazardous Air Pollutants (''NESHAP''), 40 CFR part 63, pursuant to sections 112(d) and 112(g) of the Act; and the Minnesota state implementation plan (''SIP'') which incorporates and/or implements the above-listed federal regulations. Under the proposed settlement, Corn Plus will install air pollution control technology, comply with new, more stringent emission limits, and pay a civil penalty of $42,076. The Minnesota Pollution Control Agency has joined in the settlement as a signatory to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Corn Plus Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Corn Plus*, D.J. Ref. 90–5–2–1–07784/4.

The Consent Decree may be examined at the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 55101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $15.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**William Brighton,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 02–27072 Filed 10–23–02; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 2, 2002, a proposed Consent Decree in *United States* v. *Diversified Energy Company,* (''DENCO''), Civil Action No. CV02–3784 ADM/RLE was lodged with the United States District Court for the District of Minnesota.

In this action the United States sought to resolve claims against the owners and operators of an ethanol dry mill in Morris, Minnesota, pursuant to Section 113(b) of the Clean Air Act (''Act''), 42 U.S.C. 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991). The United States sought injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration (''PSD'') provisions of the Act and regulations promulgated thereunder. In addition, the Complaint alleges that the plant is in violation of the New Source Performance Standards (''NSPS''), 40 CFR part 60, subparts Db, Dc, DD, Kb, and VV; National Emission Standards for Hazardous Air Pollutants (''NESHAP''), 40 CFR part 63, pursuant to sections 112(d) and 112(g) of the act; and the Minnesota state implementation plan (''SIP'') which incorporates and/or implements the above-listed federal regulations. Under the proposed settlement, DENCO will install air pollution control technology, comply with new, more stringent emission limits, and pay a civil penalty of $34,975. The Minnesota Pollution Control Agency has joined in the settlement as a signatory to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the DENCO Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Diversified Energy Company, D.J. Ref. 90–5–2–1–00784/5.*

The Consent Decree may be examined at the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 55101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. A copy of the Consent Decree may also be obtained by mail from the Consent decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $18.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**William Brighton,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 02–27073 Filed 10–23–02; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 2, 2002, a proposed Consent Decree in *United States* v. *Ethanol 2000, L.L.P., Broin and Associates, Inc., and Broin Management, L.L.C.*, (''Ethanol 2000'') Civil Action No. CV02–3788 MJD/JGL was lodged with the United States District Court for the District of Minnesota.

In this action the United States sought to resolve claims against the owners and operators of an ethanol dry mill in Luverne, Minnesota, pursuant to section 113(b) of the Clean Air Act (''Act''), 42 U.S.C. 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991). The United States sought injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration (''PSD'') provisions of the Act and regulations promulgated thereunder. In addition, the Complaint alleges that the plant is in violation of the New Source Performance Standards (''NSPS''), 40 C.F.R. part 60, Subparts Db, Dc, DD, Kb, and VV; National Emission Standards for Hazardous Air Pollutants (''NESHAP''), 40 C.F.R. part 63, pursuant to sections 112(d) and 112(g) of the Act; and the Minnesota state implementation plan (''SIP'') which incorporates and/or implements the above-listed federal regulations. Under the proposed settlement, Ethanol 2000 will install air pollution control technology, comply with new, more stringent emission limits, and pay a civil penalty of $36,101. The Minnesota Pollution Control Agency has joined in the settlement as a signatory to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Ethanol 2000 Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Ethanol 2000, L.L.P., Broin and Associates, Inc., and Broin Management, L.L.C.*, D.J. Ref. 90–5–2–1–07784/6.

The Consent Decree may be examined at the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 55101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library,

PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $14.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**William Brighton,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 02–27070 Filed 10–23–02; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 2, 2002, a proposed Consent Decree in *United States* v. *Agra Resources Cooperative, d/b/a/ Exol, Broin and Associates, Inc., and Broin Management, L.L.C.,* Civil Action No. CV02–3789 MJD/JGL, (''Exol'') was lodged with the United States District Court for the District of Minnesota.

In this action the United States sought to resolve claims against the owners and operators of an ethanol dry mill in Albert Lea, Minnesota, pursuant to section 113(b) of the Clean Air Act (''Act''), 42 U.S.C. 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991). The United States sought injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration (''PSD'') provisions, the New Source Performance Standards (''NSPS''), 40 CFR part 60, subparts Db, Dc, DD, Kb, and VV; and the National Emission Standards for Hazardous Air Pollutants (''NESHAP''), 40 CFR part 63, pursuant to sections 112(d) and 112(g) of the Act; and the Minnesota state implementation plan (''SIP'') which incorporates and/or implements the above-listed federal regulations. Under the proposed settlement, Exol will install air pollution control technology, comply with new, more stringent emission limits, and pay a civil penalty of $30,409. The Minnesota Pollution Control Agency has joined in the settlement as a signatory to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Exol Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Agra Resources Cooperative, d/b/a/ Exol, Broin and Associates, Inc., and Broin Management, L.L.C.,* D.J. Ref. 90–5–2–1–07784/7.

The Consent Decree may be examined at the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 55101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $14.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**William Brighton,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 02–27069 Filed 10–23–02; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 2, 2002, a proposed Consent Decree in *United States* v. *Gopher State Ethanol, Inc.,* (''Gopher State''), Civil Action No. CV02–3793 DSD/SRN was lodged with the United States District Court for the District of Minnesota.

In this action the United States sought to resolve claims against the owners and operators of an ethanol dry mill in St. Paul, Minnesota, pursuant to section 113(b) of the Clean Air Act (''Act''), 42 U.S.C. 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991). The United States sought injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration (''PSD''), provisions of the Act and regulations promulgated thereunder. In addition, the Complaint alleges that the plant is in violation of the New Source Performance Standards (''NSPS''), 40 CFR part 60, Subparts Db, Dc, DD, Kb, and VV; National Emission Standards for Hazardous Air Pollutants (''NESHAP''), 40 CFR part 63, pursuant to sections 112(d) and 112(g) of the Act; and the Minnesota state implementation plan (''SIP'') which incorporates and/or implements the above-listed federal regulations. Under the proposed settlement, Gopher State will comply with new, more stringent emission limits, and pay a civil penalty of $18,904. The Minnesota Pollution Control Agency has joined in the settlement as a signatory to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Gopher State Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Gopher State Ethanol, Inc.,* D.J. Ref. 90–5–2–1–07784/8.

The Consent Decree may be examined at the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 55101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $14.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**William Brighton,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 02–27074 Filed 10–23–02; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 2, 2002, a proposed Consent Decree in *United States* v. *Heartland Corn Products,* (''Heartland''), Civil Action No. CV02–3790 RHK/AJB was lodged with the United States District Court for the district of Minnesota.

In this action the United States sought to resolve claims against the owners and operators of an ethanol dry mill in Wintrop, Minnesota, pursuant to section 113(b) of the Clean Air Act (''Act''), 42 U.S.C. 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991). The United sought injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration (''PSD'') provisions of the Act; the New Source Performance Standards

(''NSPS''), 40 CFR part 60, subparts Db, Dc, DD, Kb, and VV; and the National Emission Standards for Hazardous Air Pollutants (''NESHAP''), 40 CFR part 63, pursuant to sections 112(d) and 112(g) of the Act; and the Minnesota state implementation plan (''SIP'') which incorporates and/or implements the above-listed federal regulations. Under the proposed settlement, Heartland will install air pollution control technology, comply with new, more stringent emission limits, and pay a civil penalty of $39,969. The Minnesota Pollution Control agency has joined in the settlement as a signatory to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Heartland Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20444–7611, and should refer to: *United States* v. *Heartland Corn Products,* D.J. Ref. 90–5–2–1–07784/9.

The Consent Decree may be examined at the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 55101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $15.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**William Brighton,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 02–27078 Filed 10–23–02; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 2, 2002, a proposed Consent Decree in *United States* v. *Minnesota Energy,* Civil Action No. CV02–3791 JEL/JGL was lodged with the United States District Court for the District of Minnesota.

In this action the United States sought to resolve claims against the owners and operators of an ethanol dry mill in Buffalo Lake, Minnesota, pursuant to section 113(b) of the Clean Air Act (''Act''), 42 U.S.C. 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991). The United States sought injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration (''PSD'') provisions of the Act; the New Source Performance Standards (''NSPS''), 40 CFR part 60, subparts Db, Dc, DD, Kb, and VV; and the National Emission Standards for Hazardous Air Pollutants (''NESHAP''), 40 CFR part 63, pursuant to sections 112(d) and 112(g) of the Act; and the Minnesota state implementation plan (''SIP'') which incorporates and/or implements the above-listed federal regulations. Under the proposed settlement, Minnesota Energy will install air pollution control technology, comply with new, more stringent emission limits,and pay a civil penalty of $29,360. The Minnesota Pollution Control Agency has joined in the settlement as a signatory to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Minnesota Energy Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Minnesota Energy,* DJ. Ref. 90–5–2–1–07784/10.

The Consent Decree may be examined by the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 55101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC. 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $17.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**William Brighton,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 02–27068 Filed 10–23–02; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 2, 2002, a proposed Consent Decree in *United States* v. *Pro-Corn, L.L.C., Broin and Associates, Inc., and Broin Management, L.L.C.,* Civil Action No. CV02–3786 PAM/RLE was lodged with the United States District Court for the District of Minnesota.

In this action, the United States sought to resolve claims against operators of ethanol dry mills in Minnesota pursuant to Section 113(b) of the Clean Air Act (''Act''), 42 U.S.C. § 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991). The Pro-Corn facility is located in Preston, Minnesota. The United States sought injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration (''PSD'') provisions of the Act and regulations promulgated thereunder. In addition, the Complaint alleges that the plant is in violation of the New Source Performance Standards (''NSPS''), 40 CFR part 60, subparts Db, Dc, DD, Kb, and VV; National Emission Standards for Hazardous Air Pollutants (''NESHAP''), 40 CFR part 63, pursuant to Sections 112(d) and 112(g) of the Act; and the Minnesota state implementation plan (''SIP'') which incorporates and/or implements the above-listed federal regulations. Under the proposed settlement, Pro-Corn will install air pollution control technology, comply with new, more stringent emission limits, and pay a civil penalty of $32,828. The Minnesota Pollution Control Agency has joined in the settlement as a signatory to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Pro-Corn Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Pro-Corn, L.L.C., Broin and Associates, Inc., and Broin Management, L.L.C.,* D.J. Ref. 90–5–2–1–07784/11.

The Consent Decree may be examined at the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 55101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library,

P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $14.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**William Brighton,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 02–27075 Filed 10–23–02; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

October 16, 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:* New collection.

*Title:* Quick Turnaround Surveys on Workforce Investment Act Implementation.

*OMB Number:* 1205–ONEW.

*Affected Public:* State, Local, or Tribal Government.

*Type of Response:* Reporting.

*Frequency:* 1-time each.

*Number of Respondents:* 250.

*Annual Responses:* 5,000.

*Average Response Time:* 1.5 hours.

*Estimated Burden Hours:* 7,500.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $0.

*Description:* The Employment and Training Administration is seeking Office of Management and Budget approval for a plan to collect data from state workforce agencies and local workforce investment areas on issues relating to the governance and administration, budgeting and funding, and service design and delivery structure of workforce programs authorized by the Workforce Investment Act. Section 172 of the Workforce Investment Act is the authority by which ETA will collect information proposed in this information collection plan.

**Marlene J. Howze,**

*Acting Departmental Clearance Officer.*

[FR Doc. 02–27104 Filed 10–23–02; 8:45 am]

BILLING CODE 4510–23–M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

### Working Group on Education and Training of 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 of the Advisory Council on Employee Welfare and Pension Benefit Plans assigned to study the issue of educating and training plan fiduciaries will hold an open public meeting on Thursday, November 7, 2002, 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 a.m. to approximately noon, is for Working Group members to finalize their report and recommendations for presentation to the full Advisory Council and ultimately, to the Secretary of Labor.

Members of the public are encouraged to file a written statement pertaining to the topic by sending 20 copies on or before October 30, 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 wish disabilities who need special accommodations should contact Sharon Morrissey by October 30 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. Written statements will be accepted and included in the record of the meeting if received on or before October 30.

Signed at Washington, DC this 18th day of October, 2002.

**Ann L. Combs,**

*Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 02–27100 Filed 10–23–02; 8:45 am]

BILLING CODE 4510–29–M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

### 120th 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 120th open meeting of the full Advisory Council on Employee Welfare and Pension Benefit Plans will be held Friday, November 8, 2002, in the Secretary of Labor's Conference Room S–2508, U.S. Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

The purpose of the meeting, which will begin at 10 a.m. and end at approximately noon, is for the Council's

three Working Group chairs to present their groups' final reports and recommendations for approval by the full Council before the reports are forwarded to the Secretary of Labor. Also at the meeting, the five departing members will be cited for the completion of their three-year terms of service.

Members of the public are encouraged to file a written statement pertaining to the three Working Group issue assignments—fiduciary training and education, orphan plans, and electronic reporting—by submitting 20 copies on or before October 30, 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, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Sharon Morrissey by October 30 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. Written statements will be accepted and included in the record of the meeting if received on or before October 30, 2002.

Signed at Washington, DC, this 18th day of October, 2002.

**Ann L. Combs,**

*Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 02–27101 Filed 10–23–02; 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 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, a public meeting will be held on Thursday, November 7, 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.

The sessions 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 1 p.m. to approximately 3 p.m., is for Working Group members to finalize their reports and recommendations for presentation to the full Advisory Council and ultimately, to the Secretary of Labor.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before October 30, 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 October 30 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. Written statements will be accepted and included in the record of the meeting if received on or before October 30.

Signed at Washington, DC, this 18th day of October, 2002.

**Ann L. Combs,**

*Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 02–27102 Filed 10–23–02; 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 (ERISA), 29 U.S.C. 1142, a public meeting will be held Thursday, November 7, 2002, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group studying electronic reporting.

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 last from 3:15 p.m. to approximately 5 p.m., is for Working Group members to complete their report and recommendations for presentation to the full Advisory Council, and ultimately, to the Secretary of Labor.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before October 30, 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 who wish 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 October 30 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. Written statements will be accepted and included in the record of the meeting if received on or before October 30.

Signed at Washington, DC, this 18th day of October, 2002.

**Ann L. Combs,**

*Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 02–27103 Filed 10–23–02; 8:45 am]

**BILLING CODE 4510–29–M**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meetings of Humanities Panel

**AGENCY:** The National Endowment for the Humanities.

**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:** Daniel Schneider, 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:* November 1, 2002.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 415.
*Program:* This meeting will review applications for Stabilization of Humanities Collections, submitted to the Division of Preservation and Access at the July 1, 2002 deadline.

2. *Date:* November 5, 2002.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 415.
*Program:* This meeting will review applications for Library & Archival Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 2002 deadline.

3. *Date:* November 8, 2002.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 415.
*Program:* This meeting will review applications for Library & Archival Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 2002 deadline.

4. *Date:* November 18, 2002.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 426.
*Program:* This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the September 16, 2002 deadline.

5. *Date:* November 19, 2002.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 415.
*Program:* This meeting will review applications for Library & Archival Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 2002 deadline.

6. *Date:* November 22, 2002.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 415.
*Program:* This meeting will review applications for Library & Archival Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 2002 deadline.

**Daniel Schneider,**
*Acting Advisory Committee Management Officer.*

[FR Doc. 02–27050 Filed 10–23–02; 8:45 am]
BILLING CODE 7536–01–P

## NUCLEAR REGULATORY COMMISSION

**[License No. 19–00915–03, Docket No. 03004530]**

### Consideration of Amendment Request to Remediate a Radioactive Waste Burial Site at the U.S. Department of Agriculture Facility in Ames, IA and Opportunity for a Hearing

The Nuclear Regulatory Commission is considering amending the United States Department of Agriculture's Byproduct Materials License No. 19–00915–03 to authorize excavation and remediation of the radioactive waste burial site located at its facilities in Ames, Story County, Iowa.

The U.S. Department of Agriculture (USDA) submitted a request dated August 16, 2002, for an amendment to Nuclear Regulatory Commission (NRC) License No. 19–00915–03. The licensee requests approval to decommission a radioactive waste burial site located on its property in Ames, Iowa. USDA proposes to excavate the site and retrieve the buried radioactive waste for shipment to a commercial waste disposal site in accordance with the procedures contained in that and subsequent submissions. The licensee has retained Cabrera Services, Inc., an NRC licensee (License No. 06–30556–01), to perform the decommissioning and remediation of the site.

The amendment request by United States Department of Agriculture and related documents are available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, PA 19406. The documents may also be viewed in the Agency-wide Document Access and Management System (ADAMS) located on the NRC Web site at *http://www.nrc.gov.* These documents include:

Letter from U.S. Department of Agriculture to USNRC, Region I, dated August 16, 2002 requesting approval to remediate burial site at National Animal Disease Center, Ames, IA, with enclosed Work Plan. (ML022330227)

Letter from Cabrera Services to USNRC, Region I, dated August 20, 2002 providing documents used in historical assessment of burial site (ML022390595).

Letter from USEPA, Region VII to UDSA, dated August 6, 2002, regarding Engineering Evaluation and Cost Analysis for NADC, Ames, IA (ML022270115).

Fax from USDA to USNRC, Region I dated September 11, 2002 providing additional information (ML022550516).

Engineering Evaluation and Cost Analysis for USDA National Animal Disease Center, Revision 1, Final, dated August 14, 2002 (ML022690109).

Environmental Assessment and Finding of No Significant Impact, dated October 24, 2002 (ML022890591).

Any person whose interest may be affected by the issuance of this action may file a request for a hearing. Any hearing request must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director of Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 and Region I, Chief, Nuclear Materials Safety Branch, 475 Allendale Road, King of Prussia, PA 19406), and on the licensee (U.S. Department of Agriculture, 5601 Sunnyside Avenue, Mail Stop 5510, Beltsville, MD. 20705); and must comply with the requirements for requesting a hearing set forth in the Commission's regulations, 10 CFR Part 2, Subpart L, ''Information Hearing Procedures for Adjudications in Materials Licensing Proceedings.''

*These requirements, which the request must address in detail, are:*

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding (including the reasons why the requestor should be permitted a hearing);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely—that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (*i.e.*, health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at King of Prussia, Pennsylvania, this 16th day of October, 2002.

For the Nuclear Regulatory Commission.

**John D. Kinneman,**

*Chief, Nuclear Materials Safety Branch, Division of Nuclear Materials Safety, Region I.*

[FR Doc. 02–26984 Filed 10–23–02; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Nuclear Waste; Request for Candidates

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The U.S. Nuclear Regulatory Commission seeks qualified candidates for the Advisory Committee on Nuclear Waste. Submit resumès to: Ms. Sherry Meador, Administrative Assistant, ACRS/ACNW, Mail Stop T2E–26, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or email address *SAM@NRC.gov*.

**SUPPLEMENTARY INFORMATION:** The Commission established the Advisory Committee on Nuclear Waste (ACNW) to provide independent technical review of and advice on matters related to the management of nuclear waste, including all aspects of nuclear waste disposal facilities, as directed by the Commission. The ACNW undertakes independent studies and reviews related to disposal, storage, and transportation of both high- and low-level radioactive waste including interim storage of spent nuclear fuel; materials safety; and facilities decommissioning. This encompasses activities related to rulemakings, associated regulatory guides, and technical positions developed to support and clarify NRC's nuclear materials and radioactive waste regulations. Committee members are selected from a variety of engineering and scientific disciplines, such as risk assessment, chemistry, mechanical engineering, civil engineering, materials sciences, and the earth sciences. At this time, candidates are being sought who have 15–20 years of experience, including graduate level education, in the management and disposal of radioactive waste. Committee members serve a 4-year term with the possibility of reappointment for a total service of 8 years.

Criteria used to evaluate candidates include education and experience, demonstrated skills in nuclear waste management matters, and the ability to solve complex technical problems. The Commission, in selecting its Committee members, considers the need for a specific expertise to accomplish the work expected to be before the ACNW. For this position, the expertise must be directly related to the area of radioactive waste disposal, site remediation and closure activities, nuclear fuel reprocessing, chemistry, chemical exchange processes, and nuclear fuel cycle. Consistent with the requirements of the Federal Advisory Committee Act, the Commission seeks candidates with diverse backgrounds, so that the membership on the Committee will be fairly balanced in terms of the points of view represented and functions to be performed by the Committee.

Candidates for ACNW appointments may be involved in or have financial interests related to NRC-regulated aspects of the nuclear industry. Because conflict-of-interest considerations may restrict the participation of a candidate in ACNW activities, the degree and nature of any such restriction on an individual's activities as a member will be considered in the selection process. Each qualified candidate's financial interests must be reconciled with applicable Federal and NRC rules and regulations prior to final appointment. This might require divestiture of securities or discontinuance of certain contracts or grants. Information regarding these restrictions will be provided upon request.

A resumè describing the educational and professional background of the candidate, including any special accomplishments and professional references should be provided. Candidates should provide their current address, telephone number, and e-mail address. All candidates will receive careful consideration. Appointment will be made without regard to such factors as race, color, religion, national origin, sex, age, or disabilities. Candidates must be citizens of the United States and be able to devote approximately 70–100 days per year to Committee business. Applications will be accepted until December 20, 2002.

Dated: October 17, 2002.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 02–27002 Filed 10–23–02; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[License No. 19–00915–03; Docket Number 03004530]**

### U.S. Department of Agriculture, Ames, IA; Environmental Assessment and Finding of No Significant Impact; Notice of Availability

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for remediation of radioactive waste burial site, U.S. Department of Agriculture, Ames, IA.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is announcing the availability of the EA and FONSI for the remediation of the radioactive waste burial site at the U.S. Department of Agriculture facility in Ames, IA.

**SUPPLEMENTARY INFORMATION:** The Nuclear Regulatory Commission is considering amending the United States Department of Agriculture's Byproduct Materials License No. 19–00915–03 to authorize excavation and remediation of the radioactive waste burial site located at its facilities in Ames, Story County, Iowa.

**1. Introduction**

The U.S. Department of Agriculture (USDA) submitted a request dated August 16, 2002, for an amendment to Nuclear Regulatory Commission (NRC) License No. 19–00915–03. The licensee requests approval to decommission a radioactive waste burial site located on its property in Ames, Iowa. USDA proposes to excavate the site and retrieve the buried radioactive waste for shipment to a commercial waste disposal site in accordance with the procedures contained in that and subsequent submissions. The licensee has retained Cabrera Services, Inc., an NRC licensee (License No. 06–30556–01), to perform the decommissioning and remediation of the site.

The burial site is approximately 0.25 acre (0.1 hectare, 11,000 $ft^2$ 2, 1000 $m^2$) in the National Animal Disease Center

(NADC) located on USDA property in Ames, Story County, Iowa. In addition to the burial site, about 80 NADC research laboratories and other facilities are located on the 320 acre (130 hectare) NADC property. The licensee buried radioactive material and associated chemical waste (mostly liquid scintillation media) at the site from 1971 (when 10 CFR 20.304 authorized burial of defined radioactive waste) until January 1981 (when 10 CFR 20.304 was withdrawn). The waste buried is typical of that generated by bench scale research with radionuclides and includes such items as lead pigs, vials, pipettes, packaging materials, gloves, absorbent paper, test tubes, scintillation vials, carbon filters, and liquid scintillation counting fluid. The licensee estimates that the volume of buried waste is 40 cubic yards (30 $m^3$) containing 250 millicuries of hydrogen 3, carbon 14, and nickel 63. The waste was placed in double plastic (polyethylene) bags and then buried in 16 separate pits, each approximately 6 feet (1.8 m) deep. The pits lie along a straight line over a distance of about 300 feet (91 m). Each burial is covered by about 3 feet (0.9 m) of soil.

**2. Purpose and Need for the Proposed Action**

The licensee plans to construct additional research facilities at NADC that may disturb and/or cover part or all of the burial site. Removal of the buried waste will facilitate the construction activities and will avoid future contamination of the soil and/or groundwater with radioactive and/or chemical waste.

There is currently no evidence of soil or groundwater contamination with radioactive material or hazardous chemicals. However, in addition to the fact that it will be necessary to disturb at least part of the burial during the planned construction, the waste may deteriorate with the passage of time, resulting in future soil and/or groundwater contamination. Therefore, the licensee plans to remediate the site prior to construction of the new facilities. The licensee is also coordinating the remediation activities with the U.S. Environmental Protection Agency (EPA) because the buried waste includes hazardous chemicals. USDA applied for and obtained from EPA approval for remediation of the burial site.

**3. Proposed Action**

The licensee plans to remove the buried waste and any associated contamination, properly dispose of all waste generated and release the burial site for unrestricted use prior to construction activities.

The licensee performed an extensive review of available records and interviewed appropriate personnel to determine the locations, structure of and identity of the radioactive materials present in the burials. Records indicate that hydrogen 3, carbon 14, sodium 22, sulfur 35, chlorine 36, potassium 40, chromium 51, nickel 63, iodine 125, iodine 131, and radium 226 were used at the facility during the period when the burials were made. However, sulfur 35, chromium 51, iodine 125, iodine 131, and sodium 22 have relatively short half-lives and were eliminated from consideration during the planning of the decommissioning because the quantities were small and have undergone decay for more than 10 half-lives. The licensee's records indicate that potassium 40 was purchased only once in 1967, in an exempt amount, and, therefore, it was also not considered further. Similarly, chlorine 36 was screened out because it was acquired in solution and, according to both available records and interviews with users, waste containing chlorine 36 was disposed of to the sanitary sewer at the time of its use. The licensee concluded that all radium 226 was in the form of a single one millicurie sealed source. It is not clear if that source was disposed in a burial, but, if it is present, it should be possible to locate it during dose rate surveys of the site that will be performed before and during the excavations or during the sorting and repackaging of the waste for disposal. The licensee has concluded that the buried radioactive waste contains less than 250 millicuries of radioactive material (hydrogen 3, carbon 14, and nickel 63). The waste was buried in double plastic (polyethylene) bags in 16 separate pits, each approximately 6 feet (1.8 m) deep. These pits lie along a straight line about 6 feet (1.8 m) apart over a distance of about 300 feet (91 m). There are about 3 feet (0.9 m) of cover soil over each pit. The licensee used these conclusions in planning the removal of the burials.

In November 1989 the licensee opened the first burial pit. Observation and soil samples taken at that time did not indicate leakage of radioactivity or chemicals from the bag that was buried in the pit. The licensee performed additional monitoring in 1996 by drilling six wells approximately 15 feet (4.6 m) deep around the burial site. Analyses of soil samples taken as recently as April 2000, from these wells did not indicate presence of any volatile organic compounds. In September 2002, water samples from the wells did not indicate any radioactivity above background. Based on this information and observations of the burial in 1989, the licensee has concluded that the plastic bags containing the waste are largely intact which should facilitate removal of the waste.

The licensee plans to retrieve the buried waste by excavating the burial site in three stages. The first stage will be accomplished using a mechanical excavator to dig a trench 8 feet (2.4 m) to 12 feet (3.7 m) wide and 3 feet (0.9 m) deep approximately 300 feet (91 m) long that will include all 16 pits. The second stage will involve digging a narrower trench symmetrically located within the first trench. This will be accomplished by carefully removing soil in 2–4 inch ( 5–10 cm) layers to reduce the risk of puncturing or tearing the buried bags. The third stage will begin when the top of a bag or other evidence of waste appears. Then excavation will be performed by hand (to minimize the potential for rupture of bags or the spread of waste or contamination) until each bag or all identifiable waste is retrieved. A one-foot layer of surrounding soils will be removed from all surfaces of each pit following the extraction of the bags and/or waste.

After all visible waste and the additional foot of soil is removed, the pits will be surveyed for radioactive contamination following an approach developed using the guidance provided in NUREG 1575, ''Multi-Agency Radiation Survey and Site Investigation Manual'' (MARSSIM). The licensee will collect samples from the surface and at a depth of about 1 foot (30 cm) below the bottom and behind the walls of each pit. Each sample will be analyzed for radioactivity and compared to the decommissioning goals selected by the licensee (described below). The measurements will be made with a Minimum Detectable Activity (MDA) of about 50% of the goal.

The surface sample data will be compared to the decommissioning goal. The subsurface sample data will be compared to a background reference area to demonstrate that residual contamination is limited to the first 15 cm of soil, if any is present at all. The sampling procedure is designed to assure the decommissioning goals are applied in a fashion consistent with the limitations placed on the published screening values which are the basis for approval of the goals. Additional soil, in 6 inch layers, will be removed if the analytical results indicate contamination in excess of the goals in surface samples or in excess of background in the subsurface samples.

If the licensee's surveys indicate the presence of significant soil contamination, sufficient characterization will be performed to support the development of custom derived concentration guidelines (DCGLs) for the site.

The NRC published screening values for radioactive contamination in soil based on an annual dose limit of 25 millirems in the **Federal Register** (64 FR 68395–96, December 7, 1999 and 65 FR 37186, June 13, 2002). The licensee used EPA's Generic Soil Screening Guidance, the computer code RESRAD and a dose limit of 15 millirems/year in order to choose decommissioning goals that would be acceptable to the NRC as well as the EPA. The values selected by the licensee are less than the published screening values and, therefore, are acceptable to the NRC for surface soil. As discussed above, the licensee's procedures are appropriate to assure that the goals are applied in accordance with published guidance.

All excavated waste will be stored temporarily in an enclosed sealand container after visual examination to verify integrity of each bag. The licensee has procedures for gathering and containing any waste which may escape from the bags. There will be a closed tent within this container fitted with a High Efficiency Particulate Air (HEPA) filtration unit to control potential airborne contaminants. Each bag or container of waste will be opened within the tent and the waste material will be segregated, characterized in accordance with approved licensee procedures, applicable regulations and waste disposal facility acceptance criteria. All waste, including any contaminated soil, will be properly packaged and shipped off site for disposal at an appropriate commercial waste disposal facility. The traffic generated by the shipment of the radioactive waste is expected to be a small fraction of the traffic for the entire site. The licensee estimates less than 10 truckloads with no more than three trucks at the site at any one time. The licensee has appropriate procedures for controlling the exposures of workers and releases to the environment during these operations.

Following the removal of all waste and contaminated soil, any additional necessary final status surveys will be performed in accordance with the guidance in NUREG 1575, ''Multi-Agency Radiation Survey and Site Investigation Manual'' (MARSSIM). Based on the actual survey results, the licensee will prepare and submit for approval a ground water monitoring plan for a specified time period. The licensee expects to complete the decommissioning of the site late in 2002, submit a Final Status Survey Report and request approval to release the site for unrestricted use.

**4. Alternatives to the Proposed Action**

The licensee considered four alternatives with regard to the burial site. One alternative is to take no action. Under this alternative monitoring and control would continue, but decommissioning actions would not be performed. Therefore, the risk of exposure to existing chemical and radiological material would not be reduced, and would be expected to increase over time. In addition, the licensee would either be forced to relocate the planned building or to take control measures similar to those proposed for the decommissioning during construction. The impact of relocating the building would be additional design and construction expenses along with delays in construction. If the building is not relocated, the additional control measures during construction would have impacts similar or greater than those expected during the remediation.

A second alternative is to implement additional containment and institutional controls. This might involve covering the burial site with additional soil cover and additional institutional and engineering controls to help ensure that the waste material remains contained within the burial site. This alternative would prevent future use of the burial site location. The licensee concluded that this alternative does not adequately control risks and does not meet the requirements of regulatory agencies (EPA and the NRC). The main impacts of this alternative are permanent loss of use of the land area and the additional cost for containment and institutional controls.

A third alternative considered by the licensee involves excavation of the buried waste and transporting it to an on-site storage facility until disposal off site. The licensee estimated that this alternative would take over 5 years to implement. The licensee did not consider this alternative further because of the impacts of additional costs, additional construction on the site and the loss of use of the location for a protracted period of time.

The preferred alternative is removal of the buried waste and any contaminated soil followed by prompt and appropriate disposal, as described above. This alternative allows productive use of the area of the burial site and prevents future contamination of soil and possibly groundwater with radioactive material and hazardous chemicals.

**5. Affected Environment and Justification of the Action**

The burial site is about 0.25 acre (0.1 hectare) of the 320 acre (130 hectare) NADC research complex in Story County, within the incorporation limits of Ames, Iowa. There are more than 80 buildings and other facilities in the research complex. The city of Ames had a population of approximately 51,000 according to the 2000 census. All people in the vicinity of NADC are served by ground water, either from the Ames municipal wells or from private wells. The nearest potable municipal well is located approximately 1.8 miles (2.9 km) from the waste site. The nearest private residence is 0.8 mile (1.3 km) from the waste site.

The NADC research complex is bounded on the east by Interstate Highway 35, on the south by the USDA's National Veterinary Services Laboratories (an additional 153 acres (62 hectares) of USDA property), on the west by Dayton Road and on the north by agricultural lands. Land use in the vicinity of the NADC is commercial to the south, residential to the west and agricultural to the north and east.

Topography in the vicinity of NADC is gently rolling with a divide which causes approximately one third of the facility's drainage to flow towards the southwest with the rest of the drainage flowing generally northeast. The drainage flows overland and percolates into the soil. It can be intercepted by storm sewers, roadside ditches, or it can reach the Skunk River about one mile (1.6 km) southwest of the burial site. The Skunk River is not used for drinking water. Near the burial site, the ground water flows west with a slight southwest trend. The ground water flow is somewhat independent of surficial water flow. Soil of the site is mainly composed of clay loams and loams.

Four major aquifer types exist in Story County: Alluvial aquifers, bedrock aquifers, buried channel aquifers, and drift aquifers. The upper bedrock aquifer underlies all of Story County. Overlying the upper bedrock aquifer are surficial aquifers and surface streams. The upper bedrock aquifer and surficial aquifers produce approximately 75 percent of the county's public water supply. Drift aquifers, which are not present in the vicinity of NADC produce the remaining 25 percent. A buried channel aquifer provides drinking water in the Ames area. Only the upper bedrock aquifer is present under NADC and is approximately 150 feet (48 m) beneath the ground surface. There are

approximately 50 feet (15 m) of essentially impermeable clay between the aquifer and the ground surface at NADC. Therefore, the burial has presented and the planned decommissioning activities will present, little danger to the potable water supply.

While the burial site is unlikely to affect potable water supplies, the upper local groundwater table may be less than 5 feet (1.5 m) beneath the surface during the rainy seasons of the year. Water levels in the monitoring wells around the burial site have been measured at less than 4 feet (1.2 m) beneath the ground in early spring. It is possible that the buried waste may at times have been be surrounded by the ground water. Over time contact between the buried waste and ground water might make contamination available to surface plants and foraging animals. However, recent sampling of these wells found no radioactivity above natural background in the water.

The vegetation on the site is primarily introduced grasses and alfalfa and most of the undeveloped land on the NADC is utilized for animal foraging and pasture. Animals that inhabit the site are moles, deer mice, red fox, striped skunk, raccoon, badger, and an occasional whitetail deer. Birds such as horned larks, killdeer, vesper sparrow, and ring necked pheasants would likely inhabit the site. No unusual, threatened or endangered species of vegetation or wildlife are known or expected to occur on the site. There are approximately 15 acres (6.1 hectares) of wetlands in a ravine approximately one-half mile to the east of NADC.

Analyses of soil and water samples from the monitoring wells and one of the burial pits indicate that the buried waste material has not left the burials and has not had an adverse impact on the surrounding environment. However, the licensee plans construction activities near the burial site and these activities will change the underground profile of the burial site. If the waste remains buried, the leakage may occur during construction or in the future. Leaking material could be transferred to soil and local plants and thence to foraging animals. Due to the planned disturbance of the area and the possible future deterioration of the waste it is prudent to remediate the site now. This will avoid the spread of contamination into the environment and possibility of exposure of members of the public.

**6. Environmental Impacts of the Proposed Action and Mitigating Measures**

The licensee and its contractors have committed to comply with all pertinent environmental requirements to protect human health and the environment during the implementation of the proposed action. The licensee will follow appropriate standards set by the U.S. Occupational Safety & Health Administration (OSHA) to ensure worker health and safety, and will obtain all necessary permits from the local and state authorities.

Impacts of decommissioning activities such as increased noise and traffic are not expected to be significant because of the small area to be remediated and the fact that only a few pieces of construction equipment will be used to avoid dispersal of the waste during remediation. The burial site is currently fenced and not available to general access. The exclusion area and congestion in the area will increase somewhat during remediation, but the time of remediation is short (4 to 6 weeks) and there is adequate space to reroute traffic and other activities. The main environmental impacts are expected to be disturbance of the ground surface, the possibility of local soil erosion and the collection of precipitation in open excavations leading to the generation of potentially contaminated water.

The licensee's procedures for the excavation of the site are described in detail in a letter dated August 16, 2002, with enclosed Work Plan. The procedures are adequate to prevent or control soil erosion and the spread of radioactive and chemical contamination. Since the amount of radioactivity is not large and is most likely well contained, the risk of contamination spread is low and can be controlled by the licensee's procedures. Berms will be built around the excavated pits and soil storage areas to prevent water from getting into these areas and to control erosion. During excavation and screening dust will be controlled by misting with water and excavated soil will be covered to prevent it from becoming airborne. Wash water and precipitation will be collected, stored in tanks, sampled and disposed of in accordance with applicable regulatory requirements.

The licensee has developed procedures to control personnel exposures and to prevent the spread of radioactive contamination to other areas during and following excavation. A boundary (Construction Zone) will be established to mark the areas where excavation and remedial activities will be performed. Access to the areas within this boundary will be controlled by the use of temporary fencing with clearly defined access points. A Radiological Control Zone will be established within the Construction Zone to isolate the areas that could become radiologically contaminated. All areas will be appropriately posted.

Airborne contamination surveys and other appropriate radiological surveys of the soil and the trench surfaces will be made during and after removal of each soil layer. These surveys will determine if there was leakage into the soil from the waste and ensure that workers are not exposed to radiation from any unexpected source.

Spread of contamination from the burials would likely be by surficial or underground water currents. Such a spread of contamination is expected to be directed downward or laterally and, therefore, radioactive contamination is not expected in the top layer of soil. Therefore, the soil excavated during the first and second stages (top layers) will be spread in a 6-inch layer on polyethylene sheeting of at least 10 mil thickness in a designated lay down area for screening and potential segregation. The plan is to use as much of this soil as possible for backfill of the trench. Soil excavated during the third stage (after the tops of the bags become visible) will be loaded into intermodal containers and covered with tarps. This soil will be more extensively sampled for contamination. All soil contaminated in excess of the of the decommissioning goals will be shipped to an approved disposal site.

After radiological surveys confirm that the site meets the decommissioning goals, the burial site will be filled with the excavated non-contaminated soil and, if necessary, additional clean fill. The site will either be incorporated into a major construction project or appropriately vegetated. All waste and any contaminated soil removed will be transferred to a commercial burial site. The licensee will perform final radiological surveys of the site to ensure that the site meets NRC criteria for release for unrestricted use.

All contaminated items or material, including the equipment used in the excavation, will either be decontaminated in a designated area near the burial site, or disposed of in accordance with licensee's approved radiation safety procedures.

The licensee's procedures to initiate, accomplish and complete the remediation of the burial site adequately address concerns about the protection and radiological safety of members of the public and workers, the environment, and natural resources in the area.

**7. Endangered Species and Historical Site Review**

No unusual, threatened, or endangered species of vegetation or wildlife are known or expected to occur on the NADC property. There are no habitats of endangered species on the NADC property. Wetlands near the NADC property are not involved in the remediation activities. These conclusions were confirmed in discussions with the U.S. Fish and Wildlife Service.

The Iowa State Historical Society has reviewed the site and planned activities and concluded that it is unlikely that any areas of historical significance are involved.

**8. Agencies and Persons Consulted**

Scott Marquess, U.S. Environmental Protection Agency. The EPA is reviewing the proposed remediation, has approved the project and will monitor the implementation of the remediation activities.

Daniel McGhee, State of Iowa, Department of Public Health. The Department of Public Health representative indicated knowledge of the site including the research uses of radioactive material, supports the removal of the burial site and had no special concerns about the removal.

Wayne Fisher, U.S. Fish and Wildlife Service. Contact discussed in Section 7.

Daniel K Higginbottam, Iowa State Historic Preservation Office. Contact discussed in Section 7.

**9. Sources Used**

Letter from U.S. Department of Agriculture to USNRC, Region I, dated August 16, 2002, requesting approval to remediate burial site at National Animal Disease Center, Ames, IA, with enclosed Work Plan (ML022330227).

Engineering Evaluation and Cost Analysis for USDA National Animal Disease Center, Revision 1, Final, dated August 14, 2002 (ML022690109).

Letter from Cabrera Services to USNRC, Region I, dated August 20, 2002, providing documents used in historical assessment of burial site (ML022390595).

Letter from USEPA, Region VII to UDSA, dated August 6, 2002, regarding Engineering Evaluation and Cost Analysis for NADC, Ames, IA (ML022270115).

Fax from USDA to USNRC, Region I dated September 11, 2002 providing additional information (ML022550516).

Fax from Cabrera Services to USNRC, Region I, dated October 3, 2002 which encloses letter from Iowa State Historical Society to USDA, date July 22, 2002 (ML022890418).

**10. Finding of no Significant Impact**

Pursuant to the National Environmental Policy Act of 1969 (NEPA) and the Commission's regulations in 10 CFR part 51, the Commission has determined that there will not be a significant effect on the quality of the human environment resulting from the excavation and retrieval of the buried waste and transfer to an off site waste disposal facility. Accordingly, the preparation of an Environmental Impact Statement is not required for the proposed amendment to Byproduct Material License No. 19–00915–03, which will authorize decommissioning of the burial site. This determination is based on the foregoing Environmental Assessment performed in accordance with the procedures and criteria in 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.''

The amendment request by United States Department of Agriculture and related documents are available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, PA 19406. The documents may also be viewed in the Agency-wide Document Access and Management System (ADAMS) located on the NRC website at *www.nrc.gov*.

Dated at King of Prussia, Pennsylvania, this 16th day of October, 2002.

For the Nuclear Regulatory Commission.

**John D. Kinneman,**

*Chief, Nuclear Materials Safety Branch, Division of Nuclear Materials Safety, Region I.*

[FR Doc. 02–26985 Filed 10–23–02; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

### Public Meeting on the Memorandum of Understanding Between the Environmental Protection Agency and the Nuclear Regulatory Commission; Consultation and Finality on Decommissioning and Decontamination of Contaminated Sites

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of meeting.

**SUMMARY:** NRC will host a public meeting in Rockville, Maryland. During the meeting, staff from the Environmental Protection Agency and the Nuclear Regulatory Commission will discuss the Memorandum of Understanding (MOU) Between the Environmental Protection Agency and the Nuclear Regulatory Commission titled, ''Consultation and Finality on Decommissioning and Decontamination of Contaminated Sites,'' and proposed plans for its implementation. The MOU can be viewed on the Internet at the following Web site: *http://www.nrc.gov/reading-rm/doc-collections/news/2002/02-120.html.* EPA also has additional information at the following Web site: *http://www.epa.gov/superfund/resources/radiation/mou.htm.*

*Purpose:* This meeting will provide an opportunity to discuss the MOU and next steps in implementation.

**DATES:** The meeting is scheduled for Tuesday November 5, 2002, from 1 pm to 4:30 pm. The meeting is open to the public.

**ADDRESSES:** NRC's Auditorium is at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. Visitor parking around the NRC building is not available; however, the meeting site is located adjacent to the White Flint Station on the Metro Red Line.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Santiago, telephone (301) 415–7269, e-mail: *pas2@nrc.gov,* Eric Pogue, telephone (301) 415–6064, e-mail: *erp@nrc.gov,* Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or Stuart Walker, Office of Emergency and Remedial, U.S. Environmental Protection Agency, Washington, DC 20555, telephone (703) 603–8748, e-mail: *walker.stuart@epa.gov.*

Dated at Rockville, Maryland, this 17th day of October, 2002.

For the Nuclear Regulatory Commission.

**Martin J. Virgilio,**

*Director, Office of Nuclear Material Safety and Safeguards.*

**Agenda**

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|---|---|
| 12:30–1:00 | Meet and Greet |
| 1:00–1:15 | Welcome and Opening Remarks |
| 1:15–2:15 | Overview of MOU |
| 2:15–2:45 | Public Questions |
| 2:45–3:00 | NRC Next Steps/Guidance |
| 3:00–3:15 | EPA Next Steps/Guidance |
| 3:15–3:30 | Closing Remarks |
| 3:30–3:45 | Public Questions |
| 3:45–4:30 | Staff Available for additional discussion |

[FR Doc. 02–27124 Filed 10–23–02; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Memorandum of Understanding Between the U.S. Environmental Protection Agency and the U.S. Nuclear Regulatory Commission; Consultation and Finality on Decommissioning and Decontamination of Contaminated Sites

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of issuance.

**SUMMARY:** The Nuclear Regulatory Commission signed a Memorandum of Understanding (MOU) with the Environmental Protection Agency on the radiological decommissioning and decontamination of NRC-licensed sites. The MOU signed by NRC and EPA provides that EPA will defer exercise of authority under the Comprehensive Environmental Response, Compensation and Liability Act (Superfund) for the majority of facilities decommissioned under NRC authority. The MOU includes provisions for NRC and EPA consultation for certain sites when, at the time of license termination, (1) groundwater contamination exceeds EPA-permitted levels; (2) NRC contemplates restricted release or alternate criteria for release of the site; and/or (3) residual radioactive soil concentrations exceed levels defined in the MOU.

**SUPPLEMENTARY INFORMATION:** The MOU responds to a 1999 report from the House Committee on Appropriations that stated: ''in the interest of ensuring that sites do not face dual regulation, the Committee strongly encourages both agencies to enter into an MOU which clarifies the circumstances for EPA's involvement at NRC sites when requested by the NRC.'' The MOU also is responsive to a Government Accounting Office report issued in 2000. The MOU does not fully meet the intent of the Appropriations Committee because the threat of dual regulation remains for certain licensees. Thus, although the MOU reduces dual jurisdiction, the NRC will continue efforts to seek legislation that would eliminate the possibility of dual regulation of all NRC decommissioning licensees.

The MOU does not impose any new requirements on NRC licensees and will reduce the involvement of EPA with NRC licensees who are decommissioning. Most sites are expected to meet the NRC criteria for unrestricted use, and NRC believes that only a few sites will have groundwater or soil contamination in excess of the levels specified in the MOU which trigger consultation with EPA. If there are other hazardous materials on the site, EPA may be involved in cleanup.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Santiago at (301) 415–7269, e-mail: *pas2@nrc.gov,* or Eric Pogue at (301) 415–6064, e-mail: *erp@nrc.gov,* Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or Stuart Walker, Office of Emergency and Remedial Response, U.S. Environmental Protection Agency, Washington, DC 20555, telephone (703) 603–8748, e-mail: *walker.stuart@epa.gov.*

The MOU between the EPA and the NRC is entitled ''Consultation and Finality on Decommissioning and Decontamination of Contaminated Sites'' and is attached to this notice. The MOU was signed by the Administrator of the U.S. Environmental Protection Agency on September 30, 2002, and by the Chairman of the U.S. Nuclear Regulatory Commission on October 9, 2002.

Dated in Rockville, Maryland, this 17th day of October, 2002.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

### I. Introduction

The Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC), in recognition of their mutual commitment to protect the public health and safety and the environment, are entering into this Memorandum of Understanding (MOU) in order to establish a basic framework for the relationship of the agencies in the radiological decommissioning and decontamination of NRC-licensed sites. Each Agency is entering into this MOU in order to facilitate decision-making. It does not establish any new requirements or rights on parties not subject to this agreement.

### II. Purpose

The purpose of this MOU is to identify the interactions of the two agencies for the decommissioning and decontamination of NRC-licensed sites and to indicate the way in which those interactions will take place. Except for section VI, addressing corrective action under the Resource Conservation and Recovery Act (RCRA), this MOU is limited to the coordination between EPA, when acting under its Comprehensive Environmental Response, Compensation and Liability act (CERCLA) authority, and NRC, when a facility licensed by the NRC is undergoing decommissioning, or when a facility has completed decommissioning, and the NRC has terminated its license. It continues a basic policy of EPA deferral to NRC decision-making in the decommissioning of NRC-licensed sites except in certain circumstances, and establishes the procedure to govern the relationship between the agencies in connection with the decommissioning of sites at which those circumstances arise.

### III. Background

An August 3, 1999, report (106–286) from the House Committee on Appropriations to accompany the bill accompany the bill covering EPA's FY 1999 Appropriations/FY 2000 budget request states:

Once again the Committee notes that the Nuclear Regulatory Commission (NRC) has and will continue to remediate sites under its jurisdiction to a level that fully protects public health and safety, and believes that any reversal of the long-standing policy of the Agency to defer to the NRC for cleanup of NRC's licensed sites is not a good use of public or private funds. The interaction of the EPA with the NRC, NRC licensees, and others, with regard to sites being remediated under NRC regulatory requirements—when not specifically requested by the NRC—has created stakeholder concerns regarding the authority and finality of NRC licensing decisions, the duration and costs of site cleanup, and the potential future liability of parties associated with affected sites. However, the Committee recognizes that there may be circumstances at specific NRC licensed sites where the Agency's expertise may be of critical use to the NRC. In the interest of ensuring that sites do not face dual regulation, the Committee strongly encourages both agencies to enter into an MOU which clarifies the circumstances for EPA's involvement at NRC sites when requested by the NRC. The EPA and NRC are directed to report to the Committee on Appropriations no later than May 1, 2000, on the status of the development of such an MOU.

Since September 8, 1983, EPA has generally deferred listing on the CERCLA National Priorities List (NPL) those sites that are subject to NRC's licensing authority, in recognition that NRC's actions are believed to be consistent with the CERCLA requirement to protect human health and the environment. However, as EPA indicated in the **Federal Register** notice announcing the policy of CERCLA deferral to NRC, if EPA ''determines that sites which it has not listed as a matter

of policy are not being properly responded to, the Agency will consider listing those sites on the NPL'' (see 48 FR 40658).

EPA reaffirms its previous 1983 deferral policy. EPA expects that any need for EPA CERCLA involvement in the decommissioning of NRC licensed sites should continue to occur very infrequently because EPA expects that the vast majority of facilities decommissioned under NRC authority will be decommissioned in a manner that is fully protective of human health and the environment. By this MOU, EPA agrees to a deferral policy regarding NRC decision-making without the need for consultation except in certain limited circumstances as specified in paragraphs V.C.2 and V.C.3.

One set of circumstances in which continued consultation should occur, pursuant to the procedures defined herein, relates to sites at which the NRC determines during the license termination process that there is radioactive ground-water contamination above certain limits. Pursuant to its License Termination rule, NRC applies a dose criterion that encompasses all pathways, including ground water. In its cleanup of sites pursuant to CERCLA, by contrast, EPA customarily establishes a separate ground-water cleanup standard in which it applies certain Maximum Contaminant Levels (MCLs, found at 40 CFR 141) promulgated for radionuclides and other substances pursuant to the Safe Drinking Water Act. NRC has agreed in this MOU to consult with EPA on the appropriate approach in responding to the circumstances at particular sites with ground-water contamination at the time of license termination in excess of EPA's MCLs or those sites for which NRC contemplates either restricted release or the use of alternate criteria for license termination, or radioactive contamination at the time of license termination exceeds the corresponding levels in Table 1 as provided in section V.C.2.

## IV. Principles

In carrying out their respective responsibilities, the EPA and the NRC will strive to:

1. Establish a stable and predictable regulatory environment with respect to EPA's CERCLA authority in and NRC's decommissioning of contaminated sites.

2. Ensure, to the extent practicable, that the responsibilities of the NRC under the AEA and the responsibilities of EPA under CERCLA are implemented in a coordinated and consistent manner.

## V. Implementation

### *A. Scope*

This MOU is intended to address issues related to the EPA involvement under CERCLA in the cleanup of radiologically contaminated sites under the jurisdiction of the NRC. EPA will continue its CERCLA policy of September 8, 1983, which explains how EPA implements deferral decisions regarding listing on the NPL of any sites that are subject to NRC's licensing authority. The NRC's review of sites under NRC jurisdiction indicates that few of these sites have radioactive ground-water contamination in excess of the EPA's MCLs. At those sites at which NRC determines during the license termination process that there is radioactive ground-water contamination above the relevant EPA MCLs, NRC will consult with EPA and, if necessary, discuss with EPA the use of flexibility under EPA's phased approach to addressing ground-water contamination. NRC has agreed in this MOU to consult with EPA on the appropriate approach in responding to the circumstances at particular sites where ground-water contamination will exceed EPA's MCLs, NRC contemplates either restricted release or the use of alternate criteria for license termination, or radioactive contamination at the time of license termination exceeds the corresponding levels in Table 1 as provided in Section V.C.2.

### *B. General*

Each agency will keep the other agency generally informed of its relevant plans and schedules, will respond to the other agency's requests for information to the extent reasonable and practicable, and will strive to recognize and ameliorate to the extent practicable any problems arising from implementation of this MOU.

### *C. NRC Responsibilities*

1. NRC will continue to ensure remediation of sites under its jurisdiction to a level that fully protects public health and safety.

2. For NRC-licensed sites at which NRC determines during the license termination process that there is radioactive ground-water contamination in excess of EPA's MCLs, or for which NRC contemplates either restricted release (10 CFR 20.1403) or the use of alternate criteria for license termination (10 CFR 20.1404), NRC will seek EPA's expertise to assist in NRC's review of a decommissioning or license termination plan. In addition, NRC will consult with EPA if either the planned level of residual radioactive soil concentrations in the proposed action or the actual residual level of radioactive soil concentrations found in the final site survey exceed the radioactive soil concentration in Table 1. With respect to all such sites, the NRC will consult with EPA on the application of the NRC decommissioning requirements and will take such action as the NRC determines to be appropriate based on its consultation with EPA. For example, if NRC determines during the license termination process that there will be radioactive ground-water contamination in excess of EPA's MCLs at the time of license termination, then NRC will discuss with EPA the use of flexibility under EPA's phased approach for addressing ground-water contamination. If NRC does not adopt recommendations provided by the EPA, NRC will inform EPA of the basis for its decision not to do so.

3. NRC will defer to EPA regarding matters involving hazardous materials not under NRC's jurisdiction.

### *D. EPA Responsibilities*

1. If the NRC requests EPA's consultation on a decommissioning plan or license termination plan, EPA will provide, within 90 days of NRC's notice to EPA, written notification of its views on the matter.

2. Consistent with this MOU, EPA agrees to a policy of deferral to NRC decision making on decommissioning without the need for consultation on sites other than those presenting the circumstances described in sections V.C.2 and V.C.3. The agencies will consult with each other pursuant to the provisions of this MOU with respect to those sites presenting the circumstances described in sections V.C.2 and V.C.3. EPA does not expect to undertake CERCLA actions related to radioactive contamination at a site that has been decommissioned in compliance with the NRC's standards, including a site addressed under section V.C.2, despite the agencies decision to engage in consultation on such sites. EPA's deferral policy, and its expectation of not taking CERCLA action, continues to apply to sites that are covered under section V.C.2.

3. For NRC-licensed sites presenting the circumstances described in section V.C.2 and for which NRC has not adopted the EPA recommendation, EPA will consult with NRC on any CERCLA actions EPA expects to take if EPA does not agree with the NRC's decision.

4. EPA will resolve any CERCLA concerns involving hazardous substances outside of NRC's jurisdiction at NRC licensed sites, including concerns involving hazardous

constituents that are not under the authority of NRC. As provided in section V.D.2, EPA under CERCLA will defer or consult with NRC as appropriate regarding matters involving AEA materials under NRC's jurisdiction.

*E. Other Provisions*

1. Nothing in this MOU shall be deemed to establish any right nor provide a basis for any action, either legal or equitable by any person, or class of persons challenging a government action or failure to act.

2. Each agency will appoint a designated contact for implementation of this MOU. The designated individuals will meet at least annually or at the request of either agency to review NRC-licensed sites that meet the criteria for consultation pursuant to section V.C.2. The NRC designated contact is the Director, Office of Nuclear Materials Safety and Safeguards, and the EPA designated contact is the Director, Office of Emergency and Remedial Response, or as each designee delegates.

3. This MOU will remain in effect until terminated by the written notice of either party submitted six months in advance of termination.

4. Within six months of the execution of this MOU, each party will revise its guidance to its Headquarters and Regional Offices to reflect the terms of this MOU.

5. If differences arise that cannot be resolved by senior EPA and NRC management within 90 days, then either senior EPA or NRC management may raise the issue to their respective agency head.

## VI. Corrective Action Under RCRA

Some NRC sites undergoing decommissioning may be subject to cleanup under RCRA corrective action authority. This authority, administered either by EPA or authorized states, requires cleanup of releases of hazardous waste or constituents at hazardous waste treatment, storage or disposal facilities. NRC sites subject to RCRA corrective action will be expected to meet RCRA cleanup standards for chemical contamination within EPA's jurisdiction. EPA Office of Solid Waste's policy is to encourage regional and State program implementers to coordinate RCRA cleanups with decommissioning, as appropriate, at those NRC sites subject to EPA's corrective action authority.[1]

EPA will continue to support coordination of cleanups under the RCRA corrective action program with decommissioning at NRC sites consistent with its March 5, 1997 policy. In addition, under RCRA the majority of States are authorized to implement the corrective action requirements. States are not signatories to this MOU; however, EPA will encourage States to act in accordance with this policy where they have responsibility for RCRA corrective action at NRC sites undergoing decommissioning.

Items 1 and 3 of the ''Other Provisions'' of section V.E. apply to this section.

Dated: September 30, 2002.

Christine T. Whitman, *Administrator, U.S. Environmental Protection Agency.*

Dated: October 9, 20002.

Richard A. Meserve, *Chairman, U.S. Nuclear Regulatory Commission.*

BILLING CODE 7590–01–M

[1] See letter from Elizabeth Cotsworth, Acting Director, Office of Solid Waste to James R. Roewer, USWAG, dated March 5, 1997.

## MOU Table 1: Consultation Triggers for Residential and Commercial/Industrial Soil Contamination

**Except for radium-226, thorium-232, or total uranium, concentrations should be aggregated using a sum of the fraction approach to determine site specific consultation trigger concentrations. This table is based on single contaminant concentrations for residential and commercial/industrial land use when using generally accepted exposure parameters. Table users should select the appropriate column based on the site's reasonably anticipated land use.**

| Radionuclide | Residential Soil Concentration | Industrial/Commercial Soil Concentration |
|---|---|---|
| H-3 | 228 pCi/g | 423 pCi/g |
| C-14 | 46 pCi/g | 123,000 pCi/g |
| Na-22 | 9 pCi/g | 14 pCi/g |
| S-35 | 19,600 pCi/g | 32,200,000 pCi/g |
| Cl-36 | 6 pCi/g | 10,700 pCi/g |
| Ca-45 | 13,500 pCi/g | 3,740,000 pCi/g |
| Sc-46 | 105 pCi/g | 169 pCi/g |
| Mn-54 | 69 pCi/g | 112 pCi/g |
| Fe-55 | 269,000 pCi/g | 2,210,000 pCi/g |
| Co-57 | 873 pCi/g | 1,420 pCi/g |
| Co-60 | 4 pCi/g | 6 pCi/g |
| Ni-59 | 20,800 pCi/g | 1,230,000 pCi/g |
| Ni-63 | 9,480 pCi/g | 555,000 pCi/g |
| Sr-90+D | 23 pCi/g | 1,070 pCi/g |
| Nb-94 | 2 pCi/g | 3 pCi/g |
| Tc-99 | 25 pCi/g | 89,400 pCi/g |
| I-129 | 60 pCi/g | 1,080 pCi/g |
| Cs-134 | 16 pCi/g | 26 pCi/g |
| Cs-137+D | 6 pCi/g | 11 pCi/g |
| Eu-152 | 4 pCi/g | 7 pCi/g |
| Eu-154 | 5 pCi/g | 8 pCi/g |

**MOU Table 1: Consultation Triggers for Residential and Commercial/Industrial Soil Contamination**

**Except for radium-226, thorium-232, or total uranium, concentrations should be aggregated using a sum of the fraction approach to determine site specific consultation trigger concentrations. This table is based on single contaminant concentrations for residential and commercial/industrial land use when using generally accepted exposure parameters. Table users should select the appropriate column based on the site's reasonably anticipated land use.**

| Radionuclide | Residential Soil Concentration | Industrial/Commercial Soil Concentration |
|---|---|---|
| Ir-192 | 336 pCi/g | 544 pCi/g |
| Pb-210+D | 15 pCi/g | 123 pCi/g |
| Ra-226 | 5 pCi/g | 5 pCi/g |
| Ac-227+D | 10 pCi/g | 21 pCi/g |
| Th-228+D | 15 pCi/g | 25 pCi/g |
| Th-232 | 5 pCi/g | 5 pCi/g |
| U-234 | 401 pCi/g | 3,310 pCi/g |
| U-235+D | 20 pCi/g | 39 pCi/g |
| U-238+D | 74 pCi/g | 179 pCi/g |
| total uranium | 47 mg/kg | 1230 mg/kg |
| Pu-238 | 297 pCi/g | 1,640 pCi/g |
| Pu-239 | 259 pCi/g | 1,430 pCi/g |
| Pu-241 | 40,600 pCi/g | 172,000 pCi/g |
| Am-241 | 187 pCi/g | 568 pCi/g |
| Cm-242 | 32,200 pCi/g | 344,000 pCi/g |
| Cm-243 | 35 pCi/g | 67 pCi/g |

[FR Doc. 02–27125 Filed 10–23–02; 8:45 am]
BILLING CODE 7950–01–C

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### November 7, 2002 Public Hearing

*Time and Date:* 2 p.m. Thursday, November 7, 2002.

*Place:* Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

*Status:* Hearing Open to the Public at 2 p.m.

*Purpose:* Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

**Procedures**

Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m., Tuesday, November 5, 2002. The notice must include the individual's name, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to a afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m., Tuesday, November 5, 2002. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

For Further Information Contact: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via email at *cdown@opic.gov.*

Dated: October 22, 2002.

**Connie M. Downs,**

*OPIC Corporate Secretary.*

[FR Doc. 02–27270 Filed 10–22–02; 2:56 am]

**BILLING CODE 3210–01–M**

## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application of Central Maine Power Company to Withdraw its Dividend Series Preferred Stock (par value $100) 3.5% Series, from Listing and Registration on the American Stock Exchange LLC File No. 1–05139

October 18, 2002.

Central Maine Power Company, a Maine corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Dividend Series Preferred Stock (par value $100), 3.5% Series (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of Amex Rule l8 by complying with all applicable laws in effect in the state of Maine, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors (''Board'') of the Issuer unanimously approved a resolution on June 14, 2002 to withdraw the Issuer's Security from listing on the Amex. In making the decision to withdraw its Security from the Amex, the Board cites low trading volume, the expense of maintaining the listing on the Amex, and the existence of adequate alternative trading markets. The Security has been trading over-the-counter since June 2002. The Issuer's application relates solely to the Security's withdrawal from listing on the Amex and from registration under Section 12(b) of the Act, [3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before November 8, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 02–27149 Filed 10–23–02; 8:45 am]

**BILLING CODE 8010–01–P**

[1] 15 U.S.C. 78l(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78l(b).

[4] 15 U.S.C. 78l(g).

[5] 17 CFR 200.30–3(a)(1).

## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application to Withdraw from Listing and Registration on the New York Stock Exchange, Inc. (El Paso Tennessee Pipeline Co., 8¼% Cumulative Preferred Stock, Series A) File No. 1–09864

October 18, 2002.

El Paso Tennessee Pipeline Co., a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its 8¼% Cumulative Preferred Stock, Series A (''Security''), from listing and registration on the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of the NYSE rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Trustees (''Board'') of the Issuer approved a resolution on October 8, 2002 to withdraw the Issuer's Security from listing on the NYSE. In making its decision to withdraw the Issuer's Security from the Exchange, the Board notes that the Security is held by less than three hundred (300) persons. In addition, the board considered the low number of record holders, the erratic and thin trading of the securities, and the burden on the Issuer's resources due to the costs associated with maintaining the listing requirements for its Security.

The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under section 12(b) of the Act [3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before November 8, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 02–27151 Filed 10–23–02; 8:45 am]

**BILLING CODE 8010–01–P**

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application of FFP Marketing Company, Inc. to Withdraw its Common Shares, $.01 par Value, From Listing and Registration on the American Stock Exchange LLC File No. 1–13727

October 18, 2002.

FFP Marketing Company, Inc., a Texas corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Shares, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of Amex Rule l8 by complying with all applicable laws in effect in the State of Texas, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Trustees (''Board'') of the Issuer approved resolutions on September 26, 2002 to withdraw the Issuer's Security from listing on the Amex. In making its decision to withdraw the Issuer's Security from the Exchange, the Board notes the low number of stockholders of record results in a disproportionately high cost associated with being publicly traded, the extent and nature of trading in the Security is erratic and thin, and the burden on the Issuer's resources due to the costs associated with maintaining the listing requirements for its Security.

The Issuer's application relates solely to the Security's withdrawal from listing on the Amex and from registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before November 8, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 02–27150 Filed 10–23–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–27580]**

### Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

October 18, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 12, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy of the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 12, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Unitil Corporation, et al. (70–10084)**

*Notice of Proposed Merger of Two Unitil Utility Subsidiaries; Order Authorizing Solicitation of Proxies or Consents*

Unitil Corporation (''Unitil''), 6 Liberty Lane West, Hampton, New Hampshire 03842–1720, a registered holding company under the Act, and tow of its retail electric utility subsidiaries, Concord Electric Company (''CECo''), One McGuire Street, Concord, New Hampshire 03301, and Exeter & Hampton Electric Company (''E&H''), 114 Drinkwater Road, Kensington, New Hampshire 03833, (collectively, ''Applicants''), have filed an application-declaration (''Application'') under sections 6, 7, 9, 10 and 12(c) and 12(e) of the Act and rules 43, 44, 45, 54 and 62 under the Act.

The Application seeks approvals relating to the proposed merger of CECo and E&H. Applicants propose that E&H will merge into CECo to form a single retail electric utility subsidiary of Unitil to the named Unitil Energy Systems Inc. (''UES''). Applicants state that the proposed merger is one element of Unitil's restructuring proposal under the New Hampshire Electricity Restructuring Law (codified as RSA 374–F). By merging E&H into CECo, the Applicants state that they will simplify the corporate structure of Unitil's holding company system and achieve cost efficiency and service quality improvements.

CECo is engaged in the transmission and distribution of electric energy at regulated rates to approximately 28,000 customers in Concord and the capital region of New Hampshire. CECo is regulated as a public utility in New Hampshire. As of June 30, 2002, CECo reported net utility plant of $37,417,000 and operating revenues for the 12 months ended June 30, 2002 of $52,263,000.

E&H is engaged in the transmission and distribution of electric energy at regulated rates to approximately 41,000 customers in Exeter and the seacoast region of New Hampshire. E&H is regulated as a public utility by the New Hampshire Public Utilities Commission. As of June 30, 2002, E&H reported net utility plant of $43,221,000 and operating revenues for the 12 months ended June 30, 2002 of $58,053,000.

The utility operations of CECo and E&H are administered and coordinated through Unitil's centralized service company, Unitil Service Corp., and each company has, since 1986, secured all of its requirements for electric energy from Unitil Power Company (''UPC''), a subsidiary generating company of Unitil. The companies have different

retail tariffs, rates and rate bases. As proposed, the merger will result in a new unified rate structure and a single rate base as well as the elimination of any inefficiencies and duplicative costs resulting from the operation of the companies as two separate entities.

To accomplish the merger, the companies will enter into an agreement approved by their respective boards of directors (''Merger Agreement''). Consummation of the transactions proposed in the Merger Agreement will be subject to the receipt of all necessary regulatory approvals and to approval by the shareholders of each company. As a result of the merger, all of E&H's assets and liabilities will, by operation of law, become the assets and liabilities of CECo.

*Description of Outstanding Equity Securities of CECo and E&H*

CECo currently has 250,000 authorized shares of common stock (''CECo Common Stock''), of which 131,745 shares are issued and outstanding and owned both of record and beneficially by Unitil; 2,250 authorized shares of non-cumulative preferred stock (''CECo Non-Cumulative Preferred Stock''), all of which are issued and outstanding and none of which is owned, of record or beneficially, by Unitil; and 15,000 authorized shares of cumulative preferred stock (''CECo Cumulative Preferred Stock''), of which 2,150 shares are issued and outstanding in a single series designated the ''8.70% Series,'' none of which is owned, of record or beneficially, by Unitil. Holders of the CECo Common Stock and the CECo Non-Cumulative Preferred Stock are entitled to vote on all matters brought before the shareholders of CECo. Each outstanding share is entitled to one vote. The CECo Non-Cumulative Preferred Stock is not entitled to vote as a separate class. The CECo Cumulative Preferred Stock is not entitled to vote on any matter, except as may otherwise be authorized or required by the New Hampshire Business Corporation Act. Under the Business Corporation Act, the CECo Cumulative Preferred Stock will not be entitled to vote on the merger and related transactions.

E&H currently has 197,417 authorized shares of common stock (''E&H Common Stock''), of which 195,000 shares are issued and outstanding and owned both of record and beneficially by Unitil; and 25,000 authorized shares of cumulative preferred stock (''E&H Cumulative Preferred Stock''), of which a total of 9,704 shares are issued and outstanding in four series as follows: 840 shares of the ''5% Dividend Series,'' 1,680 shares of the ''6% Dividend Series,'' 3,331 shares of the ''8.75% Dividend Series'' and 3,853 shares of the ''8.25% Dividend Series.'' None of the E&H Cumulative Preferred Stock is owned, of record or beneficially, by Unitil. The E&H Cumulative Preferred Stock is not entitled to vote as a separate class, unless such a class vote is otherwise authorized or required by the Business Corporation Act. Under the Business Corporation Act, each series of the E&H Cumulative Preferred Stock will be entitled to vote as a separate class on the proposed merger with CECo, since, as described below, the terms of the Merger Agreement provide for the issuance to the holders of the E&H Cumulative Preferred Stock in exchange for their shares of E&H Cumulative Preferred Stock an equal number of shares of CECo Cumulative Preferred Stock in four new series which will have the same terms and conditions as the existing series of the E&H Cumulative Preferred Stock. As part of the Merger Agreement, the board of directors of CECo and the holders of CECo Common Stock and CECo Non-Cumulative Preferred Stock will approve an amendment to the CECo Articles of Incorporation creating the four new series of CECo Cumulative Preferred Stock to be issued in the merger to the holders of the E&H Cumulative Preferred Stock.

The authorized and unissued shares of CECo Cumulative Preferred Stock may be issued in series by CECo from time to time upon authorization of its board of directors, with the terms of each new series to be approved by the vote of two-thirds of the outstanding shares of CECo Common Stock and CECo Non-Cumulative Preferred Stock.

*Terms of the Merger Agreement*

The Merger Agreement requires all of the issued and outstanding shares of E&H Common Stock to be converted into a single share of CECo Common Stock, and each share of E&H Cumulative Preferred Stock to be converted, as explained above, into a share of a new series of CECo Cumulative Preferred Stock. The shares of CECo Common Stock, CECo Non-Cumulative Preferred Stock and CECo Cumulative Preferred Stock issued and outstanding immediately prior to the merger will remain outstanding and will not be affected by the merger.

*Amendments to Debt Indentures*

E&H is party to an Indenture of Mortgage and Deed of Trust dated December 1, 1952(''E&H Indenture''), and CECo is party to an Indenture of Mortgage and Deed of Trust dated July 15, 1958 (''CECo Indenture''). There are currently three series of bonds outstanding under each of the indentures. The Applicants propose to consolidate the indentures. All of the currently outstanding bonds of E&H and CECo would remain outstanding. Bondholders under the new indenture would be secured ratably in all of the real property assets of UES on the same terms on which they are currently secured in the real property assets of CECo and E&H. The consent of each bondholder under the E&H Indenture and the CECo Indenture will be necessary to accomplish the proposed combination, amendment and restatement of the two indentures. Applicants request authority to seek bondholders' consent.

While the CECo Indenture and the E&H Indenture are largely identical instruments, there are differences between them. As part of the combination, amendment and restatement process, CECo and E&H propose to conform the provisions of the indentures. Any special provisions applicable to the separate series of bonds under each indenture which are contained in supplemental indentures will be preserved in the combination, amendment and restatement of the two Indentures. The proposed combination, amendment and restatement will not effect any material economic change in the provisions applicable to the bonds or any series of the bonds, such as their respective rates of interest, maturities, amounts outstanding or redemption features.

*Boards of Directors and Shareholder Approvals*

The Merger Agreement must be approved by the boards of directors of CECo and E&H. In addition, the Merger Agreement and related amendments to CECo's Articles of Incorporation must be approved by the holders of CECo Common Stock and CECo Non-Cumulative Preferred Stock, voting together as a single class, and by the holders of E&H Common Stock and each series of E&H Cumulative Preferred Stock, each voting as a separate class. Because Unitil effectively controls the boards of directors of each of E&H and CECo since it owns all of the issued and outstanding shares of common stock of each company, approval of the Merger Agreement and related amendments to CECo's Articles of Incorporation by those boards of directors is assured. Approval by the holders of CECo Common Stock and CECo Non-Cumulative Preferred Stock is also assured since Unitil controls the vote of more than 99% of these shares.

Approval of the Merger Agreement by the holders of E&H Common Stock is assured since Unitil controls the vote of these shares. Unitil does not, however, control the vote of any outstanding series of E&H Cumulative Preferred Stock. Unitil intends to solicit written consents in favor of the Merger Agreement and related transactions from the holders of each outstanding series of the E&H Cumulative Preferred Stock. The solicitation of consent is subject to New Hampshire law and the terms of E&H's governance documents. Under Section 7.04 of the New Hampshire Business Corporation Act, the holders of E&H Cumulative Preferred Stock can take action by unanimous written consent, and E&H's governance documents are in agreement. E&H has the right to call each outstanding series for redemption under the terms of each series and will call for redemption any series which does not consent to the Merger Agreement and related transactions. Therefore, the consent of the E&H Cumulative Preferred is assured.

*Tax and Accounting Consequences of the Merger*

The merger has been structured to qualify for tax purposes as a tax-free ''reorganization'' under section 368(a) of the Internal Revenue Code. As a result, no gain or loss will be recognized by CECo or E&H or the holders of CECo Common Stock, CECo Non-Cumulative Preferred Stock, CECo Cumulative Preferred Stock, E&H Common Stock or E&H Cumulative Preferred Stock. CECo and E&H expect that the merger will qualify as a common control merger for accounting and financial reporting purposes. The accounting for a common control merger is similar to a pooling of interests. Under this accounting treatment, the combination of the ownership interests of the two companies is recognized and the recorded assets, liabilities, and capital accounts are carried forward at existing historical balances to the consolidated financial statements of UES as the surviving company following the merger.

On a pro forma basis and giving effect to the merger, as of June 30, 2002, UES will have total assets of approximately $112,047,000, including net utility plant of $80,638,000, and operating revenues for the 12 months ended June 30, 2002 of approximately $110,316,000. UES's pro forma consolidation capitalization as of June 30, 2002 (assuming the exchange of all of the E&H Cumulative Preferred Stock for new shares of UES Cumulative Preferred Stock) will be as follows:

Common Stock Equity, 28,411,000,000 amount outstanding, 35%.

Preferred Stock, 1,195,000,000 amount outstanding, 1.5%.

Short-term Debt, 1,550,000,000 amount outstanding, 1.9%.

Long-term Debt, 50,000,000,000 amount outstanding, 61.6%.

*Money Pool Matters*

CECo and E&H participate in the Until system money pool arrangement (''Money Pool'') that is funded, as needed, through bank borrowings and surplus funds invested by the participants in the Money Pool and as authorized by HCAR Nos. 35–26737 (June 30, 1997); 35–27182 (June 9, 2000); 35–37207 (Dec. 15, 2000) and 35–27345 (Feb. 14, 2001). Participation in the Money Pool, including short-term debt borrowings, by CECo and E&H are authorized by the New Hampshire Public Utility Commission and, therefore, are exempt under rule 52 of the Act. However, borrowings by and loans to Unitil's other utility subsidiary, Fitchburg Gas and Electric Light Company (''Fitchburg''), dare not exempt. Following the merger, it is proposed that UES be authorized to make loans to Fitchburg on the same terms as CECo's and E&H's current authorization. All other terms, conditions and limitations under the Money Pool orders will continue to apply without change.

*Order For Solicitation of Proxies and Contents*

E&H has requested that an order be issued authorizing commencement of the solicitation of proxies or consents from the holders of the outstanding shares of its preferred stock for the purpose of seeking approval of the merger and related transactions and the solicitation of consents from bondholders in connection with the proposed indenture amendments. It appears to the Commission that the applicants' declarations regarding the proposed solicitation of proxies and consents should be permitted to become effective immediately under rule 62(d).

Fees, commissions and expenses paid or incurred in connection with the solicitation of proxies or consents are estimated to be not more than $2,000. Unitil further stats that no state or federal commission, other than this Commission, has jurisdiction over the solicitation of proxies or consents.

Unitil states, for purposes of rule 54, that the conditions specified in rule 53(a) are satisfied and that none of the adverse conditions specified in rule 53(b) exist. As a result, the Commission will not consider the effect on the Unitil system of the capitalization or earnings of any Unitil subsidiary that is an exempt wholesale generator or foreign utility company, as each is defined in sections 32 and 33 of the Act, respectively, in determining whether to approve the proposed transactions.

*It is ordered,* under rule 62 under the Act, that the declaration regarding the proposed solicitation of proxies or consents form the holders of outstanding shares of E&H preferred stock for the purpose of seeking approval of the merger and related transactions and the solicitation of consents from bondholders in connections with the proposed indenture amendments become effective immediately, subject to the terms and conditions contained in rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–27119 Filed 10–23–02; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46675; File No. SR–OPRA–2002–04]**

## Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to OPRA Plan to Revise Fees Charged by OPRA

October 17, 2002.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 4, 2002, the Options Price Reporting Authority (''OPRA'')[2] submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and

[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981). The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The five participants to the OPRA Plan that operate an options market are the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the International Securities Exchange LLC, the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. The New York Stock Exchange, Inc. is a signatory to the OPRA Plan, but sold its options business to the CBOE in 1997. *See* Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

Quotation Information (''OPRA Plan''). The proposed OPRA Plan amendment would revise device-based and Enterprise Rate professional subscriber fees charged by OPRA in respect of its Basic Service, and eliminate OPRA's ''Back-up Facility Access Fee.'' The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

## I. Description and Purpose of the Amendment

The purpose of the amendment is to make modest increases in device-based and Enterprise Rate professional subscriber fees charged by OPRA in respect of its Basic Service. Specifically, OPRA proposes to increase by amounts ranging from 7.39% to 8.11% the device-based information fee payable to OPRA by professional subscribers to OPRA's Basic Service, and to increase by 7.5% the Enterprise Rate fee that these same subscribers may elect to pay as an alternative to the device-based fee. OPRA's Basic Service consists of market data and related information pertaining to equity and index options (''OPRA Data'').[3] Professional subscribers are persons who subscribe to OPRA Data and do not qualify for the reduced fees charged to nonprofessional subscribers. OPRA's Enterprise Rate is based on the number of a professional subscriber's U.S. registered representatives and independent investment advisers who contract with the subscriber to provide advisory services to the subscriber's customers. Professional subscriber device-based fees charged to members will continue to be discounted by two percent for members who preauthorize payment by electronic funds transfer through an automated clearinghouse system.

OPRA estimates that the overall effect of the proposed increases in Basic Service professional subscriber fees will be to increase revenues derived from these fees by approximately 7.5%.

The proposed increases in the device-based professional subscriber fees and in the Enterprise Rate fee are intended to generate additional revenues for OPRA that are needed to cover actual and anticipated increases in the costs of collecting, consolidating, processing and disseminating options market. These increases reflect the costs of continuing enhancements to and upgrades of the OPRA system to enable it to handle a greater volume of market information as a result of the continuing expansion of listed options trading, and to support OPRA's proposed new ''best bid and offer'' service planned for early 2003.

OPRA also proposes to eliminate its ''Back-up Facility Access Fee,'' in order to eliminate any possible impact this fee may have on discouraging OPRA's subscribers from establishing prudent back-up facilities.[4] Devices used solely as part of a back-up facility will no longer be subject to fees imposed by OPRA unless and until they are actually used in support of a professional subscriber's operations, in which event regular professional subscriber device charges will apply for each month in which such devices are so used.

## II. Implementation of the OPRA Plan Amendment

Pursuant to paragraph (c)(3)(i) of Rule 11Aa3–2 under the Act,[5] OPRA designates this amendment as establishing or changing a fee or other charge collected on behalf of all of the OPRA participants in connection with access to or use of OPRA facilities, thereby qualifying for effectiveness upon filing. The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3–2(c)(2) under the Act,[6] if it appears to the Commission that such action is necessary or appropriate in the public interest; for the protection of investors and the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a national market system; or otherwise in furtherance of the purposes of the Act. In order to give persons subject to these fees advance notice of the changes, OPRA proposes to put them into effect beginning January 1, 2003.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment 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, and all written statements with respect to the proposed OPRA Plan amendment that are filed with the Commission, and all written communications relating to the proposed OPRA Plan amendment between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to File No. SR-OPRA–2002–04 and should be submitted by November 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–27118 Filed 10–23–02; 8:45 am]

**BILLING CODE 8010–01–P**

[3] At this time, no changes are proposed to be made to fees charged for access to information pertaining to foreign currency options (''FCO'') provided through OPRA's FCO Service.

[4] The Back-up Facility Access Fee does not apply to OPRA's FCO Service.

[5] 17 CFR 240.11Aa3–2(c)(3)(i).

[6] 17 CFR 240.11Aa3–2(c)(2).

[7] 17 CFR 200.30–3(a)(29).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46683; File No. SR–CBOE–2002–27]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc. Relating to Permanent Approval of the 100 Spoke RAES Wheel

October 17, 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 May 24, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'' 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 CBOE. On July 17, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On September 26, 2002, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Nancy L. Nielsen, Director of Arbitration and Assistant Secretary, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 16, 2002 (''Amendment No. 1''). Amendment No. 1 is described in Section II.A., below.

[4] *See* Letter from Madge M. Hamilton, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 26, 2002 (''Amendment No. 2''). Amendment No. 2 is described in Section II.A., below.

comments on the proposed rule change, as amended, from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The CBOE proposes to amend its rules to eliminate the pilot program and make permanent the 100 Spoke RAES Wheel System. The CBOE further proposes to modify the calculation of the participation distribution for market makers participating on the 100 Spoke RAES Wheel by eliminating the ''vacation penalty.''

Below is the text of the proposed rule change, as amended. Proposed new language is in *italics*; proposed deletions are in brackets.

Chapter VI Doing Business on the Exchange Floor

Section A: General

RULE 6.8

* * * * *

* * * Interpretations and Policies

.01–.05 No change.

.06(a)–(b) No change.

(c) Under the ''100 spoke RAES Wheel,'' [for a pilot period ending November 28, 2002,] RAES orders would be assigned to logged-in market makers according to the percentage of their in-person agency contracts traded in that class (excluding RAES contracts traded) compared to all of the market-maker in-person agency contracts traded (excluding RAES contract) during the review period. The review period will be determined by the appropriate Floor Procedure Committee and may be for any period not in excess of *10 trading days*, [two weeks] *within the previous 30 calendar days. The trading days within the review period may be for non-consecutive trading days.* The percentage distribution *will be calculated at the conclusion of each trading day and will* be applied to the 100 Spoke RAES Wheel distribution on the following trading day [determined during a review period will be effective for the succeeding review period]. On each revolution of the RAES wheel, subject to the exceptions described below, each participating market maker (who is logged onto RAES at the time) will be assigned enough contracts to replicate his percentage of contracts on RAES that he traded in-person in that class during the review period. [The review period will most likely be for an expiration cycle with the percentage distribution to be effective for the succeeding calendar month.] A participation percentage will be calculated for each market-maker for each class that the market-maker trades. For this purpose all DPM Designees of the same DPM unit will have their percentage aggregated into a single percentage for the DPM unit.

Once a market-maker has logged onto RAES, he will be assigned contracts on the RAES Wheel until his market-maker participation percentage has been met. This may mean that multiple orders (or an order and a part of the succeeding order) will be assigned to the same market-maker on the Wheel. To understand how the RAES orders will actually be allocated to market-makers to meet those percentages, one must understand the concepts of ''spokes'' and ''wedges.'' A ''spoke'' is 1% of the RAES wheel and often may be equal to one contract. The appropriate Floor Procedure Committee may determine the number of contracts that make up one spoke. Each market-maker logged onto RAES for that class, regardless of his participation percentage, is entitled to be assigned at least one spoke on every revolution of the RAES wheel. For example, if a spoke equals one contract then there will be 100 spokes that will be assigned to market-makers on every revolution of the RAES wheel. If a spoke is defined as five contracts then there will be 500 RAES contracts assigned to the participating market-makers before the RAES wheel completes one revolution. Generally, the RAES Wheel will consist of the number of spokes replicating the cumulative percentage of all market-makers logged onto the system who have a participation percentage plus one spoke for each market-maker that does not have a specific participation percentage.

A ''wedge'' is the maximum number of spokes that a market-maker may be consecutively assigned at any one time on the RAES wheel. Because the size of the wedge may be smaller than the number of contracts to which a particular market-maker is entitled during one revolution of the RAES Wheel, that market-maker will receive more than one turn during one revolution of the RAES wheel. The wedge size will be variable, at the discretion of the appropriate Floor Procedure Committee and may be different for different classes or the same for all classes.

The appropriate Floor Procedure Committee will notify the membership of each class of options that is subject to the ''100 Spoke RAES Wheel''.

(d) No change.

.07–.09 No change.

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**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. The 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, the Proposed Rule Change*

1. Purpose

*a. The Initial Proposal*

On May 25, 2000, the Commission approved, on a pilot basis, the Exchange's proposal to amend Rule 6.8 to provide the appropriate Floor Procedure Committee (''FPC'') with a third choice for apportioning RAES trades among participating market-makers, the 100 Spoke RAES Wheel.[5] In those classes where the 100 Spoke RAES Wheel is employed, the distribution of RAES trades to participating market-makers is essentially identical to the distribution of in-person agency market-maker trades for non-RAES trades in that class. The pilot program has been extended five times, most recently until November 28, 2002.[6]

Under the 100 Spoke RAES Wheel, RAES orders are assigned to market-makers according to the percentage of their in-person agency contracts (excluding RAES contracts) traded in that class compared to the in-person agency contracts (excluding RAES contracts) of all of the market-makers traded during the review period. Agency

[5] Securities Exchange Act Release No. 42824 (May 25, 2000), 65 FR 37442 (June 14, 2000). RAES is the Exchange's automatic execution system for public customer market or marketable limit orders of less than a certain size.

[6] Securities Exchange Act Release No. 46644 (October 10, 2002) (pilot program extended until November 28, 2002) (SR–CBOE–2002–60); Securities Exchange Act Release No. 46149 (June 28, 2002), 67 FR 45161 (July 8, 2002) (pilot program extended until September 28, 2002) (SR–CBOE–2002–34); Securities Exchange Act Release No. 45230 (January 3, 2002), 67 FR 1380 (January 10, 2002) (pilot program extended until June 28, 2002) (SR–CBOE–2001–68); Securities Exchange Act Release No. 44749 (August 28, 2001), 66 FR 46487 (September 5, 2001) (pilot program extended until December 28, 2001) (SR–CBOE–2001–47); Securities Exchange Act Release No. 44020 (February 28, 2001), 66 FR 13985 (March 8, 2001) (pilot program extended until August 28, 2001) (SR–CBOE–01–07).

contracts are any contracts represented by an agent (booked orders and orders represented by brokers) and do not include contracts traded between market-makers in person in the trading crowd. A particular market-maker's entitlement will change based upon the percentage of agency contracts that market-maker traded in the review period. For example, if a particular market-maker traded 10% of all the in-person agency contracts (excluding RAES contracts) of class ABC for a particular review period, then that market-maker would be assigned 10% of the RAES contracts during the next trading period. The review period is determined by the appropriate FPC.

The RAES Wheel can be envisioned as having a number of spokes, each generally representing one percent of the total participation of all market-makers in the class. Thus, a market-maker will generally be assigned one spoke for each one percent of his or her market-maker participation during the review period. If the spoke size is one and all market-makers who traded in-person agency contracts in that option class during the review period are logged onto RAES, and no other market-makers are logged on, the RAES Wheel would consist of 100 spokes, representing 100 percent of all market-maker activity during the review period. The appropriate FPC may establish a larger spoke size. Setting the spoke size to five contracts, for example, would redefine the RAES Wheel for a particular option class as a Wheel of 500 contracts. A larger Wheel would mean the Wheel would not revolve as quickly through the logged on market-makers, but a larger Wheel would not change the participation percentage of the individual market-makers.

A wedge is the maximum number of spokes that may be consecutively assigned at any one time to a market-maker during a rotation of the RAES Wheel. The purpose of the wedge is to break up the distribution of contracts into smaller groupings to reduce the exposure of any one market-maker to market risk. If the size of the wedge is smaller than the number of spokes to which a particular market-maker may be entitled based on his or her participation percentage, then that market-maker would receive one or more additional assignments during one revolution of the RAES Wheel. For example, in the case where one spoke is equal to one contract and the market-maker's participation percentage is 15 percent (15 percent of 100 spokes) and the wedge size is ten, that market-maker first would be assigned ten contracts on the RAES Wheel and then five contracts at a different place on the RAES during the same revolution of the RAES Wheel. The wedge size is variable at the discretion of the appropriate FPC and may be established at different levels for different classes, or at the same level for all classes.

The Exchange represents that the 100 Spoke RAES Wheel has worked as anticipated by providing an efficient and effective alternative allocation method for assigning RAES trades. The Exchange further represents that, in those classes where the 100 Spoke RAES Wheel is employed, the distribution of RAES trades is essentially identical to the distribution of in-person agency market-maker trades on non-RAES trades in that class during the relevant review period. Therefore, CBOE requests permanent approval of the 100 Spoke RAES Wheel.

*b. Amendment No. 1*

In Amendment No. 1, CBOE clarified the calculation of the participation distribution for market-makers participating on the 100 Spoke RAES Wheel. Specifically, Amendment No. 1 modified Interpretation .06(c) of Rule 6.8 to adjust the applicable review period to account for vacations by market-makers. CBOE indicated that without this revision, if a market-maker takes even a single trading day off over the two-week review period, the market-maker is allocated a number of spokes that is less than the market-maker's average daily percentage of the trading volume, resulting in a ''vacation penalty.'' Thus, in Amendment No. 1, CBOE amended the rule text to specify that rather than ''two weeks'' (as previously specified) the operative review period will be the prior ''10 trading days,'' *i.e.*, last ten days in which the market-maker had trading activity, subject to the condition that the review period cannot extend back more than 30 calendar days (in order to assure that the review period is not based on stale activity). The Amendment further specified that the trading days within the review period may be non-consecutive trading days, and that the percentage distribution ''will be calculated at the conclusion of each trading day and will be applied to the 100 Spoke RAES Wheel distribution on the following trading day''.

*c. Amendment No. 2*

CBOE filed Amendment No. 2 in order to clarify various items discussed in the narrative portion of the original filing and Amendment No. 1. Although Amendment No. 2 did not propose changes to the proposed rule text (as amended by Amendment No. 1), it did provide further explanation of the following items.

First, CBOE explained that, in calculating the review period, the 10 trading days used to compute one market-maker's RAES participation distribution may be a different 10 trading days than another market-maker signed onto RAES in the same trading crowd, and that the 10-day review periods may overlap. In addition, CBOE clarified that the individual market-makers have no discretion over which 10 trading days will be used in the calculation. The proposed rule change permits the appropriate FPC to set a review period not to exceed 10 trading days. Once the appropriate FPC has set the number of days to be used in the calculation of the market-maker's participation distribution, the Exchange looks back that number of trading days to calculate each market-maker's participation right.

Second, CBOE reiterated that, under the proposed rule, the Exchange will conduct the calculation for the market-maker participation distribution at the conclusion of each trading day and apply the market-makers' RAES participation distribution to the following trading day. CBOE further explained that, since the calculation of the participation distribution is done at the end of each trading day, the 10-day review period for each market-maker will be done on a rolling basis, *i.e.*, each time the calculation is conducted the non-RAES agency trading volume for the current day, if any, is added to the 10-day review period, and the non-RAES agency trading volume for the oldest day used for the previous day's calculation is deleted. According to CBOE, this calculation encourages market-makers to actively trade every day, since each day's trading activity will have an effect on the market-maker's RAES participation distribution for the next trading day.

Third, CBOE corrected the formula for determining market-maker participation percentage on the 100 Spoke RAES Wheel, which had been stated incorrectly in Amendment No. 1 (the numerator and denominator were inadvertently reversed). In Amendment No. 2, CBOE clarified that in order to obtain a market-maker's participation percentage, the ''non-RAES agency trading volume'' for a given market-maker is divided by the ''total volume,'' *i.e.*, the sum of the volume of the non-RAES agency trades for all traders in a particular options class (which is determined by adding together the trading volume for each market-maker and DPM during his or her relevant 10-day review period). CBOE provided the

following example: Market-Maker A traded every day for three weeks, then in week four did not trade on Monday or Tuesday, but traded the rest of the week, and the appropriate FPC set the review period at ten non-consecutive trading days. CBOE would calculate Market-Maker A's participation percentage by looking at the last ten days out of the last 30 calendar days that Market-Maker A traded. Thus, the Exchange would count Wednesday, Thursday, and Friday in week four, all five trading days of week three and Thursday and Friday of week two to compute the ten-day review period for Market-Maker A. The Exchange then would sum the volume of the non-RAES agency trades for Market-Maker A in order to calculate Market-Maker A's ten-day non-RAES agency trading volume. The Exchange then would sum the volume of the non-RAES agency trades for all traders in a particular options class to obtain the total non-RAES agency trading volume (''total volume'').[7] The non-RAES agency trading volume for Market-Maker A would then be divided by the total volume to obtain Market-Maker's A's participation percentage on the 100 Spoke RAES Wheel. This calculation would eliminate the ''vacation penalty'' and provide greater incentive for market-makers to participate on the 100 Spoke RAES Wheel.

To further explain its proposal, in Amendment No. 2 CBOE included the following specific example showing how market makers' review periods and participation percentages on the 100 Spoke RAES Wheel would be calculated.

For example, the trading pit for XYZ option consists of Market-Makers A, B, C, D and E. Market-Maker A took the week of January 21, 2002, off for vacation. January 21, 2002, was a holiday and the Exchange was closed for trading. After the close on Friday, January 25, 2002, the Exchange calculates the participation percentage for Monday, January 28, 2002. The Exchange would calculate the non-RAES agency trading volume for each market-maker during each market-maker's 10-day review period. Market-Maker A had total non-RAES agency trading volume of 20,000 contracts for trading on January 7, 8, 9, 10, 11,14, 15, 16, 17, and 18. Market-Maker B had total non-RAES agency trading volume of 20,000 contracts for trading on January 11, 14, 15, 16, 17, 18, 22, 23, 24 and 25. Market-Maker C had total non-RAES agency trading volume of 10,000 contracts for trading on January 11, 14, 15, 16, 17, 18, 22, 23, 24 and 25. Market-Maker D had total non-RAES agency trading volume of 20,000 for trading on January 11, 14, 15, 16, 17, 18, 22, 23, 24 and 25. Market-Maker E had total non-RAES agency trading volume of 30,000 contracts for trading on January 11, 14, 15, 16, 17, 18, 22, 23, 24 and 25. The Exchange would add the total non-RAES agency trading volume for Market-Makers A, B, C, D and E to get a total volume of 100,000 contracts. Each market-maker's total non-RAES agency trading volume would be divided by 100,000 contracts. Therefore, on Monday, January 28, 2002, Market-Maker A would have a RAES participation distribution of 20 percent, Market-Maker B would have a RAES participation distribution of 20 percent; Market-Maker C would have a RAES participation distribution of 10 percent, Market-Maker D would have a RAES participation distribution of 20 percent and Market-maker E would have a RAES participation distribution of 30 percent.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, will continue to be consistent with the requirements of section 6(b)(5) of the Act.[8] Section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[9] The Exchange represents that, as anticipated, the 100 Spoke RAES Wheel has rewarded those market-makers who are most active in providing the services that a market-maker is expected to perform, *i.e.*, providing liquidity to agency business in the assigned product. The Exchange represents that this has enhanced the ability of the Exchange to provide instantaneous, automatic execution of RAES-eligible orders at the best available prices. In addition, the Exchange believes that the proposed rule change, as amended, promotes just and equitable principles of trade by eliminating the ''vacation penalty.'' The Exchange further believes that the proposed rule change, as amended, protects investors and is in the public interest by creating an incentive for more market-makers to participate on the 100 Spoke RAES Wheel, which provides more liquidity for the automatic execution of orders.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange represents that the proposed rule change, as amended, does not 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*

No written comments were solicited or received with respect to the proposed rule change, as amended.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No.

[7] The Exchange noted that the total volume is not based on a specific two-week calendar period, but instead is calculated by adding together the trading volume for each market-maker and DPM during his or her relevant 10-day review period.

[8] 15 U.S.C. 78f(b)(5).

[9] *Id.*

SR–CBOE–2002–27 and should be submitted by November 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–27116 Filed 10–23–02; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46686; File No. SR–NYSE–2002–51]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Regarding Listing and Trading of Exchange Traded Funds Based on Dow Jones STOXX 50 SM and Dow Jones EURO STOXX 50SM Indexes.

October 18, 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 October 18, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade, under Section 703.16 of the Listed Company Manual (the ''LCM'') and the Exchange's Rule 1100 *et seq.,* shares of the Fresco Dow Jones STOXX 50 Fund and Fresco Dow Jones EURO STOXX 50 Fund (each, a ''Fund'' and together, the ''Funds''). The Funds are each a separate series of Fresco Index Shares Funds (the ''Trust'') [3] UBS Global Asset Management (US) Inc. (''UBS Global AM''), an indirect wholly owned asset management subsidiary of UBS AG (''UBS''), acts as the advisor (the ''Advisor'') to the Funds. UBS Global Asset Management International Ltd. (''UBS Global AM Ltd.''), an indirect wholly owned asset management subsidiary of UBS, acts as the sub-advisor to the Funds. STOXX Limited, a joint venture among Deutsche Boerse AG, Dow Jones & Company, Inc., Euronext Paris SA and SWX Swiss Exchange (''STOXX''), provides and services the Dow Jones STOXX 50 and Dow Jones EURO STOXX 50 indexes (each an ''Index'' or ''Underlying Index'').

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to list and trade, under Section 703.16 of the Listed Company Manual (the ''LCM'') and the Exchange's Rule 1100 et seq., shares of the Fresco Dow Jones STOXX 50 Fund and Fresco Dow Jones EURO STOXX 50 Fund (each, a ''Fund'' and together, the ''Funds''). The Funds are each a separate series of Fresco Index Shares Funds (the ''Trust'').[4] UBS Global Asset Management (US) Inc. (''UBS Global AM''), an indirect wholly owned asset management subsidiary of UBS AG (''UBS''), acts as the advisor (the ''Advisor'') to the Funds. UBS Global Asset Management International Ltd. (''UBS Global AM Ltd.''), an indirect wholly owned asset management subsidiary of UBS, acts as the sub-advisor to the Funds. STOXX Limited, a joint venture among Deutsche Boerse AG, Dow Jones & Company, Inc., Euronext Paris SA and SWX Swiss Exchange (''STOXX''), provides and services the Dow Jones STOXX 50 and Dow Jones EURO STOXX 50 indexes (each an ''Index'' or ''Underlying Index''). STOXX Limited is not affiliated with the Trust, the Funds, UBS Global AM or the Exchange.

*Indexes* [5]

The Dow Jones STOXX 50 Index represents the performance of the 50 largest companies, across all components of the 18 Dow Jones STOXX 600SM market sector indexes are a subset of the pan-European Dow Jones STOXXSM Total Market Index and contain the 600 largest stocks traded on the major exchanges in Europe.

The Dow Jones EURO STOXX Index represents the performance of the 50 largest companies, across all components of the 18 Dow Jones EURO STOXX 600SM market sector indexes. The Dow Jones EURO STOXX 600SM market sector indexes are a subset of the Dow Jones EURO STOXXSM Total Market Index and contain the 600 largest stocks traded on the major exchanges in the Eurozone.[6]

The Dow Jones STOXX 50 and Dow Jones EURO STOXX 50 Indexes track the large-cap markets of the European and Eurozone regions. Both these Dow Jones STOXX blue-chip indexes are currently in use globally as the basis for investment products, such as derivatives and exchange-traded funds. Their components have a high degree of liquidity and represent the largest companies across all 18 market sectors defined by the Dow Jones Global Classification standard.

Derived from the broader total market indexes for each of the two regions, Europe and the Eurozone, these two blue-chip indexes each represent about 60% of the market capitalization of their underlying benchmarks.

The index universes for each of the Dow Jones STOXX 50 Index and the Dow Jones EURO STOXX 50 Index are defined, respectively, as all components of the 18 Dow Jones STOXX 600 market sector indexes and all components of the 18 Dow Jones EURO STOXX market

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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] The Trust is registered under the Investment Company Act of 1940, as amended (the ''1940 Act''). The Trust has filed with the Commission a Registration Statement on the Form N–1A under the Securities Act of 1933 as amended (the ''Securities Act'') and under the Investment Company Act of 1940 relating to the Fund (File Nos. 333–92106 and 811–21145, respectively).

[4] The Trust is registered under the Investment Company Act of 1940, as amended (the ''1940 Act''). The Trust has filed with the Commission a Registration Statement on the Form N–1A under the Securities Act of 1933 as amended (the ''Securities Act'') and under the Investment Company Act of 1940 relating to the Fund (File Nos. 333–92106 and 811–21145, respectively).

[5] The Exchange attached a detailed description of each of the Underlying Indexes for the Funds as Exhibit 2 to its Form 19b–4. This description includes, but is not limited to, information regarding index description, component selection criteria, country representation and Index maintenance. Descriptions of each Index, including any changes thereto, may be found on the STOXX Web site at *http://www.stoxx.com.*

[6] The ''Eurozone'' includes the countries of the European Monetary Union. Telephone conference between Elena Daley, Office of General Counsel, NYSE, and Florence Harmon, Division of Market Regulation, Commission, on October 18, 2002.

sector indexes. The Dow Jones STOXX 600 market sector indexes contain the 600 largest stocks traded on the major exchanges of 17 European countries. STOXX, Dow Jones STOXX 50, Dow Jones EURO STOXX 50 and Dow Jones STOXX 600 are each service markets of STOXX Limited.

The Dow Jones EURO STOXX market sector indexes represent the Eurozone portion of the Dow Jones STOXX Total Market Index (''TMI''), which in turn covers 95% of the total market capitalization of the stocks traded on the major exchanges of 17 European countries.

For each of the 18 Dow Jones STOXX 600 market sector indexes, the component stocks are ranked by free-float market capitalization. The largest stocks are added to the selection list until the coverage is close to, but still less than, 60% of the free float market capitalization of the corresponding Dow Jones STOXX TMI market sector index. If the next-ranked stock brings the coverage closer to 60% in absolute terms, then it is also added to the selection list. Any remaining stocks that are Dow Jones STOXX 50 Index components are added to the selection list. The stocks on the selection list are ranked by free-float market capitalization. In exceptional cases, the STOXX Limited Supervisory Board may make additions and deletions to the selection list. Within each of the 18 Dow Jones EURO STOXX market sector indexes, the component stocks are ranked by free-float capitalization. The largest stocks are added to the selection list until the coverage is close to, but still less than, 60% of the free-float market capitalization of the corresponding Dow Jones EURO STOXX TMI market sector index. If the next-ranked stock brings the coverage closer to 60% in absolute terms, then it is also added to the selection list. Any remaining stocks that are current Dow Jones EURO STOXX 50 Index components are added to the selection list. The stocks on the selection list are ranked by free-float market capitalization. In exceptional cases, the STOXX Limited Supervisory Board may make additions and deletions to the selection list.

The 40 largest stocks on the selection list for each index are chosen as components. Any remaining current components of the index ranked between 41 and 60 are added as index components. If the component number is still below 50, then the largest stocks on the selection list are added until the index contains 50 stocks.

The indexes are each weighted by free-float market capitalization. Each component's weight is capped at 10% of the index's total free-float market capitalization. Each component's weight is capped at 10% of the index's total free-float market capitalization. Weights are reviewed quarterly. The creator and compiler of the Dow Jones STOXX SM Indexes is STOXX Limited.

The Funds of the Trust will use the Dow Jones STOXX Indexes pursuant to a sub-licensing agreement with an affiliate of UBS Global AM. Such affiliate has entered into an agreement with STOXX Limited and is authorized thereunder to sub-license the Indexes to the Funds. As of the date hereof, STOXX Limited is not affiliated with Trust, the Funds, UBS Global AM to the Exchange.

*General Description of the Fund*

The Funds offer and issue shares (''Fund Shares'') at their net asset value (''NAV'') only in aggregations of a specified number of Fund Shares (referred to as a ''Creation Unit''), principally in exchange for a basket of equity securities included in the Underlying Index (the ''Deposit Securities''), together with a deposit of a specified cash payment (the ''Cash Component'').[7] Fund Shares are redeemable only in Creation Units, principally, in exchange for portfolio securities and a specified cash payment. Creation Units are aggregations of 50,000 Fund Shares. The Trust reserves the right to offer a ''cash'' option for creations and redemptions of Fund Shares. All standard orders to create a Creation Unit must be received by UBS Global AM, as principal underwriter, no later than the close of the regular trading session on the NYSE (ordinarily 4 p.m. New York time) on the date such order is placed in order for creation of Creation Units to be effected based upon the NAV of Funds Shares as next determined on such date after receipt of the order in proper form. In the case of custom orders, the order must be received by UBS Global AM, as principal underwriter, no later than 11 New York time.[8]

*''Passive'' or Indexing Investment Approach*

The Funds seeks to replicate as closely as possible, before expenses, the price and yield of the Underlying Index.

The Fund uses a ''passive'' or indexing approach in seeking to achieve the investment objectives of each Fund.

*Replication*

Each Fund uses an ''indexing'' investment approach, attempting to replicate, before expenses, the price and yield of each Underlying Index. Each Fund generally will invest in all of the stocks comprising its Underlying Index in proportion to their weighings in the Underlying Index. However, each Fund may, in certain circumstances, purchase only a sample of stocks in its Underlying Index in proportions expected by the Advisor to replicate generally the performance of the Index as a whole, choose to overweight a stock in the Index, purchase securities not in the Index which the Advisor are appropriate to substitute for the securities contained in the Index, or utilize other available investment techniques in seeking to track the Index.

Each Fund will invest at least 90% of its total assets in the stocks of the Underlying Index. Each Fund may invest its remaining assets in money market instruments, convertible securities, structured notes and in options and futures contracts. Each Fund also intends to maintain the required level of diversification so as to qualify as a regulated investment company under the Internal Revenue Code (the ''Code''). Compliance with the diversification requirements of the Code could limit the investment flexibility of each Fund.

*Correlation*

An index is a theoretical financial calculation while the ETF is an actual investment portfolio. The performance of each Fund and its Underlying Index will vary somewhat due to, among other things, operating expenses incurred by the Funds, transaction costs, market impact and timing variances. The Fund's Advisory seeks a correlation of 95% or better between the Fund's performance and the price and yield performance of the Underlying Index. A figure of 100% would indicate perfect

[1] The Cash Component is an amount equal to the difference between the net asset value of the Fund Shares (Per Creation Unit) and the market value of the Deposit Securities. If the Cash Component is a positive number (*i.e.,* the NAV per Creation Unit Aggregation exceeds the market value of the Deposit Securities), the Cash Component shall be such positive amount. If the Cash Component is a negative number (*i.e.,* the NAV per Creation Unit Aggregation is less than the market value of the Deposit Securities), the Cash Component shall be such negative amount and the creator will received cash in an amount equal to the Cash Component.

[8] A custom order may be placed by an Authorized Participant in the event that the Trust permits or requires the substitution of an amount of cash to be added to the Cash Component to replace any Deposit Security which may not be available in sufficient quantity for delivery or which may not be eligible for trading by such Authorized Participant or the investor for which it is acting. Telephone conference between Elena Daley, Office of General Counsel, NYSE, and Florence Harmon, Division of Market Regulation, Commission, on October 18, 2002.

correlation. Any correlation of less than 100% is called ''tracking error.''

*Industry Concentration Policy*

The Funds will not concentrate their investments in an industry (*i.e.* hold 25% or more of its total assets in the stocks of a particular industry or group of industries), except that each Fund will concentrate to approximately the same extent that its Underlying Index concentrates in the stocks of such particular industry or group of industries.

*Creations and Redemptions of Fund Shares*

The Fund Shares are ''created'' at their NAV by authorized participants, large investors and institutions, only in Creation Units consisting of 50,000 Shares. A ''creator'' deposits into each Fund the Deposit Securities and the Cash Component in exchange for 50,000 Fund Shares.

Similarly, Fund Shares can only be redeemed in Creation Units of 50,000 Fund Share, principally in-kind for a specified portfolio of stocks held by the relevant Fund (''Fund Securities'') plus cash in an amount equal to the difference between the NAV of the Fund Shares being redeemed and the value of the Fund Securities (the ''Cash Redemption Amount''). Except when aggregated in Creation Units, Fund Shares are not redeemable. The prices at which creations and redemptions occur are based on the next calculation of NAV after an order is received in proper form.

Creations and redemptions must be made through a firm that is a Depository Trust Company participant and, that has executed an agreement with the Distributor and Transfer Agent with respect to creations and redemptions of Creation Unit (''Participant Agreement''). The Trust will impose transaction fees in connection with creation and redemption transactions.

*Clearance and Settlement*

Deposit Securities must be delivered to an account maintained at the applicable local sub-custodian of the Trust on or before 2 p.m., New York time, on the Contractual Settlement Date.[9] Participant must also make available on or before the Contractual Settlement Date, by means satisfactory to the Trust, immediately available or same day funds estimated by the Trust to be sufficient to pay the Cash Component next determined after acceptance of the order to purchase Fund Shares, together with the applicable creation transaction fee (as described in the Prospectus). Any excess funds will be returned following settlement of the issue of the Creation Unit.

A Creation Unit will not be issued until the transfer of good title to the Trust of the portfolio of Deposit Securities and the payment of the Cash Component and the creation transaction fee have been completed. When the sub-custodian confirms to the custodian that the required securities included in the portfolio deposit (or, when permitted in the sole discretion of the Trust, the cash value thereof) have been delivered to the account of the relevant sub-custodian, the custodian shall notify UBS Global AM, as the principal underwriter, and the Trust will issue and cause the delivery of the Creation Unit via DTC.

*Availability of Information Regarding Fund Shares and Underlying Indices*

The list of names and amount of each security constituting the current Deposit Securities, and the Cash Component effective as of the previous business day, per outstanding share of each Fund, is expected to be made available each business day immediately prior to the opening of business on the Exchange. The list of names and amounts of each security constituting the Fund Securities is also expected to be made available each business day. In addition, an amount representing the sum of the estimated Cash Component effective through and including the previous business day, plus the current value of the Deposit Securities in U.S. dollars, on a per share basis, is expected to be disseminated every 15 seconds during the Exchange's regular trading hours, through the facilities of the Consolidated Tape Association (''CTA'').

The value of each Underlying Index will be updated intra-day on a real-time basis as individual component securities of the Underlying Index change in price. These intra-day values of the Underlying Indexes will be disseminated every 15 seconds throughout the trading day. In addition, there will be disseminated a value for each Underlying Index once each trading day, based on closing prices in the relevant exchange market.

The net asset value of each Fund is calculated by the Funds' custodian and determined each business day, normally at the close of regular trading of the Exchange (ordinarily 4 p.m. New York time). In addition, the Trust maintains a web site that provides general information about the Funds, including the Funds' prospectus and daily trading volume and closing price for each Fund. The closing price of each Fund is also readily available from, as applicable, the relevant exchanges, automated quotation systems, or on-line information services such as Bloomberg or Reuters.

*Dissemination of Indicative Portfolio Value*

In order to provide updated information relating to each Fund for use by investors, professionals and persons wishing to recreate or redeem Fund Shares, and since each Fund is based on an Index which includes non-U.S. components, there will be disseminated through the facilities of the CTA an updated indicative portfolio value (''Value'') for each Fund traded on the Exchange as calculated by a securities information provided (''Value Calculator''). The Value will be disseminated for each Fund on a per Share basis every 15 seconds during regular Exchange trading hours. The equity securities values included in the Value are the values of, and the Deposit Securities disseminated for that trading day. In addition to the value of the Deposit Securities for each Fund, a the Value includes the estimated Cash Component. The Value also reflects changes in currency exchange rates between the U.S. dollar and the applicable home foreign currency.

The Value may not reflect the value of all securities included in the applicable Underlying Index. In addition, the Value does not necessarily reflect the precise composition of the current portfolio of securities held by each Fund at a particular point in time. The currency exchange rate used in the calculation of the Value may also differ from that used by the Fund's custodian in the calculation of each Fund's NAV. Therefore, the Value for each Fund on a per Share basis disseminated during the Exchange's trading hours should not be viewed as a real-time update of the NAV of each Fund, which is calculated only once a day. While the Value that will be disseminated immediately prior to the opening of business of the Exchange (currently 9:30 a.m., EST) is expected to be generally very close to the previous day's NAV on a per Share basis, it is possible that each Fund's Value diverge from its NAV during any trading day. In such case, the Value will not precisely reflect the value of the relevant Fund portfolio.

[9] The ''Contractual Settlement Date'' is the earlier of (i) the date upon which all of the required Deposit Securities, the Cash Component and any other cash amounts which may be due are delivered to the Trust and (ii) the latest day for settlement on the customary settlement cycle in the jurisdiction where any of the securities of the relevant Fund are customarily traded.

During the trading day, however, the Funds expect that the Value should closely approximately the value per Fund share of the portfolio of securities for the relevant Fund except under unusual circumstances (*e.g.*, in the case of extensive rebalancing of multiple securities in a Fund at the same time by the Advisor). The circumstances that might cause the Value to be different from a Fund's NAV would not be different from circumstances causing any index fund or trust to diverge from its underlying benchmark index.

The Exchange believes that dissemination of the Value based on the Deposit Securities provides additional information regarding the Funds that would not otherwise be available to the public and is useful to professionals and investors in connection with Fund Shares trading on the Exchange or the creation or redemption of Fund Shares.

For foreign stocks that trade on principal foreign markets during hours that overlap regular trading hours on the Exchange, the Value Calculator will update the applicable Value every 15 seconds to reflect price changes in the applicable foreign market or markets, and convert such prices into U.S. dollars based on the current currency exchange rate. When the principal foreign market or markets are closed but the Exchange is open, the Value will be updated every 15 seconds to reflect changes in currency exchange rates after such markets close.

*Other Characteristics of the Fund*

It is anticipated that a minimum of three Creation Units for each Fund will be outstanding at the commencement of trading on the Exchange. The number of Shares per Creation Unit is 50,000.

Fund Shares will be registered in book-entry only form through the Depository Trust Company (''DTC''). Trading in Fund Shares on the Exchange will be effected normally until 4 p.m. each business day. The minimum trading increment for Fund Shares on the Exchange initially will be $0.01.

Dividends from net investment income will be declared and paid at least annually by each Fund. Distributions of realized securities gains, if any, generally will be declared and paid at least once a year, but each Fund may make distributions on a more frequent basis to comply with distribution requirements of the Code. Each Fund may make the DTC book-entry Dividend Reinvestment Service available for use by beneficial owners of the Fund through DTC Participants for reinvestment of their cash proceeds.

*Original and Annual Listing Fees*

The Exchange original listing fee applicable to the listing of each Fund will be $5,000. The annual continued listing fee for each Fund will be $2,000.

*Stop and Stop Limit Orders*

Commentary .30 to Exchange Rule 13 provides that stop and stop limit orders in an Investment Company Unit shall be elected by a quotation, but specifies that if the electing bid on an offer is more than 0.10 points away from the last sale and is for the specialist's dealer account, the prior approval of a Floor Official is required for the election to be effective.

*Trading Halts*

The Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in each Fund. Trading on the Exchange in the Fund Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, making trading in the Fund Shares inadvisable. these may include (1) the extent to which trading is not occurring in the Deposit Security(s) or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition trading in Fund Shares is subject to trading halts caused by extraordinary market volatility pursuant to Exchange's ''circuit breaker'' rules.[10]

*Surveillance Procedures*

The Exchange's written surveillance procedures for Fund Shares will be similar to the procedures utilized for other Investment Company Units. the Exchange also intends to utilize its existing surveillance procedures to monitor trading in the Fund, including situations where specialists purchase or redeem Creation Units to ensure compliance with NYSE Rule 460.10, which requires that such purchases or redemptions facilitate the maintenance of a fair and orderly market in the subject security (see the description of the Rule and its application below).

*Rule 460.10*

Rule 460.10 generally precludes certain business relationships between an issuer and the specialist in the issuer's securities. Exceptions in the Rule permit specialists in Fund Shares to enter into Creation Unit transactions through the Distributor to facilitate the maintenance of a fair and orderly market. A specialist Creation Unit transaction may only be effected on the same terms and conditions as any other investor, and only at the net asset value of the Fund Shares. A specialist may acquire a position in excess of 10% of the outstanding issue of the Fund Shares, provided, however,that a specialist registered in a security issued by an investment company may purchase and redeem the investment company unit or securities that can be subdivided or converted into such unit, from the investment company as appropriate to facilitate the maintenance of a fair and orderly market in the subject security.

*Prospectus Delivery*

The Commission has granted the Trust an exemption from certain prospectus delivery requirements under section 24(d) of the Investment Company Act of 1940.[11] Any product description used in reliance on a section 24(d) exemptive order will comply with all representations made therein and all conditions thereto. The Exchange, in an Information Circular to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, of the prospectus or product description delivery requirements applicable to the Funds. Any product description used in reliance on the section 24(d) exemptive order will comply with all representations made and all conditions contained in the application for the order.

*Suitability*

Pursuant to Exchange Rule 405, before a member, member organization, allied member or employee of such member organization undertakes to recommend a transaction in Fund Shares, such member or member organization should make a determination that such Fund Shares are suitable for such customer. If any recommendation is made with respect to such Fund Shares, the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that he or she may reasonably be expected to be capable of evaluating the risks and any special characteristics of the recommended transaction, and is financially able to bear the risks of the recommended transaction.

*Information Circular to Members*

The Exchange will distribute an information circular to its members in connection with the trading in the Fund. The circular will discuss the special characteristics and risks of

[10] Rule 80B.

[11] *See* Investment Company Act Release No. 25738 (October 11, 2002).

trading this type of security. Specifically, the circular, among other things, will discuss what the Fund is, how it is created and redeemed, the requirement that members and member firms deliver a prospectus to investors purchasing Fund Shares prior to or concurrently with the confirmation of a transaction, applicable Exchange rules, dissemination information, trading information and the applicability of suitability rules.[12]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)[13] of the Act, in general, and furthers the objectives of section 6(b)(5),[14] in particular, 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 of a free and open market and, in general, to protect investor and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5).[15] The Commission believes that the Exchange's proposal to trade the Funds will allow investors to achieve desired investment objectives through the purchase of an instrument linked to the Dow Jones STOXX 50 and Dow Jones EURO STOXX 50 indexes. These objectives include participating in or gaining exposure to these indexes while limiting somewhat downside risk and participating in foreign securities markets. In addition, trading of the Funds can produce added benefits to investors through the increased competition between other markets trading the product. Specifically, the Commission believes that NYSE's proposal should help provide investors with increased flexibility in satisfying their investment needs, by allowing them to purchase and sell at negotiated prices throughout the trading day securities that replicate the performance of several portfolios of stock,[16] and by increasing the availability of the Funds as investment tools. Accordingly, as discussed below, the rule proposal is consistent with the requirements of Section 6(b)(5) that Exchange rules facilitate transactions in securities, remove impediments to, and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[17]

As the Commission noted in greater detail in the order approving iShares (formally ''World Equity Benchmark Securities'' or ''WEBS'') for listing and trading on the American Stock Exchange LLC (''Amex''),[18] the estimated cost of individual Fund Shares described herein should make it attractive to individual retail investors who wish to hold a security replicating the performance of a portfolio of stocks, including foreign stocks. The Commission also notes that such Funds should provide investors with several advantages over standard open-end investment companies; in particular, investors can trade the Funds continuously throughout the day in secondary markets at negotiated prices.[19] In contrast, Investment Company Act of 1940 (''Investment Company Act'') Rule 22c–1[20] limits holders and prospectus holders of open-end management investment company shares to purchasing or redeeming securities of the fund based on the next asset value of the securities held by the fund as designated by the board of directors. Thus, the Funds should allow investors to respond quickly to market changes through intra-day trading for opportunities, expand the opportunity for retail investors to engage in hedging strategies, and reduce transaction costs for trading a portfolio of stocks.

The Commission notes that, although the respective values of the Funds are based on the value of the securities and cash held in the Funds, Fund Shares are not leveraged instruments. Fund Shares are essentially equity securities that represent an interest in a portfolio of stocks designed to reflect substantially the applicable Dow Jones STOXX 50 and Dow Jones EURO STOXX 50 indexes. Accordingly, it is appropriate to regulate the Funds in a manner similar to other equity securities. Nonetheless, the Commission believes that the unique nature of the Funds raises certain disclosure, trading, and other issues that need to be addressed. The remainder of this section addresses these issues, although they are discussed in greater detail in the Amex WEBS Approval Order, where the Commission initially approved WEBS for trading as a new product.

*A. Disclosure*

The Commission believes that NYSE's proposal should provide for adequate disclosure to investors relating to the terms, characteristics, and risks of trading the Funds. All investors in the

[12] The information circular will also discuss exemptive relief granted by the Commission from certain rules under the Exchange Act. The applicable rules are: Rule 10a-1, Rule 10b-10, Rules 14e-5, Rules 10b-17, Rule 11d1–2, Rules 15c1–5 and 15c1–6, and Rules 101 and 102 of Regulation M under the Exchange Act.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(5).

[16] The Commission notes that unlike typical open-end investment companies, where investors have the right to redeem their fund shares on a daily basis, investors in the Funds can redeem them in creation unit size aggregations (of 50,000 Fund Shares) only plus cash in an amount equal to the difference between the NAV of the Fund Shares being redeemed and the value of the Fund Securities.

[17] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] The Funds are similar in nature were formerly known as World Equity Benchmark Securities (''WEBS'') and were approved for listing and trading on the Amex in 1996. *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) (''Amex WEBS Approval Order''). The Commission hereby incorporates by reference the discussion and rationale for approving WEBS provided in the Amex WEBS Approval Order.

[19] The Commission believes that the Funds will not trade at a material discount or premium in relation to their NAV, because of potential arbitrage opportunities. *See* Amex WEBS Approval Order, *supra* note 16. The mere potential for arbitrage should keep the market price of Fund Shares comparable to their NAVs; therefore, arbitrage activity likely will not be significant. In addition, the Funds will redeem in-kind, thereby enabling the Fund to invest virtually all of its assets in securities comprising the Dow Jones STOXX 50 and Dow Jones EURO STOXX 50 indexes.

[20] 17 CFR 270.22c–1. Investment Company Act Rule 22c–1 generally provides that a registered investment company issuing a redeemable security, its principal underwriter, and dealers in that security may sell, redeem, or repurchase the security only at a price based on the NAV next computed after receipt of an investor's request to purchase, redeem, or resell. The NAV of an open-end management investment company generally is computed once daily Monday to Friday as designated by the investment company's board of directors. The Commission granted WEBS an exemption from this provision to allow them to trade in the secondary market at negotiated prices. *See* Amex WEBS Approval Order, *supra* note 16.

Funds will receive a prospectus or a Product Description [21] regarding the product. The prospectus or Product Description will address the special characteristics of the Funds, including a statement regarding their redeemability and method of creation, and that Fund Shares are not individually redeemable.

The Commission notes that the Exchange has represented that it will also distribute an information circular all NYSE members prior to the commencement of trading of the Funds explaining the unique characteristics and risks of the Funds. The circular will note, for example, Exchange member responsibilities, including that, before an Exchange member undertakes to recommend a transaction in the Funds, it should make a determination that it is in compliance with applicable rules of other self-regulatory organizations of which it is a member, including suitability rules. The circular will also address members' responsibility to deliver a prospectus or product description to all investors purchasing the Funds, as well as highlight the characteristics of the Funds, including that Fund Shares are only redeemable in Creation Unit size aggregation. [22] The information circular will also discuss the Trust's option of redeeming the Funds solely for cash, which is unique to these products.

*B. Dissemination of the Fund Portfolio Information*

The Commission believes that investors will be provided with timely and useful information concerning the value of the Funds. The Commission notes that the information will be disseminated through facilities of the CTA and reflects the currently available information concerning the value of the assets comprising the deposit securities. The information will be disseminated every fifteen seconds during the hours of 9:30 a.m. to 4 p.m. Eastern Standard Time and will be available to all investors, regardless of where the transaction is executed. In addition, because the value is expected to closely track the applicable Fund series, the Commission believes the Values will provide investors with adequate information to determine the intra-day value of a given Fund series. [23] In the Amex WEBS Approval Order, the Commission noted that it expected Amex to monitor the disseminated Value, and if Amex determines that the Value does not closely track applicable WEBS/iShares series, it will arrange to disseminate an adequate alternative. Here, the Commission expects the NYSE to similarly monitor the disseminated Value of the Funds.

*C. Surveillance*

The Commission notes that NYSE has submitted surveillance procedures for the Funds and believes that those procedures are adequate to address concerns associated with the listing and trading of such securities, including any concerns associated with specialists purchasing and redeeming Creation Units. The Exchange has represented that its surveillance procedures should allow it to identify situations where specialists purchase or redeem Creation Units to ensure compliance with NYSE Rule 460.10, which requires that such purchases or redemptions facilitate the maintenance of a fair and orderly market in the subject security.

*D. Specialists*

The Commission finds that it is consistent with the Act to allow a specialist registered in a security issued by an Investment Company to purchase or redeem the listed security from the issuer as appropriate to facilitate the maintenance of a fair and orderly market in that security. The Commission believes that such market activities should enhance liquidity in such security. The Commission believes that such market activities should enhance liquidity in such security and facilitate a specialist's market making responsibilities. In addition, because the specialist only will be able to purchase and redeem Fund Shares on the same terms and conditions as any other investor (and only at the NAV), and Creation transactions must occur through the distributor and not directly with the issuer, the Commission believes that concerns regarding potential abuse are minimized. As noted above, the Exchange's surveillance procedures also should ensure that such purchases are only for the purpose of maintaining fair and orderly markets, and not for any other improper or speculative purposes. Finally, the Commission notes that its approval of this aspect of the Exchange's rule proposal does not address any other requirements or obligations under the federal securities laws that may be applicable.[24]

*E. Accelerated Approval*

After careful review, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** pursuant to section 19(b)(2) of the Act.[25] The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Exchange. Accordingly, the Commission finds that the listing and trading of the Fund Shares is consistent with the Act, and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interests.[26] The Commission further finds that accelerated approval will enable the Exchange to begin listing and trading the Fund Shares on the Exchange immediately. The Commission therefore approves this proposal on an accelerated basis.

## 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

[21] *See* Investment Company Release No. 25623 (June 25, 2002).

[22] The Commission notes that the information circular should also discuss exemptive relief granted by the Commission from certain rules under the Act. The applicable rules are: Rule 10a–1, Rule 10b–10; Rule 14e–5; Rule 10b–17; Rule 11d1–2; Rules 15c1–5 and 15c1–6; and Rules 101 and 102 of Regulation M under the Exchange Act.

[23] In addition, the Amex WEBS Approval Order states that the statement of additional information (''SAI'') to the preliminary prospectus states that each series will calculate its NAV per share at the close of the regular trading session for the Amex on each day that the Amex is open for business. NAV generally will be based on the last quoted sales price on the exchange where the security primarily is traded. *See* Amex WEBS Approval Order, *supra* note 16. Such NAV calculations will be similarly done for the Funds.

[24] The Commission notes that with respect to the Funds, broker-dealers and other persons are cautioned in the prospectus and/or the Fund's SAI that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act of 1933.

[25] 15 U.S.C. 78s(b)(2).

[26] 15 U.S.C. 78f(b)(5).

the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number SR–NYSE–2002–51 and should be submitted by November 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–27120 Filed 10–23–02; 8:45 am]

**BILLING CODE 8010–01–M**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46682; File No. SR–Phlx–2002–51]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. Relating to Amending Exchange Rule 607, Registration Fee, and Deleting Exchange Rule 608, Charge for Making Transaction

October 17, 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 September 20, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 Exchange. The Exchange filed an amendment to the proposed rule change on October 2, 2002.[3] The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A)(iii) of the Act,[4] and Rule 19b-4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to amend Exchange Rule 607, Registration Fee, to conform the rule to section 31 of the Act,[7] as amended by H.R. 1088, the Investor and Capital Markets Fee Relief Act (''Fee Relief Act'').[8] In addition, the Exchange proposes to delete Exchange Rule 608, Charge for Making Transaction.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in brackets.

* * * * *

Rule 607. *Transaction* [Registration] Fee

Every member and member organization *shall pay to the Exchange in such manner and at such time as the Exchange shall direct, the fees specified in Section 31 of the Securities Exchange Act of 1934, and rules thereunder, for all sales upon the Exchange of securities specified in Section 31 of the Securities Exchange Act of 1934, and rules thereunder.* [clearing transactions effected on the Exchange, shall pay to the Exchange the sum of one cent for each $500 or fraction thereof of the dollar volume of his or its sales upon the Exchange (other than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States or such securities issued or guaranteed by corporations in which the United States has a direct or an indirect interest as shall be designated for exemption from the provisions of this Section by the Secretary of the Treasury), in reimbursement to the Exchange of the Registration Fee imposed under Section 31 of the Securities Exchange Act of 1934, as amended, in accordance with such rules as the Committee may prescribe.]

[Rule 608. Charge for Making Transaction]

[Every member or member organization who is required by Rule 607 to pay any sum to the Exchange in respect of any sale upon the Exchange shall charge and collect from the person for whom he was acting in making such transaction an amount, which shall be determined by Section 31 of the Securities Exchange Act of 1934 as the sum of one cent for each $500 or fraction thereof of the dollar amount involved in such transaction.]

[Supplementary Material:]

[Registration Fee]

[.01 Every member and member organization engaged in clearing or settling transactions effected upon the Exchange shall maintain a daily record of the aggregate dollar amount of the sales of securities made upon the Exchange and cleared or settled by him or it. The amount of money shall be computed upon the actual sales price, disregarding commissions, taxes or accrued interest on bonds. Blotter dates shall be used throughout. All sales on the Exchange shall be included, whether the securities are tax-exempt or not, except securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States or such securities issued or guaranteed by corporations in which the United States has a direct or an indirect interest as shall be designated for exemption from the provisions of this section by the Secretary of the Treasury. Odd-lot dealers shall record both the full lots and the odd lots which they sell on the Exchange. If a member organization clears and settles a transaction for a member or member organization that in turn clears it for another principal, only the member organization settling the transaction shall include it in its record. Monthly reports of the daily totals above referred to shall be submitted to the Secretary's office in the manner described below.

.02 At or before 10:30 o'clock a.m. on the 10th day of each month each member or member organization required to report to the Exchange shall submit a report on a form supplied by the Exchange showing: aggregate dollar sales volume; the Registration Fee due thereon; principal amount of bonds; number of shares of stock and number of rights to subscribe.

.03 Every such reporting member and member organization shall pay to the Exchange a sum equal to one cent for each $500 or fraction thereof of the total aggregate dollar sales volume reported monthly.

.04 With respect to all transactions which are required by these directions to be included in the foregoing report, the member or member organization responsible for reporting any transaction to the Exchange shall charge to the account, as billed, for which such transaction was made the sum of one cent for each $500 or fraction thereof represented by such transaction.

Whenever the account against which such charge is made is that of a member or member organization who is acting

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[27] 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 Cynthia K. Hoekstra, Counsel, Phlx, to Deborah Lassman Flynn, Assistant Director, Division of Market Regulation, SEC, dated October 1, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange amended the basis upon which the proposal would become effective under the Act and requested that the Commission waive the five-day pre-filing notice requirement.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The Phlx asked the Commission to waive the 30-day operative delay. *See* Rule 19b-4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[7] *See* 15 U.S.C. 78ee.

[8] *See* Pub. L. No. 107–123, 115 Stat. 2390 (2002).

for a principal, such member or member organization shall withhold from the sum credited to the account of such principal, as billed, an amount equal to one cent for each $500 or fraction thereof represented by the transaction made for such principal.

.05 In rendering to customers confirmations of sales made on the Exchange for their account, the charge required by these directions either shall be shown separately or be treated in the same manner as transfer taxes. In either case the confirmation shall contain an explanatory legend.

.06 Members or organizations that cease the clearing or settling of security transactions shall promptly render reports for any interim period resulting from such change, and shall pay promptly any sum due under the above directions.

.07 When sales are made on the Exchange for a customer each item reported in writing to the customer must be separately used as the basis for computing the fee appertaining thereto. If the written report shows as a single item the sale of two or more lots of the same security at the same price on the same day, the fee may be computed upon the total of such lots as a unit; otherwise each sale, whether reported together with others or separately, must be independently made the basis for computing the fee relating thereto.

.08 Members or organizations who settle transactions for other members or organizations, and who consequently are required to report sales on the Exchange and pay a fee thereon pursuant to paragraphs 1 and 2 above, must charge the account of the member or organization for whom they act on the same basis as is prescribed above with respect to transactions made for customers. This applies also to organizations carrying accounts of Floor traders and non-clearing members or organizations both in Philadelphia and elsewhere.

.09 The use of daily, weekly, or any similar totals of transactions made for a particular customer or for a particular account as a basis for computing the fee chargeable to such customer or account, whether member or nonmember, is prohibited.

.10 When differences in the computation of the fee arise in good faith, such as when an organization has rendered to a customer a single report covering two or more lots of the same security at the same price, and, because of ''give-ups'' or otherwise, it is necessary to bill or record the transaction as two or more separate lots, or when similar differences arise between a main office and a branch office, such differences may be adjusted between the organizations or offices involved by mutual agreement.]

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## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 607 to conform the rule to section 31 of the Act, as amended by the Fee Relief Act. Section 31 of the Act provides for the assessment of transaction fees to be paid to the Commission by national securities exchanges and national securities associations. Among other things, the Fee Relief Act reduced the amount of the assessment of transaction fees under section 31 of the Act and required the Commission to make annual adjustments to the fee rates for certain fiscal years.

In addition to conforming Exchange Rule 607 to recent Congressional changes, the proposal will allow for future adjustments to be made automatically to the rates as specified by the Commission and in section 31 of the Act. In addition, the Exchange proposes to delete Exchange Rule 608 because the requirements in Exchange Rule 608 are outdated and no longer necessary due to the fact that many of the procedures in Exchange Rule 608 have been automated. No such reporting is needed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [9] in general and furthers the objectives of sections 6(b)(4) [10] and 6(b)(5) [11] of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members, it promotes just and equitable principles of trade and it protects investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) from the date on which it was filed, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Because the proposed rule change will codify the Exchange's current section 31 billing practice and allow the Exchange to conform Exchange Rule 607 to section 31 of the Act, the Exchange has requested that the Commission waive the pre-filing notice requirement of at least five business days (or such shorter time as designated by the Commission) and the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii).[14] The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[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).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] 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).

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.[16]

## 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 Phlx. All submissions should refer to file number SR–Phlx–2002–51 and should be submitted by November 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–27117 Filed 10–23–02; 8:45 am]

BILLING CODE 8010–01–P

[16] *See* section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on October 2, 2002, the date that the Exchange filed Amendment No. 1.

[17] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3452]**

### State of Louisiana [Amendment #1]

In accordance with a notice received from the Federal Emergency Management Agency, dated October 16, 2002, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on October 1, 2002, and continuing through October 16, 2002.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is December 2, 2002, and for economic injury the deadline is July 3, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 18, 2002.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 02–27122 Filed 10–23–02; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3448]**

### State of Texas; [Amendment #3]

In accordance with a notice received from the Federal Emergency Management Agency, dated October 15, 2002, the above numbered declaration is hereby amended to include Webb County in the State of Texas as a disaster area due to damages caused by Tropical Storm Fay beginning on September 6, 2002, and continuing through September 30, 2002.

In addition, applications for economic injury loans from small businesses located in Jim Hogg, Maverick and Zapata Counties may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary county have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 25, 2002, and for economic injury the deadline is June 26, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 18, 2002.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 02–27121 Filed 10–23–02; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Federal Assistance to Provide Financial, Counseling, Technical Assistance and Long Term Training to Small Business Owners and Those Interested in Starting a Small Business

**AGENCY:** Small Business Administration.

**ACTION:** SBDC 2003 Program Announcement for CY 2003.

**SUMMARY:** The Small Business Administration plans to issue a supplemental SBDC Program Announcement for CY 2003 to invite applicants from Institutions of Higher Education and Women's Business Centers to establish, manage, and oversee a Small Business Development Center (SBDC) Network in the Commonwealth of Virginia.

The authorizing legislation is Section 21 of the Small Business Act, (15 U.S.C. Section 648).

SBA's Richmond District Office will hold a bidders conference on November 19, 2002.

SBA's Richmond District Office must receive applications/proposals by December 6, 2002.

SBA will select the applicants competitively. The successful applicant will receive an award to provide long term training, counseling and technical assistance to business persons who want to start or expand a small business.

The applicant must submit a one year plan that describes the network, sources of match, training and technical assistance activities. Award recipients must provide non-Federal matching funds, *i.e.,* one-non Federal dollar for each Federal dollar for the project-year. At least half of the matching requirement must be in cash. The remainder may be in-kind or in waived indirect cost.

**DATES:** SBA will mail program announcements to interested parties, immediately, upon request. The opening date will be October 21, 2002.

**FOR FURTHER INFORMATION CONTACT:** Charles Gastón, (804) 771–2741 x 140 or Jorge Cardona, (202) 205–7303.

**Johnnie L. Albertson,**

*Associate Administrator for Small Business Development Centers.*

[FR Doc. 02–27062 Filed 10–23–02; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Privacy Act of 1974 System of Records Notice

**AGENCY:** Small Business Administration.

**ACTION:** Notice of new system of records.

**SUMMARY:** The Small Business Administration is adding a new system of records to the Agency's Privacy Act System of Records. The new system collects and maintains personal and commercial information on individuals named in loan files, throughout the life of SBA's interest in the loan, under all of the Agency's business (non-disaster) loan programs. Data collected will be used by Headquarters, Regional Offices, District Offices, Branch Offices, Processing Centers, Servicing Centers, SBA Resource Partners, (*i.e.*, participating lenders, Certified Development Companies, lending program intermediaries), contractors

and qualified investors. Data will be used for Lender Oversight, Loan Monitoring, Portfolio Risk Management and Asset Sales.

**DATES:** The new system will be effective without further notice November 25, 2002, unless comments are received that result in a need for modification.

**ADDRESSES:** Address comments to LeAnn M. Oliver, Deputy Associate Administrator for Financial Assistance, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Steve Kucharski, Office of Financial Assistance (202) 205 7551.

**SBA 170**

**SYSTEM NAME:**

Loan Monitoring System (LMS), U.S. Small Business Administration (SBA).

**SYSTEM LOCATION:**

SBA Headquarters, Regional Offices, District Offices, Branch Offices, Processing Centers, and Servicing Centers (see Appendix A for addresses).

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals (*i.e.* borrowers, guarantors, principals of businesses named in loan records), throughout the life of SBA's interest in a loan, under all of the Agency's business (non-disaster) loan programs.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Personal and commercial information (*i.e.* credit history, financial information, identifying number or other personal identifier ) on individuals named in business loan files, throughout the life of SBA's interest in the loan, under all of the Agency's business (non-disaster) loan programs.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Pub. L. 85–536, 15 U.S.C. 631 *et seq.* (Small Business Act, all provisions relating to loan programs); 5 U.S.C. 301; 44 U.S.C. 3101 (Records Management by Federal Agencies); and Pub. L. 103–62 (GPRA).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED, OR REFERRED:**

(a) To the SBA Resource Partner, its successors or assigns, (*i.e.* participating lender, certified development company, micro lender) who initially collected the individual's information for the purpose of making and servicing loans.

(b) To a Congressional office from an individual's record when the office is inquiring on the individual's behalf. The Member's access rights are no greater than the individual's.

(c) To the Federal, state, local or foreign agency or organization which investigates, prosecutes, or enforces violations, statues, rules, regulations, or orders issued when an agency identifies a violation or potential violation of law, arising by general or program statute, or by regulation, rule, or order.

(d) To Agency volunteers, interns, experts and contractors for use in their official duties.

(e) To qualified investors who have signed a confidentiality agreement related to review of files for the purpose of evaluating, negotiating and implementing the purchase of loans from the Agency as a part of the Agency's Asset Sales program.

(f) To the Department of Justice (DOJ) when:

(1) The agency, or any component thereof; or

(2) Any employee of the agency in his or her official capacity; or

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components;

is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(g) To disclose them in a proceeding before a court or adjudicative body before which the Agency is authorized to appear, when:

(1) The agency, or any component thereof; or

(2) Any employee of the agency in his or her official capacity; or

(3) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(h) To request information from a Federal, State, local agency or a private credit agency maintaining civil, criminal or other information relevant to determining an applicant's suitability for a business loan. This applies to individuals involved in business loans.

(i) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:**

**STORAGE:**

Electronic Records are in a secure server and paper records are in files. Loan files are in a secured area, sometimes locked files, sometimes locked file rooms.

**RETRIEVABILITY:**

Electronic Records: By individual name, personal identifier, SBA Identifier, Participating Lender Identifier, Participating Lender Name, business name, and business identifier.

Paper Records: By individual name, personal identifier and SBA Identifier.

**SAFEGUARDS:**

Electronic Records: Access and use is limited to Agency officials acting in their official capacities, with a need-to-know, and to SBA Resource Partners. Access and use by SBA Resource Partners will generally be via the Internet, with restricted password(s)/passcode(s). SBA Resource Partners, their successors or assigns, will have access only to those individual records that were collected by that particular partner. Information contained in files will be available only to potential asset sale purchasers who have executed a confidentiality agreement. Only SBA employees in the performance of their official duties, who are granted access to the records by Agency issuance of User IDs and/or passcodes, may amend or review the records.

Paper Records: Access and use is limited to Agency officials acting in their official capacities, with a need-to-know. SBA Resource Partners, their successors or assigns, will have access only to those individual records that were collected by that particular partner. Information contained in loan files will be available only to potential asset sale purchasers who have executed

a confidentiality agreement. Only those SBA employees in the performance of their official duties may amend or review the records.

**RETENTION AND DISPOSAL:**

In accordance with SBA SOP 00 41 2, Item Nos. 50:04, 50:08, 50:09, 50:10, 50:11, 50:12, 50:13, 50:19, 50:22, 55:02. Records are retained for the life of SBA's interest in the business loan and are disposed of according to the reference in the SOP that pertains to a particular type of record; retention period varies according to the type of record.

**SYSTEM MANAGER(S) AND ADDRESS(ES):**

Associate Administrator for Capital Access, Associate Administrator for Lender Oversight, Regional Administrators, District Directors, Branch Managers, Loan Service Center Directors, and Loan Processing Centers Directors (see Appendix A for addresses).

**NOTIFICATION PROCEDURE:**

An individual may submit a written record inquiry to the appropriate Systems Manager or Privacy Act Officer. Individuals inquiring about this system must follow the SBA Privacy Act Regulations at 13 CFR part 102 subpart B.

**RECORDS ACCESS PROCEDURES:**

Systems Manager or Privacy Act Officer will determine procedures. Individuals inquiring about this system must follow the SBA Privacy Act Regulations at 13 CFR part 102 subpart B.

**CONTESTING RECORD PROCEDURES:**

Notify the official listed above and state reason(s) for contesting and the proposed amendment sought, as indicated in 13 CFR part 102 subpart B.

**RECORD SOURCE CATEGORIES:**

Individuals and businesses to whom the record belongs, financial institutions, credit reporting agencies, law enforcement agencies and SBA resource partners.

Dated: June 27, 2002.

**Christopher Holleman,**

*Acting Senior Privacy Act Official.*

[FR Doc. 02–27061 Filed 10–23–02; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF STATE

**[Public Notice 4170]**

## Bureau of Political-Military Affairs; Denied Persons Pursuant to UN Security Council Resolution

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of persons that are subject to an arms embargo in implementation of UN Security Council Resolution 1390 (2002). This action is being taken pursuant to Sections 38 and 42 of the Arms Export Control Act and in accordance with Section 5 of the UN Participation Act (UNPA) and E.O. 12918.

**EFFECTIVE DATE:** October 24, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mary Sweeney, Munitions Control Analyst, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 633–2700.

**SUPPLEMENTARY INFORMATION:** Section 2(c) of UN Security Council Resolution 1390 (2002) requires an arms embargo against those individuals, groups, undertakings and entities listed in the consolidated list created pursuant to UN Security Council Resolutions 1267 (1999) and 1333 (2000). Specifically, the Resolution requires that Member States prevent the direct or indirect supply, sale and transfer, to those on the Sanctions Committee list, from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related material of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned and technical advice, assistance, or training related to military activities. U.S. manufacturers and exporters and any other affected parties are hereby notified the Department has imposed a policy of denial for any new license application or other request for approval for the export or transfer of defense articles or defense services if any of the names on the list below appear in connection with the application or other request for approval subject to Section 38 of the Arms Export Control Act. This action also precludes the use of any exemptions from licensing or other approval (*e.g.* brokering) requirements available under the International Traffic in Arms Regulations (ITAR) involving any person on the list.

The term ''person'', as defined in 22 CFR 120.14 of the ITAR, means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities.

This action has been taken pursuant to sections 38 and 42 of the AECA (22 U.S.C. 2778 and 2791) and § 126.7 of the International Traffic in Arms Regulations in furtherance of the foreign policy of the United States, and in accordance with section 5 of the UNPA (22 U.S.C. 287(c)) and E.O. 12918.

In accordance with these authorities the following persons are subject to this arms embargo:

### A. Resolution 1267 (1999)

*Individuals*

1. Mullah Mohammad Rabbani, Chairman of the Ruling Council, Head of the Council of Ministers;
2. Mullah Hadji Mohammad Hassan, First Deputy, Council of Ministers; Governor of Kandahar;
3. Maulavi Abdul Kabir, Second Deputy, Council of Ministers; Governor of Nangahar Province; Head of Eastern Zone;
4. Mullah Mohammed Omar, Leader of the Faithful ('Amir ul-Mumineen'), Afghanistan;
5. Mullah Mohammed Tahre Anwari, Administrative Affairs;
6. Maulavi Sayyed Haqqan, Minister of Administrative Affairs;
7. Maulavi Abdul Latif Mansur, Minister of Agriculture;
8. Mullah Shams-ur-Rahman, Deputy Minister of Agriculture;
9. Maulavi Attiqullah Akhund, Deputy Minister of Agriculture;
10. Maulavi Abdul Ghafoor, Deputy Minister of Agriculture;
11. Akhtar Mohammad Mansour, Minister of Civil Aviation and Transportation;
12. Hadji Tahis, Deputy Minister of Civil Aviation;
13. Mullah Mohammad Naim, Deputy Minister of Civil Aviation;
14. Hidayatuallah Abu Turab, Deputy Minister of Civil Aviation;
15. Mullah Yar Mohammad Rahimi, Minister of Communication;
16. Mullah Haji Alla Dad Tayeb, Deputy Minister of Communication;
17. Maulavi Abdul Razaq, Minister of Commerce;
18. Maulavi Faiz Mohammad Faizan, Deputy Minister of Commerce;
19. Maulavi Nik Mohammad, Deputy Minister of Commerce;
20. Mullah Matiullah, Kabul Custom House;
21. Maulavi Dadullah Akhund, Minister of Construction;
22. Mullah Hadji Ubaidullah Akhund, Minister of Defense;
23. Mullah Fazel M. Mazloom, Deputy Chief of Army Staff;
24. Mullah Baradar, Deputy, Minister of Defence;
25. Mullah Abdul Rauf, Commander of Central Corpus;
26. Mullah Amir Khan Motaql, Minister of Education;

27. Mullah Mohammad Nasim Hanafi, Deputy Minister of Education;
28. Maulavi S. Ahmed Skahidkhel, Deputy Minister of Education;
29. Mullah Abdul Wasay Aghajan Motasem, Minister of Finance;
30. Mullah Arefullah Aref, Deputy Minister of Finance;
31. Mullah Haji M. Ahmadi, President of Da Afghanistan Bank;
32. Abdul Wakil Mutawakil, Minister of Foreign Affairs;
33. Abdul Rahman Zahed; Deputy Minister of Foreign Affairs;
34. Mullah Abdul Jalil, Deputy Minister of Foreign Affairs;
35. Dr. Abdul Satar Paktis, Protocol Dept., Ministry of Foreign Affairs;
36. Maulavi Faiz, Information Dept., Ministry of Foreign Affairs;
37. Shams-us-Safa Aminzai, Press-Centre, Ministry of Foreign Affairs;
38. Maulavi Abdul Baqi, Consulate Dept., Ministry of Foreign Affairs;
39. M. Jawaz Waziri, UN Dept., Ministry of Foreign Affairs;
40. Maulavi Djallalouddine Haqani, Minister of Frontier Affairs;
41. Maulavi Abdul Hakim Monib, Deputy Minister of Frontier Affairs;
42. Alhaj M. Ibrahim Omari, Deputy Minister of Frontier Affairs;
43. Qari Don Mohammad, Minister Higher Education;
44. Maulavi Hamidullah Nomani, High Ranking Official in the Ministry of Higher Education;
45. Zabihullah Hamidi, Deputy Minister of Higher Education;
46. Maulavi Arsalan Rahmani, Deputy Minister of Higher Education;
47. Maulavi Qudratuallah Jamal, Minister of Information;
48. Mullah Abdul Baqi, Vice-Minister of Information and Culture;
49. Maulavi Abdul Rahman Ahman Hottak, Deputy (Cultural) Minister of Information and Culture;
50. Maulavi Rahimullah Zurmati, Deputy (Publication) Minister of Information and Culture;
51. Abdulhai Motmacn, Information and Culture Dept., Kandahar;
52. Maulavi Mohammad Yaqoub, Head of BIA;
53. Mullah Abdul Razaq, Minister of Interior Affairs;
54. Mullah Abdul Samad Khaksar, Deputy (Security) Minister of Interior Affairs;
55. Mohammad Sharif, Deputy Minister of Interior Affairs;
56. Maulavi Noor Jalal, Deputy (Administrative) Minister of Interior Affairs;
57. Maulavi Saed M. Azim Agha, Passport and Visa Dept.;
58. Mullah Nooruddin Turabi, Minister of Justice;
59. Maulavi Jalaluddine Shinwari, Deputy Minister of Justice;
60. Alhaj Mullah Mohammad Essa Akhund, Minister of Mines and Industries;
61. Maulavi Sayeedur Rahman Haqani, Deputy Minister of Mines and Industries;
62. Mullah Abdul Salam Zaief, Deputy Minister of Mines and Industries;
63. Maulavi Mohammad Azam Elmi, Deputy Minister of Mines and Industries;
64. Qari Din Mohammad Hanif, Minister of Planning;
65. Maulavi Ezatullah, Deputy Minister of Planning;
66. Maulavi M. Musa Hottak, Deputy Minister of Planning;
67. Mullah Mohammad Abbas Akhund, Minister of Public Health;
68. Sher Abbas Stanekzai, Deputy Minister of Public Health;
69. Maulavi Mohammadullah Mati, Minister of Public Works;
70. Maulavi Rostam Nuristani, Deputy Minister of Public Works;
71. Hadji Molla Atiqullah, Deputy Minister of Public Works;
72. Maulavi Najibullah Haqqani, Deputy Minister of Public Works;
73. Maulavi Sayyed Ghiassouddine Agha, Minister of Haj and Religious Affairs;
74. Maulavi Moslim Haqqani, Deputy Minister of Haj and Religious Affairs;
75. Maulavi Qalamudin Momand, Deputy Minister of Haj Afairs;
76. Maulavi Abdul Raqib Takhari, Minister of Repatriation;
77. Ramatullah Wahidyar, Deputy Minister for Martyrs and Repatriation;
78. Mohammad Sediq Akhundzada, Deputy Minister of Martyrs and Repatriation;
79. Maulavi Mohammad Wali, Minister of Department of Preventing Vice and Propagating Virtue;
80. Maulavi Mohammad Salim Haqqani, Deputy Minister of Preventing Vice and Propagating Virtue;
81. Maulavi Sayed Esmatullah Asem, Deputy Minister of Preventing Vice and Propagating Virtue;
82. Qari Ahmadulla, Minister of Security (Intelligence);
83. Maulavi Abdul-Haq-Wasseq, Deputy Minister of Security (Intelligence);
84. Maulavi Ehsanullah, Deputy Minister of Security (Intelligence);
85. Mullah Habibullah Reshad, Head of Investigation Dept.;
86. Mullah Ahmed Jan Akhund, Minister of Water and Electricity;
87. Eng. Mohammad Homayoon, Deputy Minister of Water and Electricity;
88. Maulavi Saiduddine Sayyed, Vice-Minister of Work and Social Affairs;
89. Maulavi Abdul Jabbar, Governor of Baghlan Province;
90. Maulavi Nurullah Nuri, Governor of Balkh Province; Head of Northern Zone;
91. Muhammad Islam, Governor of Bamiyan Province;
92. Mullah Janan, Governor of Fariab;
93. Mullah Dost Mohammad, Governor of Ghazni Province;
94. Maulavi Khair Mohammad Khairkhwah, Governor of Heart Province;
95. Maulavi Abdul Bari, Governor of Helmand Province;
96. Maulavi Walijan, Governor of Jawzjan Province;
97. Mullah M. Hasan Rahmani, Governor of Kandahar Province;
98. Mullah Manan Nyazi, Governor of Kabul Province;
99. Maulavi A. Wahed Shafiq, Deputy Governor of Kabul Province;
100. Alhaj Mullah Sadudin Sayed, Mayor of Kabul City;
101. Maulavi Shafiquallah Mohammadi, Governor of Khost Province;
102. Maulavi Nazar Mohammad, Governor or Kunduz Province;
103. M. Eshaq, Governor of Laghman Province;
104. Maulavi Zia-ur-Rahman Madani, Governor of Logar Province;
105. Maulavi Hamsudin, Governor of Wardak (Msidan) Province;
106. Maulavi A. Kabir, Governor of Nangarhar Province;
107. Mullah M. Rasul, Governor of Nimroz Province;
108. Maulavi Tawana, Governor of Paktia Province;
109. Mullah M. Shafiq, Governor of Samangan Province;
110. Maulavi Aminullah Amin, Governor of Saripul Province;
111. Maulavi Abdulhai Salek, Governor of Urouzgan Province;
112. Maulavi Ahmad Jan, Governor of Zabol Province;
113. Noor Mohammad Saqib, Chief Justice of Supreme Court;
114. Maulavi Sanani, Head of Dar-ul-Efta;
115. Maulavi Samiullah Muazen, Deputy of High Court;
116. Maulavi Shahabuddin Delawar, Deputy of High Court;
117. Abdul Rahman Agha, Chief Justice of Military Court;
118. Mullah Mustasaed, Head of Academy of Sciences;
119. Maulavi Esmatullah Asem, SG of Afghan Red Crescent Society (ARCS);
120. Maulavi Qalamuddin, Head of Olympic Committee;
121. Abdul Salam Zaeef, Taliban Ambassador to Pakistan;

122. Abdul Hakim Mujahid, Taliban envoy to the United Nations;
123. General Rahmatullah Safi, Taliban representative in Europe;
124. Mullah Hamidullah, Head of Ariana Afghan Airlines;
125. Alhaj Mullah Sadruddin, Mayor of Kabul City;
126. Amir Khan Muttaqi, Taliban representative in UN-led talks;
127. Mr Jan Mohmmad Madani, Charge d'Affaires, Taliban Embassy, Abu Dhabi;
128. Mr Shamsalah Kmalzada, Second Secretary, Taliban Embassy, Abu Dhabi;
129. Mr Azizirahman, Third Secretary, Taliban Embassy, Abu Dhabi;
130. Mr Mawlawi Abdul Manan, Commercial Attache, Taliban Embassy, Abu Dhabi;
131. Malawi Abdul Wahab, Taliban Charge d'Affairs in Riyadh; Taliban ''Embassy,'' Islamabad
132. Mullah Abdul Salam Zaeef (Ambassador Extraordinary & Plenipotentiary);
133. Ilabibullab Fauzi (First Secretary/ Deputy Head of Mission);
134. Mohammad Sobail Shaheen (Second Secretary);
135. Mohammad Sarwar Siddiqmal (Third Secretary);
136. Mullah Mohammad Zahid (Third Secretary);
137. General Abdul Qadeer (Military Attache);
138. Maulavi Nazirullah Anafi (Commercial Attache);
139. Maulavi Abdul Ghafar Qurishi (Repatriation Attache);
140. Mohammad Daud (Administrative Attache); Taliban ''Consulate General,'' Peshawar
141. Maulavi Najibullah (Consul General);
142. Qari Abdul Wali (First Secretary);
143. Syed Allamuddin (Second Secretary);
144. Maulavi Akhtar Mohmmad (Education Attache);
145. Alhaj Maulavi Mohammad Saddiq (Trade Representative); Taliban ''Consulate General,'' Karachi
146. Maulavi Rahamatullah Kakazada (Consul General);
147. Mufti Mohammad Aleem Noorani (First Secretary);
148. Haji Abdul Ghafar Shenwary (Third Secretary);
149. Maulavi Gul Ahmad Hakimi (Commercial Attache); Taliban ''Consulate General,'' Quetta
150. Maulavi Abdullah Murad (Consul General);
151. Maulavi Abdul Haiy Aazem (First Secretary);
152. Maulavi Hamdullah (Repatriation Attache);

*Entities*

1. De Afghanistan Momtaz Bank.

**B. Resolution 1333 (2000)**

*Individuals*

1. Abd Al-Hadi Al-Iraqi (a.k.a. Abu Abdallah, Abdal Al-Hadi Al-Iraqi);
2. Abdul Rahman Yasin (a.k.a. Taha, Abdul Rahman S.; a.k.a. Taher, Abdul Rahman S.; a.k.a. Yasin, Abdul Rahman Said; a.k.a. Yasin, Aboud) DOB: 10 Apr 1960; POB: Bloomington, Indiana, U.S.A.; Citizen U.S.A.;
3. Abdullah Ahmed Abdullah (a.k.a. Abu Mariam, a.k.a. Al-Masri, Abu Mohamed; a.k.a. Saleh); Afghanistan; DOB: 1963; POB: Egypt; Citizen Egypt;
4. Abdullkadir, Hussein Mahamud, Florence, Italy;
5. Abu Hafs the Mauritanian (a.k.a. Mahfouz Ould Al-Walid, Khalid Al-Shanqiti, Mafouz Walad Al-Walid, Mahamedou Oui Slahi) DOB 1 Jan 75;
6. Abu Zubaydah (a.k.a. Abu Zubaida, Abd Al-Hadi Al-Wahab, Zain Al-Abidin Muhahhad Husain, Zain Al-Abidin Muhahhad Husain, Zayn Al-Abidin Muhammad Husayn, Tariq); Thought to be a Saudi, Palestinian and Jordanian national. Close associate of Usama Bin Laden and facilitator of terrorist travel. DOB: 12 March 71; POB: Riyadh, Saudi Arabia;
7. Agha, Haji Abdul Manan (a.k.a. Saiyid, Abd Al-Man, Am) Pakistan;
8. Ahmed Khalfan Ghailani (a.k.a. ''Ahmed The Tanzanian''; a.k.a. ''Foopie''; a.k.a. ''Fupi''; a.k.a. Ahmad, Abu Bakr; a.k.a. Ahmed, A.; a.k.a. Ahmed, Abubakar; a.k.a. Ahmed, Abubakar K.; a.k.a. Ahmed, Abubakar Khalfan; a.k.a. Ahmed, Abubakary K.; a.k.a. Ahmed, Ahmed Khalfan; a.k.a. Al Tanzani, Ahmad; a.k.a. Ali, Ahmed Khalfan; a.k.a. Bakr, Abu; Ghailani, Abubakary Khalfan Ahmed; a.k.a. Ghailani, Ahmed; a.k.a. Ghilani, Ahmad Khalafan; a.k.a. Hussein, Mahafudh Abubakar Ahmed Abdallah; a.k.a. Khabar, Abu; a.k.a. Khalfan, Ahmed; a.k.a. Mohammed, Shariff Omar); DOB: 13 Apr. 1974; Alt. DOB: 14 Apr. 1974; Alt. DOB: 1 Aug. 1970; POB: Zanzibar, Tanzania; Citizen Tanzania;
9. Ahmed Mohammed Hamed Ali (a.k.a. Abdurehman, Ahmed Mohammed; a.k.a. Abu Fatima; a.k.a. Abu Islam; a.k.a. Abu Khadiijah; a.k.a. Ahmed Hamed; a.k.a. Ahmed The Egyptian; a.k.a. Ahmed, Ahmed; a.k.a. Al-Masri, Ahmad; a.k.a. Al-Surir, Abu Islam; a.k.a. Ali, Ahmed Mohammed; a.k.a. Ali, Hamed; a.k.a. Hamed, Ahmed; a.k.a. Shieh, Ahmed; a.k.a. Shuaib) Afghanistan; DOB: 1965; POB: Egypt; Citizen: Egypt;
10. Al-Fawaz, Khalid (a.k.a. Al-Fauwaz, Khaled; Al-Fauwaz, Khaled A.; Al-Fawwaz, Khalid; Al Fawwaz, Khalik; Al-Fawwaz, Khaled; Al Fawwaz, Khaled); DOB: August 25, 1962; 55 Hawarden Hill, Brooke Road, London NW2 7BR, UK.
11. Al-Hamti, Muhammad (a.k.a. Al-Ahdal, Mohammad Hamdi Sadiq; a.k.a. Al-Makki, Abu Asim), Yemen;
12. Al-Haq, Amin (a.k.a. Amin, Muhammad; a.k.a. Ah Haq, Dr. Amin; Ul-Haq, Dr. Amin); DOB: 1960; POB: Nangahar Province, Afghanistan; Afghan national, Security coordinator for Usama Bin Laden.;
13. Ali, Abbas Abdi, Mogadishu, Somalia;
14. Ali, Yusaf Ahmed, Hallbybybacken 15, 70 Spanga, Sweden; DOB: 20 November 1974;
15. Al-Jadawi, Saqar; DOB: 1965; Thought to be a Yemeni and Saudi national. Aide to Usama Bin Laden,;
16. Al-Jaziri, Abu Bakr, nationality Algerian, Address: Peshawar, Pakistan—affiliated with Afghan Support Committee (ASC);
17. Al-Kadr, Ahmad Sa'id (a.k.a. Al-Kanadi, Abu Abd Al-Rahman); DOB: 01 March 1948; POB: Cairo, Egypt; Thought to be an Egyptian and Canadian national.;
18. Al-Libi, Abd al-Muhsin, a.k.a. Ibrahim Ali Muhammad Abu Bakr—affiliated with Afghan Support Committee (AFC) and Revival of Islamic Heritage Society (RIHS);
19. Al-Masri, Abu Hamza (a.k.a. Al-Misri, Abu Hamza); DOB April 15, 1958; 9 Alboume Road, Shepherds Bush, London W12 OLW, UK; 8 Adie Road, Hammersmith, London W6 OPW, UK;
20. Al-Qadi, Yasin (a.k.a. Kadi, Shaykh Yassin Abdullah; a.k.a. Kahdi, Yasin) Jeddah, Saudi Arabia.
21. Al-Sharif, Sa'd; DOB: 1969; POB: Saudi Arabia; Brother-in-law and close associate of Usama Bin Laden. Said to be head of Usama Bin Laden's financial organization.;
22. Anas Al-Liby (a.k.a. Al-Bibi, Anas; a.k.a. Al-Raghie, Nazih; a.k.a. Al-Raghie, Nazih Abdul Hamed; a.k.a. Al-Sabai, Anas) Afghanistan; DOB: 30 Mar 1964; Alt. DOB: 14 May 1964; POB: Tripoli, Libya; Citizen: Libya;
23. Aouadi, Mohamed Ben Belgacem (a.k.a. Aouadi, Mohamed Ben Belkacem); DOB 12/11/1974; POB Tunisia; Address: Via A. Masina n. 7, Milan, Italy;
24. Aweys, Dahir Ubeldullahi, via Cipriano Facchinetti 84, Rome, Italy;
25. Aweys, Hassan Dahir (a.k.a. Ali, Sheikh Hassan Dahir Aweys) (a.k.a. Awes, Shaykh Hassan Dahir); DOB: 1935; Citizen: Somalia;
26. Ayman Al-Zawahari (a.k.a. Ahmed Fuad Salim; a.k.a. Aiman Muhammed Rabi Al-Zawahiri)

Operational and Military Leader of Jihad Group. Thought to be an Egyptian national. Former leader of Egyptian Islamic Jihad, now a close associate of Usama Bin Laden. DOB: 19 Jun 1951; POB: Giza;

27. Ben Heni, Lased; DOB 02/05/1969; POB Libya;

28. Bin Marwan, Bilal; DOB: 1947; Senior lieutenant of Usama Bin Laden;

29. Bin Muhammad, Ayadi Chafiq (a.k.a. Ayadi Shafiq, Ben Muhammad; a.k.a. Ayadi Chafik, Ben Muhammad; a.k.a. Aiady, Ben Muhammad); Helene Meyer Ring 10–1415–80809, Munich, Germany; 129 Park Road, NW8, London, England; 28 Chausse Di Lille, Moscron, Belgium, Darvingasse 1/2/58–60, Vienna, Austria; Tunisia; DOB: 21 January 1963; POB: Safais (Sfax), Tunisia;

30. Bouchoucha, Mokhtar (a.k.a. Bushusha, Mokhtar); DOB 10/13/1969; POB Tunisia; Address: Via Milano n.38, Spinadesco (CR), Italy;

31. Charaabi, Tarek (a.k.a. Sharaabi, Tarek); DOB 03/31/1970; POB Tunisia; Address: Viale Bligny n.42, Milan, Italy;

32. Darkazanli, Mamoun; Uhlenhorster Weg 34, Hamburg, 22085 Germany; DOB: August 4, 1958; POB: Aleppo, Syria;

33. Es Sayed, Abdelkader Mahmoud (a.k.a. Es Sayed, Kader); DOB 12/26/1962; POB Egypt; Address: Via del Fosso di Centocelle n.66, Rome, Italy;

34. Essid, Sami Ben Khemais; DOB 02/10/1968; POB Tunisia; Address: Via Dubini n.3, Gallarate (VA);

35. Fahid Mohammed Ally Msalam (a.k.a. Al-Kini, Usama; a.k.a. Ally, Fahid Mohammed; a.k.a. Msalam, Fahad Ally; a.k.a. Msalam, Fahid Mohammed Ali; a.k.a. Msalam, Mohammed Ally; a.k.a. Musalaam, Fahid Mohammed Ali; a.k.a. Salem, Fahid Muhamad Ali); DOB: 19 Feb 1976; POB: Mombasa, Kenya; Citizen Kenya;

36. Fazul Abdullah Mohammed (a.k.a. Abdall, Fazul; a.k.a. Adballah, Fazul; a.k.a. Aisha, Abu; a.k.a. Al Sudani, Abu Seif; a.k.a. Ali Fadel Abdallah Mohammed; a.k.a. Fazul Abdalla; a.k.a. Fazul Abdallah; a.k.a. Fazul, Abdallah Mohammed; a.k.a. Fazul, Haroon; a.k.a. Fazul, Harun; a.k.a. Haroon; a.k.a. Haroun, Fadhil; a.k.a. Harun; a.k.a. Luqman, Abu; a.k.a. Mohammed, Fazul; a.k.a. Mohammed, Fazul Abdilahi; a.k.a. Mohammed Fouad; a.k.a. Muhamad, Fadil Abdallah); DOB: 25 Aug 1972; Alt. DOB: 25 Dec 1974; Alt. DOB: 25 Feb 1974; POB: Moroni, Comoros Islands; Citizen Comoros; Alt. Citizen Kenya;

37. Hijazi, Riad (a.k.a. Hijazi, Raed M.; a.k.a. Al-Hawen, Abu-Ahmad; a.k.a. Al-Maghribi Rashid (The Moroccan); a.k.a. Al-Amriki, Abu-Ahmad (The American); a.k.a. Al-Shahid, Abu-Ahmad), Jordan; DOB: 1968; POB: California, U.S.A.;

38. Himmat, Ali Ghaleb, via Posero 2, ch-6911 Campione D'Italia, Switzerland; DOB: 16 June 1938; POB: Damascus, Syria; citizenship: Switzerland and Tunisia;

39. Huber, Albert Friedrich Armand (a.k.a. Huber, Ahmed), Mettmenstetten, Switzerland; DOB: 1927;

40. Ibn Al-Shaykh Al-Libi;

41. Jim'ale Ahmed Nur Ali (a.k.a. Jimale, Ahmed Ali) (a.k.a. Jim'ale, Ahmad Nur Ali) (a.k.a. Jumale, Ahmed Nur) (a.k.a. Jumali, Ahmed Ali) P.O. Box 3312, Dubai, UAE; Mogadishu, Somalia;

42. Kabie, Abdullahi Hussein, Bakara Market, Dar Salaam Buildings, Mogadishu, Somalia;

43. Ladehyanoy, Mufti Rashid Ahmad (a.k.a. Ludhianvi, Mufti Rashid Ahmad; a.k.a. Armad, Mufti Rasheed; a.k.a. Wadehyanoy, Mufti Rashid Ahmad); Karachi, Pakistan;

44. Mahmound, Sultan Bashir-Ud-Din (a.k.a. Mahmood, Sultan Bashiruddin; a.k.a. Mehmood, Dr. Bashir Uddin; a.k.a. Mekmud, Sultan Baishiruddin), Street 13, Wazir Akbar Khan, Kabul, Afghanistan (alt. DOB 1937; alt. DOB 1938; alt. DOB 1939; alt. DOB 1940; alt. DOB 1941; alt. DOB 1942; alt. DOB 1943; alt. DOB 1944; alt. DOB 1945; nationality: Pakistani);

45. Majeed, Abdul (a.k.a. Majeed Chaudhry Abdul; a.k.a. Majid, Abdul) DOB: 15 April 1939; DOB: 15 April 1939; alt. DOB 1938; nationality: Pakistani);

46. Makhtab Al-Khidamat/Al Kifah;

47. Mansour, Mohamed, (a.k.a. Al-Mansour, Dr. Mohamed), ob. Heslibachstr. 20, Kusnacht, Switzerland; Zurich, Switzerland; DOB: 1928; POB: Egypt or UAE;

48. Mansour-Fattouh, Zenab, Zurich, Switzerland;

49. Muhammed Atif (a.k.a. Subhi Abu Sitta, Abu Hafs Al Masri, Sheik Taysir Abdullah, Mohamed Atef, Abu Hafs Al Masri El Khabir, Taysir) DOB: 1956; POB: Alexandria, Egypt; Alt. DOB: 1951; Alt. DOB: 1944; Thought to be an Egyptian national. Senior lieutenant to Usama Bin Laden.;

50. Muhammad Salah (a.k.a. Nasr Fahmi Nasr Hasanayn);

51. Muhsin Musa Matwalli Atwah (a.k.a. Abdel Rahman; a.k.a. Abdul Rahman; a.k.a. Al-Muhajir, Abdul Rahman; a.k.a. Al-Namer, Mohammed K.A.), Afghanistan; DOB: 19 Jun 1964; POB: Egypt; Citizen: Egypt;

52. Mustafa Mohamed Fadhil (a.k.a. Al Masri, Abd Al Wakil; a.k.a. Al-Nubi, Abu; a.k.a. Ali, Hassan; a.k.a. Anis, Abu; a.k.a. Elbishy, Moustafa Ali; a.k.a. Fadil, Mustafa Muhamad; a.k.a. Fazul, Mustafa; a.k.a. Hussein, a.k.a. Jihad, Abu; a.k.a. Khalid; a.k.a. Man, Nu; a.k.a. Mohammed, Mustafa; a.k.a. Yussrr, Abu); DOB: 23 Jun 1976; POB: Cairo, Egypt; Citizen: Egypt; Alt. Citizen: Kenya; Kenyan Id. No. 12773667; Serial No. 201735161;

53. Nada, Youssef, (a.k.a. Nada, Youssef M.) (a.k.a. Nada, Youssef Mustafa), via Arogno 32, 6911 Campione d'Italia, Italy; via per Arogno 32, ch-6911 Campione d'Italia, Switzerland; via Riasc 4, ch-6911 Campione d'Italia I, Switzerland; DOB: 17 May 1931 or 17 May 1937; POB: Alexandria, Egypt; Citizen: Tunisia;

54. Nasreddin, Ahmed Idris (a.k.a. Nasreddin, Ahmad I.; a.k.a. Nasreddin, Hadji Ahmed; a.k.a. Nasreddine, Ahmed Idriss); Corso Sempione 69, 20149 Milan, Italy; 1 via della Scuole, 6900 Lugano, Switzerland; Piazzale Biancamano, Milan, Italy; Rue De Cap Spartel, Tangiers, Morocco; DOB: 22 November 1929; POB: Adi Ugri, Ethiopia;

55. Sayf-Al Adl (a.k.a. Saif Al-'Adil) DOB: 1963; POB: Egypt. Thought to be an Egyptian national. Responsible for Usama Bin Laden's security.;

56. Shaykh Sai'id (a.k.a. Mustafa Muhammad Ahmad); POB: Egypt;

57. Sheikh Ahmed Salim Swedan (a.k.a. Ahmed The Tall; a.k.a. Ally, Ahmed; a.k.a. Bahamad; a.k.a. Bahamad, Sheik; a.k.a. Bahamadi, Sheikh; a.k.a. Suweidan, Sheikh Ahmad Salem; a.k.a. Swedan, Sheikh; a.k.a. Swedan, Sheikh Ahmed Salem); DOB: 9 Apr 1969; Alt. DOB: 9 Apr 1960; POB: Mombasa, Kenya; Citizen: Kenya;

58. Tariq Anwar Al-Sayyid Ahmad (a.k.a. Hamdi Ahmad Farag, Amr Al-Fatih Fathi); DOB: 15 March 63; POB: Alexandria, Egypt;

59. Thirwat Salah Shihata (a.k.a. Tarwat Salah Abdallah, Salah Shihata Thirwat, Shahata Thirwat); DOB: 29 Jun 60; POB: Egypt;

60. Tufail, Mohammed (a.k.a. Tufail, S.M.; a.k.a. Tuffail, Sheik Mohammed) (nationality: Pakistani);

61. Usama Bin Laden (a.k.a. Usama Bin Muhammed Bin Awad, Osama Bid Laden; a.k.a. Abu Abdallah Abd Al-Hakim); DOB: 30 Jul 57; POB: Jeddah, Saudi Arabia; Alt. DOB: 28 Jul 57; Alt. POB: Yemen; Saudi citizenship withdrawn, now officially and Afghan national;

62. Uthman, Omar Mahmoud (a.k.a. Al-Silistini, Abu Qatada; a.k.a. Takfiri, Abu Umr; a.k.a. Abu Umar, Abu Omar; a.k.a. Uthman, Al-Samman; a.k.a. Umar, Abu Umar; a.k.a. Uthman, Umar; a.k.a. Abu Ismail) London, England; DOB: 30 December 1960 or 13 December 1960;

63. Yuldashev, Tohir (a.k.a. Yuldashev, Takhir), Uzbekistan;

64. Zia, Mohammad (a.k.a. Zia, Ahmad); C/O Ahmed Shah; C/O Painda Mohammad Al-Karim Set, Peshawar, Pakistan; C/O Alam General Store Shop 17, Awami Market, Peshawar, Pakistan; C/O Zahir Sha S/;

*Entities*

1. Abu Sayyaf Group (a.k.a. Al Harakat Al Islamiyya);
2. Afghan Support Committee (ASC) a.k.a. Lajnat ul Masa Eidatul Afghania, Jamiat Ayat-ur-Rhas al Islamia, Jamiat Ihya ul Turafh al Islamia, and Ahya ul Turas, Office Locations; Headquarters-G.T. Road (probably Grand Trunk Road), near Pushtoon Garhi Pabbi, Peshwar, Pakistan; Cheprahar Hadda, Mia Omar Sabaqah School, Jalabad, Afghanistan;
3. The Aid Organization Of The Ulema (a.k.a. Al Rashid Trust; Al Rasheed Trust; Al-Rasheed Trust; Al-Rashid Trust); Pakistan; Addresses: Kitab Ghar, Darul Ifta Wal Irshad, Nazimabad No. 4, Karachi, Pakistan, Phone 6683301, Phone 0300–8209199, Fax 6623814; 302b–40, Good Earth Court, Opposite Pia Planitarium, Block 13a, Gulshan-I Iqbal, Karachi, Phone 4979263; 617 Clifton Center, Block 5, 6th Floor, Clifton, Karachi, Phone 587–2545; 605 Landmark Plaza, 11 Chundrigar Road, Opposite Jang Building, Karachi, Pakistan, Phone 2623818–19; Jamia Masjid, Sulaiman Park, Begum Pura, Lahore, Pakistan, Phone 042–6812081;
4. Al Baraka Exchange L.L.C., P.O. Box 3313 Deira Dubai, UAE; P.O. Box 20066, Dubai, UAE;
5. Al-Barakaat, Mogadishu, Somalia; Dubai, UAE;
6. Al-Barakaat Bank, Mogadishu, Somalia;
7. Al-Barakat Bank of Somalia (Bss) (a.k.a. Barakat Bank of Somalia), Mogadishu, Somalia; Bossaso, Somalia;
8. Al-Barakat Finance Group, Dubai, UAE; Mogadishu, Somalia;
9. Al-Barakat Financial Holding Co., Dubai, UAE; Mogadishu, Somalia;
10. Al-Barakat Global Telecommunications (a.k.a. Barakaat Globetelcompany), P.O. Box 3313, Dubai, UAE; Mogadishu, Somalia; Hargeysa, Somalia;
11. Al-Barakat Group of Companies Somalia Limited (a.k.a. Al-Barakat Financial Company), P.O. Box 3313, Dubai, UAE; Mogadishu, Somalia;
12. Al-Barakat International (a.k.a. Baraco Co.), Box 2923, Dubai, UAE;
13. Al-Barakat Investments, P.O. Box 3313, Deira, Dubai, UAE;
14. Al-Barakat Wiring Service, 2940 Pillsbury Avenue, Suite 4, Minneapolis, Minnesota 55408;
15. Al-Hamati Sweets Bakeries, Al-Mukallah, Hadhramawt, Governorate, Yemen;
16. Al-Haramain Islamic Foundation—Bosnia and Herzegovina;
17. Al-Haramain Islamic Foundation—Somalia;
18. Al-Itihadd Al-Islamiya/AIAI;
19. Al-Jihad/Egyptian Islamic Movement (a.k.a. Egyptian Al-Jihad, Egyptian Islamic Jihad, Jihad Group, New Jihad);
20. Al-Nur Honey Press Shops (a.k.a. Al-Nur Honey Center), Sanaa, Yemen;
21. Al Taqwa Trade, Property and Industry Company Limited, (f.k.a. Al Taqwa Trade, Property and Industry) (f.k.a. Al Taqwa Trade, Property and Industry Establishment) (f.k.a. Himmat Establishment), C/O Asat Trust Reg., Altenbach 8, 9490 Vaduz Fl, Liechtenstein;
22. Al Qa'ida/Islamic Army (a.k.a. ''The Base,'' Al Qaeda, Islamic Salvation Foundation, the Group for the Preservation of the Holy Sites, The Islamic Army for the Liberation of Holy Places, The World Islamic Front for the Jihad Against Jews and Crusaders, Usama Bin Laden Network, Usama Bin Laden Organization);
23. Al Rashid Trust (a.k.a. Al-Rasheed Trust); Kitas Ghar, Nazimabad 4, Dahgel-Iftah, Karachi, Pakistan; Jamia Maajid, Sulalman Park, Melgium Pura, Lahore, Pakistan; Office Dha'rbi-M'unin, Opposite Khyber Bank, Abbottabad Road, Mansehra, Pakistan; Office Dha'rbi-M'unin ZR Brothers, Katcherry Road, Chowk Yadgaar, Peshawar, Pakistan; Office Dha'rbi-M'unin, Rm No. 3, Moti Plaza, Near Liaquat Bagh, Muree Road, Rawalpindi, Pakistan; Office Dha'rbi-M'unin, Top Floor, Dr. Dawa Khan Dental Clinic Surgeon, Main Baxac, Mingora, Swat, Pakistan; Operations in Afghanistan: Heart Jalalabad, Kabul, Kandahar, Mazar Sherif. Also operations in Kosovo, Chechnya.;
24. Al-Shifa, Honey Press for Industry and Commerce, P.O. Box 8089, Al-Hasabah, Sanaa, Yemen; By the Shrine Next to the Gas Station, Jamal Street, Ta'iz, Yemen; Al-Arudh Square, Khur Maksar, Aden, Yemen; Al-Nasr Street, Doha, Qatar;
25. Armed Islamic Group (a.k.a. Al Jamm'ah Al-Islamiah Al-Islamiah Al-Musallah, GIA, Groupement Islamique Arme);
26. Asat Trust Reg., Altenbach 8, 9490 Vaduz Fl, Liechtenstein;
27. Asbat Al-Ansar;
28. Bank Al Taqwa Limited (a.k.a. Al Taqwa Bank) (a.k.a. Bank Al Taqwa), P.O. Box N–4877, Nassau, Bahamas; C/O Arthur D. Hanna & Company, 10 Deveaux Street, Nassau, Bahamas;
29. Barakaat Construction Company, P.O. Box 3313, Dubai, UAE;
30. Barakaat Group of Companies, P.O. Box 3313, Dubai, UAE; Mogadishu, Somalia;
31. Barakaat International, Hallbybacken 15, 70 Spanga, Sweden;
32. Barakaat International Foundation, Box 4036, Spanga Stockholm, Sweden; Rinkebytorget 1, 04 Spanga, Sweden;
33. Barakaat North America, Inc., 925 Washington Street, Dorchester, Massachusetts; 2019 Bank Street, Ottawa, Ontario, Canada;
34. Barakaat Red Sea Telecommunications, Bossaso, Somalia; Nakhiil, Somalia; Huruuse, Somalia; Raxmo, Somalia; Ticis, Somalia; Kowthar, Somalia; Noobir, Somalia; Bubaarag, Somalia; Gufure, Somalia; Xuuxuule, Somalia; Ala Aamin, Somalia; Guureeye, Somalia; Najax, Somalia; Carafaat, Somalia;
35. Barakaat Telecommunications Co. Somalia, Ltd., P.O. Box 3313, Dubai, UAE;
36. Barakat Banks and Remittances, Mogadishu, Somalia; Dubai, UAE;
37. Barakaat Boston, 266 Neponset Avenue, Apt. 43, Dorchester, Massachusetts 02122–3224;
38. Barakat Computer Consulting (BCC), Mogadishu, Somalia;
39. Barakat Consulting Group (BCG), Mogadishu, Somalia;
40. Barakat Global Telephone Company, Mogadishu, Somalia; Dubai, UAE;
41. Barakat International Companies (BICO), Mogadishu, Somalia; Dubai, UAE;
42. Barakaat International, Inc. 1929 South 5th Street, Suite 205, Minneapolis, Minnesota;
43. Barakat Post Express (BPE), Mogadishu, Somalia;
44. Barakat Refreshment Company, Mogadishu, Somalia; Dubai, UAE;
45. Barakat Telecommunications Company Limited (a.k.a. Btelco), Bakara Market, Dar Salaam Buildings, Mogadishu, Somalia; Kievitlaan 16, T'veld, Noord-Hollan, The Netherlands;
46. Barakaat Wire Transfer Company, 4419 South Brandon Street, Seattle, Washington;
47. Barako Trading Company, LLC, P.O. Box 3313, Dubai, UAE;
48. Baraka Trading Company, P.O. Box 3313, Dubai, UAE;
49. Harakat Ul-Mujahidin/HUM (a.k.a. Al-Faran, Al-Hadid, Al-Hadith, Harakat Ul-Ansar, HUA, Harakat Ul-Mujahideen);
50. Heyatul Ulya, Mogadishu, Somalia;
51. Islamic Army of Aden;
52. Islamic Movement of Uzbekistan (a.k.a. IMU);
53. Jaish-I-Mohammed (a.k.a. Army of Mohammed), Pakistan;

54. Jam'yah Ta'awun Al-Islamia (a.k.a. Society of Islamic Cooperation) (a.k.a. Jam'iyat Al Ta'awun Al Islamiyya) (a.k.a. Jit), Qandahar City, Afghanistan;

55. Libyan Islamic Fighting Group;

56. Mamoun Darkazanll Import-Export Company (a.k.a. Darkazanli Company, Darkazanli Export-Import Sonderposten), Uhlenhorsterweg 3411 Hamburg, Germany;

57. Nada Management Organization Sa (f.k.a. Al Taqwa Management Organization Sa), Viale Stefano Franscini 22, Ch–6900 Lugano Ti, Switzerland;

58. Parks Trading Company, PO Box 3313, Deira, Dubai, UAE;

59. Rabita Trust, Room 9a, 2nd Floor, Wahdat Road, Education Town, Lahore, Pakistan; Wares Colony, Lahore, Pakistan;

60. Red Sea Barakat Company Limited, Mogadishu, Somalia; Dubai; UAE;

61. Revival of Islamic Heritage Society (RIHS), a.k.a. Jamiat Ihia Al-Turath Al-Islamiya, Revival of Islamic Society Heritage on the African Continent, Jamia Ihya ul Turath, Office Locations: Pakistan and Afghanistan;

62. Salafist Group for Call and Combat/GSPC (a.k.a. Le Groupe Salafiste Pour La Prediction et le Combat);

63. Somali Internet Company, Mogadishu, Somalia;

64. Somali International Relief Organization, 1806 Riverside Avenue, 2nd Floor, Minneapolis, Minnesota;

65. Somali Network Ab, Hallybybacken 15, 70 Spanga, Sweden;

66. Unmah Tameer E-Nau (Utn), Street 13, Wazir Akbar Khan, Kabul, Afghanistan; Pakistan;

67. Wafa Humanitarian Organization (a.k.a. Al Wafa, Al Wafa Organization, Wafa Al-Igatha Al-Islamia), Jordan House No. 125, Street 54, Phase II Hayatabad, Peshawar, Pakistan, Offices in: Saudi Arabia, Kuwait, and UAE;

68. Youssef M. Nada, Via Riasc 4, Ch–6911 Campionie D'Italia I, Switzerland;

69. Youssef M. Nada & Co. Gescellschaft M.B.H., Kaertner Ring 2/2/5/22, 1010 Vienna, Austria.

Dated: October 8, 2002.

**John R. Bolton,**

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

[FR Doc. 02–27152 Filed 10–23–02; 8:45 am]

BILLING CODE 4710–25–P

## DEPARTMENT OF STATE

**[Public Notice 4175]**

## Public Meeting With Interested Parties for the Department of State and Other Agencies To Receive Views on Proposals To Modify and Expand the Role of the International Mobile Satellite Organization (IMSO)

**AGENCY:** Department of State, Bureau of Economic and Business Affairs, Office of the Coordinator for International Communications and Information Policy.

**ACTION:** Notice of meeting and request for comments.

**DATE, TIME AND PLACE:** Tuesday, November 19, 2002, 9:30 am–12 pm, Department of State, 2201 C Street NW., Washington, DC.

**SUMMARY:** The International Mobile Satellite Organization (IMSO) Assembly of Parties (member governments) has created an Intersessional Working Group (IWG) to undertake a detailed study of a possible extension or expansion of IMSO's mandate. The issue to be addressed at this meeting is the role of IMSO in respect of the Global Maritime Distress and Safety System (GMDSS), aeronautical safety services, and service to rural and remote areas of developing countries, including the principle and the legal methodology of a possible extension or expansion of IMSO's mandate. The Department of State wishes to receive the views of the public on the issues that will be addressed by the IWG, the first meeting of which is scheduled for January 20–24, 2003.

The two principal issues that have given rise to the creation of the IWG are: (1) Questions concerning the criteria for and potential consequences of the recognition by the International Maritime Organization (IMO) of additional service providers for the satellite component of the GMDSS and any possible role for IMSO with respect to such additional providers (currently, only Inmarsat Ltd. Of London is recognized as a satellite service provider of GMDSS); and (2) formal proposals of the Party of Denmark to amend the IMSO Convention to give the IMSO an expanded mandate with respect to GMDSS, aeronautical safety services, and mobile communications in rural and remote areas.

Currently, the IMSO oversees only Inmarsat, particularly with regard to Inmarsat's provision of GMDSS services. The IMO, which has responsibility for establishing maritime safety standards, has thus far only recognized Inmarsat as a provider of the satellite component of the GMDSS. However, questions have arisen out of the possibility that the IMO may recognize additional satellite telecommunication companies as GMDSS providers in the near future, and what the role, if any, the IMSO should have in such a case.

The proposal of the Party of Denmark would expand the purpose of the IMSO ''to ensure that one or more of the public interests set forth * * * are met by each * * * entity or entities through which a mobile satellite communications system is operated.'' The ''public interests'' are: ''(1) Ensuring the provision of global maritime satellite communications services for the GMDSS; (2) ensuring the provision of global aeronautical mobile satellite safety communications services; and (3) seeking to serve all areas where there is a need for mobile satellite communications, giving due consideration to the rural and remote areas of developing countries.''

The Department of State will prepare comments and proposals on the above issues to be submitted to the IWG participants before December 20, 2002. The purpose of this meeting is to solicit input and suggestions from interested parties for use in formulating the U.S. response that will be discussed at the January 2003 IWG meeting. The Terms of Reference for the IWG, the amendment proposal of the Party of Denmark, and certain other documents can be found on the Internet Web page of the Office of the Coordinator for International Communications and Information Policy: *http://www.state.gov/e/eb/cip/.*

Please confirm attendance at the meeting using the contact information below. The meeting will be held in an informal roundtable fashion. However, up to 15 minutes will be allocated to anyone who wishes to make a formal presentation. Copies of written comments and proposals to be discussed at the meeting should be provided electronically seven days in advance and will be posted on the Web page. Additional written comments (provided electronically) will be accepted by the Department of State until December 4, 2002 and will be posted on the Web page.

**MAILING ADDRESS:** Send comments to Brian Hunt, Office of the Coordinator—International Communications and Information Policy, Mail Code EB/CIP, U.S. Department of State, 2201 C Street NW., Washington DC 20520–5820. Paper submissions must include a copy on diskette in Word or ASCII format.

Electronic copies may be sent via e-mail to *huntbj@state.gov.*

**TO CONFIRM ATTENDANCE OR FOR ADDITIONAL INFORMATION:** For additional information, contact Brian Hunt—voice: 202–647–5832, fax: 202–647–5957, e-mail: *huntbj@state.gov.*

Dated: October 18, 2002.

**Steven W. Lett,**

*Deputy U.S. Coordinator, International Communications and Information Policy, Department of State.*

[FR Doc. 02–27153 Filed 10–23–02; 8:45 am]

**BILLING CODE 4710–07–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Utah, Wasatch, Carbon, and Emery Counties, UT

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway improvement project in Utah, Wasatch, Carbon, and Emery Counties, Utah.

**FOR FURTHER INFORMATION CONTACT:** Sandra Garcia, Transportation and Environmental Engineer, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, UT 84118, Telephone: (801) 963–0182.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Utah Department of Transportation, will prepare an EIS on a proposal to improve US Highway 6 (US 6) in Utah, Wasatch, Carbon, and Emery Counties, Utah. The proposed improvements would involve reconstruction of the existing US 6 between Interstate-15 (I–15) at Spanish Fork and I–70 at Green River, a distance of about 206 kilometers (128 miles).

Improvements to the corridor are considered necessary to maximize safety by designing the highway to meet current standards and to provide for existing and future travel demand. Also, included in the proposal is the relocation of the port of entry in Helper, Utah. Alternatives under consideration include (1) taking no-action (no-build); (2) using alternate travel modes; (3) widening the existing two-lane highway to four lanes; and (4) adding passing and climbing lanes. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment to improve overall safety.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held in Green River, Price, and Spanish Fork in November 2002. In addition, a public hearing will be held after the draft EIS has been prepared. The draft EIS will be available for public and agency review and comment before the public hearing.

To ensure that a full range of issues related to the proposed action is addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalogue of Federal and Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: October 16, 2002.

**William R. Gedris,**

*Structural/Environmental Engineer, Salt Lake City, Utah.*

[FR Doc. 02–27081 Filed 10–23–02; 8:45 am]

**BILLING CODE 4910–22–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Preparation of Alternatives Analysis and Environmental Impact Statement for Commuter Corridor Between the Cities of Deland and Kissimmee, FL

**AGENCY:** Federal Transit Administration (FTA), Department of Transportation (DOT).

**ACTION:** Notice of intent to prepare an Environmental Impact Statement (EIS).

**SUMMARY:** The Federal Transit Administration (FTA); the Central Florida Regional Transportation Authority (locally known as LYNX); METROPLAN ORLANDO, the Metropolitan Planning Organization (MPO) for the Orlando and Kissimmee, Florida urbanized areas; the Volusia County Metropolitan Planning Organization (Volusia County MPO); and the Florida Department of Transportation (FDOT) intend to conduct scoping meetings and prepare an Alternatives Analysis leading to an Environmental Impact Statement (EIS) to evaluate commuter transportation improvements in the CSX Transportation (CSXT) freight rail corridor between the cities of Deland and Kissimmee, Florida in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended.

This Notice of Intent is being published at this time to notify interested parties and to invite participation in the study. The study area will generally follow the existing CSXT Corridor from Deland, Florida to Kissimmee, Florida through the City of Orlando. The corridor analysis is necessary to explore alternative modes of north-south travel to Interstate 4 (I–4), currently under reconstruction and limited by capacity constraints.

The following alternatives will be evaluated in the study: (1) A baseline alternative based on existing LYNX operations, the most recent LYNX Transportation Development Plan for the corridor including but not limited to transit preferential treatments and/or Bus Rapid Transit (BRT) and other relevant studies. (2) Commuter Rail with Light Rail Transit (LRT), and without LRT, consistent with the METROPLAN ORLANDO 2020 Cost Feasible Long Range Plan associated bus feeder and public transit circulator service and the joint operations of CSXT. [**Note:** The alternative without LRT is to provide information to local decision makers as a part of the Long Range Plan update process and is not intended to be an alternative for consideration unless local decision makers modify the 2020 Cost Feasible Plan.] (3) A No Action Alternative with LRT.

**DATES:** *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered should be sent to Ms. LaChant Barnett, Project Manager, LYNX, 445 West Amelia Street, Suite 800, Orlando, Florida, 32801 by December 19, 2002. *Scoping Meetings:* Scoping for the study will be developed during review of previous studies and consultation with affected agencies and interested persons through correspondence and at public meetings.

**ADDRESSES:** A series of four public scoping meetings will be held in the corridor to explain the purpose of the study, describe the process that will be followed, define the limits of the study area, to answer any questions that may exist and to receive comments, thoughts and/or opinions relevant to the study. Dates, times and locations of the scoping meetings are as follows:

Tuesday, October 29, 2002, 11:30 am–1:30 p.m., Orlando Public Library—Albertson Conference Room—3rd Floor, 101 East Central Boulevard, Orlando, Florida 32801.

Wednesday, October 30, 2002, 5:30 p.m.–7:30 p.m., Kissimmee Courthouse, Board of County Commissioners Boardroom, 1 Courthouse Square, Suite 4700, Kissimmee, Florida 34741.

Wednesday, November 6, 2002, 5:30 p.m.–7:30 p.m., Eastmonte Civic Center, 830 Magnolia Drive, Altamonte Springs, FL 32701.

Thursday, November 7, 2002, 5:30 p.m.–7:30 p.m., DeBary Public Library, 200 North Charles R. Beall Blvd., DeBary, Florida 32713.

An Interagency Scoping Meeting has been scheduled for:

Tuesday, November 12, 2002, 9 a.m.–11 a.m., Lynx (Educational Leadership Center Building), 3rd Floor Board Media Room, 445 W. Amelia St., Suite 800, Orlando, FL 32801.

All meeting locations are accessible to persons with disabilities. In accordance with the Americans with Disabilities Act of 1990, persons needing a special accommodation at these meetings because of a disability or physical impairment should contact Mr. Ron Jones at LYNX, (407) 841–2279, at least 48 hours before the meeting. If hearing impaired, contact LYNX at (407) 423–0787 (TDD).

**FOR FURTHER INFORMATION CONTACT:** LaChant Barnett, Project Manager, LYNX, 445 West Amelia Street, Suite 800, Orlando, Florida, 32801. You may also contact Derek R. Scott, Community Planner, FTA, 61 Forsyth Street, SW, Suite 17T50, Atlanta, GA 30303, (404) 562–3500.

**SUPPLEMENTARY INFORMATION:**

**1. Notice of Intent**

This Notice of Intent to prepare an Alternatives Analysis leading to an Environmental Impact Statement is being published at this time to advise interested parties of the study and to invite their comments. FTA regulations and guidance in accordance with NEPA will be used in the analysis and preparation of the Central Florida North/South Commuter Corridor Study.

**2. Scoping**

The FTA, LYNX, METROPLAN ORLANDO, Volusia County MPO and FDOT invite comments both at the public meetings listed above and in writing for a period of 45 days following the last public meeting. Comments should focus on identifying specific social, economic or environmental impacts to be evaluated. Comments should focus on the scope of the alternatives and impacts to be considered.

Persons wishing to be placed on a mailing list to receive further information as the study progresses, Contact Ms. LaChant Barnett at LYNX, 445 West Amelia Street, Suite 800, Orlando, Florida 32801.

**3. Study Area and Project Need**

The study area is an approximately 55-mile corridor extending from the City of Deland in Volusia County to the City of Kissimmee in Osceola County passing through Seminole and Orange Counties including the City of Orlando. A potential fixed guideway transit project would operate in the existing CSXT railroad corridor, as an alternative north-south travel mode to Interstate 4.

**4. Alternatives**

The alternatives proposed for evaluation include:

(1) A Baseline Alternative based on existing LYNX operations, the most recent LYNX Transportation Development Plan for the corridor including but not limited to transit preferential treatments and/or Bus Rapid Transit (BRT), and other relevant studies. This alternative or a variation exhibiting ''the best that can be done'' will serve as a proposal to FTA for a New Starts Baseline.

(2) A Commuter Rail Alternative with Light Rail Transit (LRT), consistent with the METROPLAN ORLANDO 2020 Cost Feasible Plan; and, without LRT for informational purposes. This alternative will address the potential commuter rail service as well as other associated bus feeder and public transit circulator services. The alternative will also address the joint operations of CSXT mainline freight and passenger services and local freight services that operate in the existing CSXT corridor. The physical features of the alternative will also be defined.

(3) A No Action Alternative without LRT for the opening year 2005 and with LRT for the target years 2015 and 2025, based on the existing LYNX transit system plus improvements envisioned for two planning horizons as indicated in the Volusia County MPO and METROPLAN ORLANDO 2020 Cost Feasible Plans and proposed changes for 2025 plans. The No Action Alternative is to specifically include the 20 miles of LRT from just north of SR 436, south to SR 528 and any bus service improvements during the appropriate target years. Impacts to the regional transportation system resulting from the No Action Alternative will be identified.

**5. Probable Effects**

Should the study proceed from the Alternatives Analysis to an Environmental Impact Statement, preliminary steps will be taken to allow the FTA, LYNX, METROPLAN ORLANDO, Volusia County MPO and FDOT to evaluate the project's potential for significant adverse impacts during construction and operation and to identify feasible mitigation measures for those impacts. The specific analyses that would take place at that point are land use, neighborhood character, social conditions, economic conditions and displacement, visual and aesthetic considerations, historic resources, archaeological resources, transit (ridership, operations and maintenance), traffic, parking. Air quality, noise and vibration, energy, hazardous materials, water quality, natural resources (vegetation and wildlife), construction and construction impacts, cumulative impacts and environmental justice (disproportionate adverse impacts on minority and low-income populations).

This study is being completed concurrent with an SDEIS for the north-south LRT project. This project will utilize information from the SDEIS, as appropriate. Information on the LRT SDEIS may be obtained from Jennifer Stults, LYNX Project Manager, 445 West Amelia Street, Suite 800, Orlando, FL 32801, (407) 841–2279, *jstults@golynx.com.*

Issued on: October 18, 2002.

**Jerry Franklin,**

*FTA Regional Administrator.*

[FR Doc. 02–27095 Filed 10–23–02; 8:45 am]

BILLING CODE 4910–57–P

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. AB–167 (Sub–No. 1095X)]**

### Consolidated Rail Corporation—Abandonment Exemption—Lancaster and Chester Counties, PA

**AGENCY:** Surface Transportation Board, Transportation.

**ACTION:** Notice of reinitiation of the National Historic Preservation Act section 106 process and request for comments.

**SUMMARY:** This notice to the parties discusses the background of the abandonment exemption proceeding, describes the Surface Transportation Board's reinitiation of the National Historic Preservation Act section 106 process, and requests comments on several specific issues.

**DATES:** Comments are due by December 9, 2002.

**ADDRESS:** If you wish to file comments regarding this Notice, you should send an original and two copies to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Troy Brady. Please refer to Docket No. *AB–167 (Sub-No. 1095X)* in all correspondence addressed to the Board.

**FOR FURTHER INFORMATION CONTACT:** Troy Brady, the environmental contact for this case, by phone at (202) 565–1643 or by fax at (202) 565–9000. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** In *Friends of the Atglen-Susquehanna Trail, Inc.* v. *Surface Transportation Bd.,* 252 F.3d 246 (3rd Cir. 2001) (*FAST*), the United States Court of Appeals for the Third Circuit vacated and remanded to the Surface Transportation Board (Board) a case involving the agency's historic review of a proposal to abandon 66.5 miles of track called the Enola Branch in Lancaster and Chester Counties, PA. The Board's decision to allow abandonment of rail service on the Enola Branch is unaffected by the court's remand. However, the court ruled that the Board failed to comply fully with the procedural requirements of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA), when in 1997 and 1999 the Board denied the requests of the Friends of the Atglen-Susquehanna Trail, Inc. (FAST) to reopen and broaden the historic preservation condition imposed by the Board's predecessor, the Interstate Commerce Commission (ICC),[1] in a 1990 decision permitting Consolidated Rail Corporation (Conrail) to fully abandon the Enola Branch except for the bridges.

The Board's Section of Environmental Analysis (SEA) has reinitiated the section 106 historic review process pursuant to the court's remand. Since the court's decision, SEA has been working to bring the diverse parties with different interests together so that the Board can move the historic review process to completion in accordance with the law and the court's decision, as described further below.

SEA consulted with the Advisory Council on Historic Preservation (ACHP) and the Pennsylvania State Historic Preservation Officer (SHPO) while preparing this Notice to the Parties (Notice), and provided them with the opportunity to review and comment on the Notice prior to issuance. The Notice incorporates the comments of ACHP and SHPO received to date. The intent of this Notice is threefold: (1) To bring all consulting parties up to date on the background of the case; (2) to describe the Board's reinitiation of the NHPA process and proposed next steps; and (3) to solicit comments on the five issues delineated at the end of this Notice.

## I. Background

### *A. The NHPA*

Before authorizing a rail line abandonment, the Board must comply with section 106 of the NHPA, which requires Federal agencies to consider the effects of their decisions on historic properties. ACHP has issued regulations implementing the NHPA. *See* 36 CFR part 800. These regulations were revised in December 2000, and SEA is following the current ACHP regulations in the reinitiation of the NHPA process for this case.

The requirements of the NHPA are procedural in nature and do not require a particular result. *See FAST,* 252 F.3d at 263. NHPA establishes a three-step process under which the agency must consult with the appropriate SHPO and other consulting parties to determine: (1) Which, if any, historic resources could be affected by the agency's action (Identification Phase); (2) whether those properties would be adversely affected by the agency's action (Assessment Phase); and, if so, (3) what conditions, if any, should be imposed to avoid, minimize or mitigate those adverse effects (Mitigation Phase). *See* 36 CFR 800.1(a).

During the Identification Phase, the agency must determine which properties that could be affected by the project are listed on or eligible for listing on the National Register of Historic Places (National Register). If the agency and the SHPO do not agree on this threshold eligibility question, or at ACHP's request, the agency must obtain an eligibility determination from an official in the Department of the Interior known as the Keeper of the National Register (Keeper).

During the Assessment Phase, the agency must determine whether the properties identified as historic will be adversely affected by the proposed abandonment. The general practice of the Board has been to assume that the abandonment of a rail line will negatively impact any properties involved that are identified as historic.

Finally, during the Mitigation Phase, the agency must develop appropriate mitigation measures to avoid, minimize or mitigate adverse effects on the historic properties so identified. Those measures must be crafted in consultation with the SHPO, ACHP, the railroad, and other consulting parties, with input from the public. The agency's mitigation plan is then formulated into a proposed Memorandum of Agreement (MOA), which, if agreed upon, is signed by the consulting parties. If no agreement on mitigation is reached, the consultation may be terminated, and the agency must request and take into account ACHP's formal comments prior to issuing a final decision.

### *B. This Case*

The Enola Branch extends across Lancaster County, PA, from approximately milepost 27 (1 mile east of Safe Harbor, at the confluence of Conestoga Creek with the Susquehanna River) easterly to the Chester County, PA, line at milepost 4.03. A short portion of the Enola Branch (between mileposts 4.03 and 0.0) lies in Chester County. The Enola Branch passes though the Townships of West Sadsbury, Sadsbury, Bart, Eden, Providence, Martic and Conestoga, and the Borough of Quarryville.

In 1989 Conrail sought authority from the ICC to abandon the Enola Branch pursuant to 49 U.S.C. 10903 and ICC regulations codified at 49 CFR 1152.50. The ICC issued a decision in 1990 allowing the abandonment subject to a condition, developed as a result of consultation with the SHPO, that Conrail retain its interest in, and take no steps to alter the historic integrity of, 83 bridges—the only properties on the line that had been identified as historic—until completion of the historic review process. The purpose of the condition was to allow the ICC to work with consulting parties to develop a plan to avoid, minimize, or mitigate any adverse effects of the abandonment on the bridges. The development of a mitigation plan was held in abeyance, however, pending negotiations to transfer the line for interim trail use/rail banking under 16 U.S.C. 1247(d) or other public use under former 49 U.S.C. 10906 (now 49 U.S.C. 10905). When those negotiations proved unsuccessful, the NHPA process was resumed.

Following extensive negotiations and consultations with Conrail and the Pennsylvania SHPO, SEA developed proposed historic preservation mitigation measures for the bridges. At the suggestion of the SHPO, Conrail would be required to document (to the level of Pennsylvania state standards) certain bridges prior to their removal,

[1] The ICC Termination Act of 1995, Pub. L. 104–88, abolished the ICC and transferred certain rail functions, including the rail line abandonment functions at issue in this case, to the Board, effective January 1, 1996.

and to fund and furnish materials for a display relating to the Enola Branch in a transportation museum administered by the SHPO.

While this process was moving forward, FAST filed a petition with the Board to reopen the proceeding and broaden the NHPA condition so that it would apply to the entire line, rather than only the bridges on the line. The Board denied FAST's request in a decision issued in 1997. In that decision, the Board also narrowed the properties determined to be historic to 32 of the 83 bridges, in light of subsequent statements by the SHPO, and clarified that its condition embraced certain archeological sites.

FAST sought Board reconsideration of the 1997 decision. FAST also sought the involvement of ACHP. In a March 1998 letter, ACHP advised the Board of ACHP's determination that the Board had not fully complied with NHPA requirements for the first two stages of the historic review process for the Enola Branch. In the meantime, SEA, which believed that only the Mitigation Phase of the NHPA process for the bridges remained open, had consulted with the SHPO and Conrail on appropriate mitigation for the identified bridges. SEA drafted a proposed MOA reflecting that consultation,[2] which was sent to the SHPO, ACHP and Conrail for their signatures later in 1998.

The SHPO declined to sign the MOA until the Board consulted with ACHP. ACHP, in turn, explained that it believed that its consideration of the draft MOA was untimely, as the draft MOA could be properly considered only after the issue of whether the entire line should be subject to an historic review was resolved. ACHP then formally referred the eligibility matter to the Keeper, who concluded that the entire Enola Branch was eligible for inclusion in the National Register.[3] Nevertheless, in 1999 the Board denied FAST's petition for reconsideration of the 1997 decision. The Board set out its view that the Identification Phase of the NHPA process had been completed in 1990 for the non-bridge parts of the line and that only the Mitigation Phase remained open and only as to the bridges. Given the impasse with ACHP, which had declined to comment on bridge mitigation, the Board decided to terminate its consultation with ACHP and to impose a section 106 condition consisting of the provisions of the unexecuted MOA as its bridge mitigation measures. FAST then sought judicial review.

*C. The Court's FAST Decision*

The court's concern that resulted in the remand was ''less with the substantive results reached by the [Board] on the historic eligibility of the Enola Branch than with the procedures and reasoning the [Board] followed in reaching those results.'' The NHPA is a ''stop, look, and listen'' provision, and the court concluded that the Board had not ''touched all the procedural bases.'' *FAST,* 252 F.3d at 263.

With respect to the Board's actions in the Identification Phase, the court found that the identification process under the ACHP regulations is a ''fluid and ongoing one'' in which changing perceptions of historical significance are considered. *Id.* Therefore, the court determined that, once ACHP brought the Keeper into the process, the Keeper's conclusions had to be considered. *Id.* at 264. The court was not persuaded that the Board had given the Keeper's determinations sufficient consideration. *Id.* The court also faulted the Board for not adequately involving ACHP in the process or considering evidence submitted by other parties (specifically Lancaster County) regarding the historic significance of the Enola Branch. *Id.* at 265–66. Finally, the court found that the Board had not followed the proper procedures for terminating consultation with ACHP, *id.* at 266–67, and directed that, on remand, the Board follow the procedures of the NHPA regulations in concluding the case, *Id.* at 267.

## II. Reinitiation of the NHPA Section 106 Process

In accordance with the court's remand, SEA is conducting the NHPA process anew in this case. Below, SEA sets forth the steps it has taken to date and outlines its plans to complete this proceeding.

*A. Identification of Potential Consulting Parties*

SEA has undertaken consultations with ACHP, the SHPO, and other consulting parties, including the Commonwealth of Pennsylvania and the Lancaster County Planning Commission, to obtain information both on how to conclude the NHPA process here and on potential consulting parties. In addition to ACHP and the SHPO, SEA has identified 54 potential consulting parties.[4] SEA is serving a copy of this Notice on each of these parties, and will publish this Notice in the **Federal Register** to alert any additional consulting parties to the opportunity to take part in the ongoing NHPA process.

*B. Identification Phase*

As stated above, the identification of historic properties is the first phase of the section 106 process. As noted, in this case the Keeper has determined that the entire line is historic,[5] rather than only selected bridges and archeological sites.[6] Therefore, SEA will treat the entire line as historic in accordance with the Keeper's determination and the ACHP regulations.

*C. Assessment Phase*

As stated above, the Board generally assumes that abandonment of a rail line would adversely impact any properties

[2] The MOA would have provided for photographic documentation of all of the historic bridges and the development of a public, interpretative display, in the form of a 6–8 minute video, outlining the history of the Enola Branch.

[3] The SHPO also had written a letter to the Pennsylvania Department of Transportation to the same effect.

[4] These potential consulting parties include: parties previously involved in the case (Norfolk Southern Corporation, FAST, and the Keeper); members of Congress (Honorable Arlen Specter, United States Senate; Honorable Rick Santorum, United States Senate; and Honorable Joseph R. Pitts, United States House of Representatives); state leaders and agencies (Honorable Mark Schweiker, Governor; Pennsylvania Department of Transportation; Pennsylvania Public Utility Commission; Pennsylvania Bureau of State Parks; and Pennsylvania Department of Conservation and Natural Resources); tribes (Absentee-Shawnee Tribe of Oklahoma; Cayuga Nation; Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; Eastern Shawnee Tribe of Oklahoma; Oneida Indian Nation; Oneida Tribe of Indians of Wisconsin; Onondaga Indian Nation; Seneca Nation of Indians; Seneca-Cayuga Tribe of Oklahoma; St. Regis Mohawk Tribe; Stockbridge-Munsee Community of Wisconsin; Tonawanda Band of Seneca Indians; and Tuscarora Nation); local agencies and organizations (Atglen Borough, Chester County Planning Commission, Chester County Parks and Recreation Department, Delaware Valley Regional Planning Commission, Lancaster County Planning Commission, Lancaster County Department of Parks and Recreation, Bart Township Supervisors, Bart Township Planning Commission, Conestoga Township Supervisors, Conestoga Township Planning Commission, Eden Township Supervisors, Eden Township Planning Commission, Martic Township Supervisors, Martic Township Planning Commission, Parkesburg Borough, Providence Township Supervisors, Providence Township Planning Commission, Quarryville Borough Council, Quarryville Borough Planning Commission, Sadsbury Township Supervisors, Sadsbury Township Planning Commission, West Sadsbury Township Supervisors, and West Sadsbury Township Planning Commission); historic preservation organizations (Chester County Historic Preservation Network, Preservation Pennsylvania, Historic Preservation Trust of Lancaster County, and Central Pennsylvania Conservancy); Amtrak; and the Law Firm of Malatesta Hawke & McKeon LLP.

[5] Evidently, little if any track remains on the Enola Branch. However, in this case, ''the historical eligibility of the line as a whole does not require the presence of the tracks and other railroad equipment.'' *See FAST*, 252 F.3d at 262.

[6] As explained above, the historic preservation condition imposed in the Board's 1997 decision covered only certain bridges and archeological sites on the Enola Branch.

involved that are identified as historic, unless it obtains evidence that there would be no adverse effect, and both ACHP and the SHPO agree with the Board that abandonment of the Enola Branch would adversely affect historic sites and structures.

*D. Mitigation Phase*

In order to develop appropriate mitigation, SEA requests additional information from all consulting parties regarding the physical condition of the Enola Branch. After the court issued its decision in *FAST*, SEA requested a description of the current condition of the rail line from Norfolk Southern Corporation (NS), which acquired the Enola Branch from Conrail in 1998.[7] NS submitted a letter stating that the road bed and embankments of the rail line are still intact, though there is substantial overgrowth in the area. While NS indicated that the Enola Branch has been subject to periodic inspections for right-of-way clean up and Amtrak's maintenance of certain power lines, NS stated that there has been no comprehensive inspection of the rail line and associated structures in the last 10 years.

The Enola Branch originally included 83 bridges, prior to Conrail's application for abandonment. In its letter, NS stated that approximately 65 grade-separated structures on the line remain in place and are in different states of usability. According to NS, the Pennsylvania Public Utility Commission has served orders for removal, conveyance to local municipalities, or assumption of maintenance responsibilities by the Commonwealth of Pennsylvania, regarding bridge structures on the rail line.

As the ICC explained in its decision adopting the rules that continue to govern the Board's implementation of the NHPA,[8] the agency's ability to protect historic properties is very limited. The Board cannot deny authority for a railroad to take an action that would otherwise meet the relevant statutory criteria solely on the ground that it would adversely affect historic resources. Moreover, with respect to rail line abandonments, the Board can impose historic preservation conditions only to the extent that the particular property is owned by the railroad seeking abandonment (either full ownership in fee or a long-term interest in the property) and the property has a sufficient nexus to the proposal under review. When the Board imposes historical preservation conditions on particular property, the Board cannot force the applicant to sell or donate its property, or impose a restrictive covenant upon the deed. Essentially, documentation of the historic resources (taking photographs or preparing a history) before they are altered or removed is the only form of nonconsensual mitigation the Board can require. Although the Board has limited authority to protect historic properties, if the consulting parties agree to undertake additional mitigation beyond what the Board may require (such as preservation of a resource), such consensual mitigation can be incorporated in the MOA.

As stated above, in the 1990's a proposed MOA was developed for the Enola Branch that would have provided for photographic documentation of all of the historic bridges to Pennsylvania's state standards, and the development of a public, interpretative display, in the form of a 6–8 minute video, outlining the history of the Enola Branch. SEA specifically requests comments on whether the provisions of this previously developed MOA proposal would constitute appropriate mitigation at this time and, if not, suggestions for additional or alternative mitigation measures.

*E. Formulation of an MOA*

Based on public comment in response to this Notice and other input that SEA receives from the SHPO, ACHP, the railroad and others, SEA expects over the next several months to develop, in conjunction with the consulting parties, appropriate measures to avoid, minimize, or mitigate adverse effects on the historic properties identified in this case. After such mitigation measures have been determined, SEA will incorporate the proposed mitigation into an MOA and then circulate, and—as required under the law—seek public comment on the MOA. SEA requests comments on how it can best publicize the proposed MOA. Once an MOA is signed, the NHPA review in this case will be complete in accordance with the NHPA and the court's decision, and the section 106 condition imposed in this case can be removed.[9]

**III. Comments**

SEA specifically invites comments from consulting parties and members of the public on the following:

1. Identification of additional consulting parties;
2. Any need for further assessment of adverse effects on the line;
3. Appropriate mitigation measures (including comments on the measures specified in the earlier MOA and suggestions for additional or alternative measures, as well as information regarding the current condition of the rail line);
4. Methods or outlets for publicizing a proposed MOA; and
5. Any other pertinent issues relevant to this proceeding.

Decided: October 15, 2002.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 02–27111 Filed 10–23–02; 8:45 am]

**BILLING CODE 4915–00–P**

[7] On June 23, 1997, NS and CSX Transportation Inc. sought permission from the Board to acquire Conrail and to divide its assets between them. On July 23, 1998, the Board approved the Conrail Acquisition. *CSX Corp., et al. & Norfolk Southern Corp., et al.—Control and Operation Leases/Agreements—Conrail Inc., et al.*, STB Finance Docket No. 33388 (decision No. 89) (STB served July 23, 1998). The Pennsylvania Rail Lines LLC, a subsidiary of Conrail, now owns the Enola Branch and leases it to NS.

[8] *See Implementation of Environmental Laws,* 7 I.C.C.2d 807, 828–29 (1991).

[9] Agency officials and consulting parties can expedite the section 106 process by addressing multiple steps simultaneously where appropriate, as long as the consulting parties and the public have an adequate opportunity to express their views and the SHPO (and Tribal Historic Preservation Officer(s), when involved) agree that it is appropriate. *See FAST*, 252 F.3d at 252; 36 CFR 800.3(g).

## DEPARTMENT OF THE TREASURY

## Fiscal Service

### Financial Management Service; Proposed Collection of Information: Minority Bank Deposit Program Certification Form for Admission

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning form FMS 3144 ''Minority Bank Deposit Certification Form for Admission.''

**DATES:** Written comments should be received on or before December 23, 2002.

**ADDRESSES:** Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Staff, Room 135, Hyattsville, Maryland 20782.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Martha Thomas-Mitchell, Risk Management Division, 401 14th Street, SW., Washington, DC 20227, (202) 874–6757.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

*Title:* Minority Bank Deposit Program Certification Form for Admission.

*OMB Number:* 1510–0048.

*Form Number:* FMS 3144.

*Abstract:* This form is used by financial institutions to apply for participation in Minority Bank Deposit Program. Institutions approved for acceptance in the program are entitled to special assistance and guidance from Federal agencies, State and local governments, and private sector organizations.

*Current Actions:* Extension of currently approved collection.

*Type of Review:* Regular.

*Affected Public:* Business or other for-profit institutions.

*Estimated Number of Respondents:* 150.

*Estimated Time Per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 75.

*Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

**Bettsy Lane,**

*Assistant Commissioner, Federal Finance.*

[FR Doc. 02–27112 Filed 10–23–02; 8:45 am]

**BILLING CODE 4810–35–M**

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Surety Companies Acceptable on Federal Bonds: Termination—Oriska Insurance Company

**AGENCY:** Financial Management Service, Fiscal Service, Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** This is Supplement No. 2 to the Treasury Department Circular 570; 2002 Revision, published July 1, 2002 at 67 FR 44294.

**FOR FURTHER INFORMATION CONTACT:** Surety Bond Branch at (202) 874–6507.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 67 FR 44323, July 1, 2002.

With respect to any bonds, including continuous bonds, currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event, should bonds that are continuous in nature be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/index.html.* A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: October 8, 2002.

**Judith R. Tillman,**

*Assistant Commissioner, Financial Operations, financial Management Service.*

[FR Doc. 02–27113 Filed 10–23–02; 8:45 am]

**BILLING CODE 4810–35–M**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[FI–27–89; FI–61–91]**

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–27–89 (TD 8366), Real Estate Mortgage Conduits; Reporting Requirements and Other Administrative Matters, and FI–61–91 (TD 8431), Allocation of Allocable Investment Expense; Original Issue Discount Reporting Requirements (1.67–3, 1.860D–4, 1.860F–4, 1.6049–4 and 1.6049–7).

**DATES:** Written comments should be received on or before December 23, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* FI–27–89, Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters, and FI–61–91, Allocation of Allocable Investment Expense; Original Issue Discount Reporting Requirements.

*OMB Number:* 1545–1018.

*Regulation Project Number:* FI–27–89 and FI–61–91.

*Abstract:* The regulations prescribe the manner in which an entity elects to be taxed as a real estate mortgage investment conduit (REMIC) and the filing requirements for REMICs and certain brokers.

*Current Actions:* There is no change to these existing regulations.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 655.

*Estimated Time Per Respondent:* 1 hour, 30 minutes.

*Estimated Total Annual Burden Hours:* 978.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 16, 2002.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 02–27159 Filed 10–23–02; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[EE–63–84: EE–96–85]**

### Notice and Request for Comments

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning and existing temporary regulation, EE–63–84 (TD 8073) and notice of proposed rulemaking, EE–96–85, Effective Dates and Other Issues Arising Under the Employee Benefit Provisions of the Tax Reform Act of 1984 (1.505(c)–1T, 1.1042–1T and 1.463–1T).

**DATES:** Written comments should be received on or before December 23, 2002, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Effective Dates and Other Issues Arising Under the Employee Benefit Provisions of the Tax Reform Act of 1984.

*OMB Number:* 1545–0916.

*Regulation Project Number:* EE–63–84 (temporary regulation) and EE–96–85 (notice of proposed rulemaking).

*Abstract:* The regulations provide rules relating to effective dates and certain other issues arising under sections 91. 223 and 511–561 of the Tax Reform Act of 1984. The regulations affect qualified employee benefit plans, welfare benefit funds, and employees receiving benefits through such plans.

*Current Actions:* There are no changes being made to the notice at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, not-for-profit institutions, and individuals.

*Estimated Number of Respondents:* 12,800.

*Estimated Time Per Respondent:* 31 minutes.

*Estimated Total Annual Burden Hours:* 6,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 16, 2002.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 02–27160 Filed 10–23–02; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[PS–102–86]**

### Proposed Collection; Comment Request For Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final

regulation, PS–102–86 (TD 8316), Cooperative Housing Corporations (1.216–1(d)(2)).

**DATES:** Written comments should be received on or before December 23, 2002, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*) Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Cooperative Housing Corporations.

*OMB Number:* 1545–1041.

*Regulation Project Number:* PS–102–86 Final.

*Abstract:* Section 1.216–1(d)(2) of this regulation allows cooperative housing corporations to make an election whereby the amounts of mortgage interest and/or real estate taxes allocated to tenant-stockholders of the corporation will be based on a reasonable estimate of the actual costs attributable to each tenant-stockholders based on the number of shares held in the corporation.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, and business or other for-profit organizations.

*Estimated Number of Respondents:* 2,500.

*Estimated Time Per Respondent:* 15 minutes.

*Estimated Total Annual Burden Hours:* 625.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 16, 2002.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 02–27161 Filed 10–23–02; 8:45 am]

BILLING CODE 4830–01–P

# Corrections

Federal Register

Vol. 67, No. 206

Thursday, October 24, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 48–2002]**

### Foreign-Trade Zone 185—Culpeper, Virginia; Application For Foreign-Trade Subzone Status, Flint Ink North America Corporation (Pigments, Inks, and Varnish Products) Weyers Cave, VA

*Correction*

In notice document 02–26416 beginning on page 64095 in the issue of Thursday, October 17, 2002, make the following correction:

On page 64096, in the first column, in the third full paragraph, in the sixth line, ''January 2, 2003'' should read ''December 31, 2002''.

[FR Doc. C2–26416 Filed 10–23–02; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP03–1–000]**

### El Paso Natural Gas Company; Notice of Application

October 10, 2002.

*Correction*

In notice document 02–26386 beginning on page 64108 in the issue of Thursday, October 17, 2002, make the following correction:

On page 64108, in the second column, the docket number is corrected to read as set forth above.

[FR Doc. C2–26386 Filed 10–23–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
October 24, 2002

# Part II

# Department of the Interior

## Fish and Wildlife Service

## 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for *Chlorogalum purpureum*, a Plant From the South Coast Ranges of California; Final Rule

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AG75**

## Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for *Chlorogalum purpureum*, a Plant From the South Coast Ranges of California

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for two varieties of purple amole: *Chlorogalum purpureum* var. *purpureum* (purple amole) and *Chlorogalum purpureum* var. *reductum* (Camatta Canyon amole). A total of approximately 2,443 ha (5,910 ac) of land fall within the boundaries of the critical habitat designation. Critical habitat is located in San Luis Obispo and Monterey counties, California. Located on Federal, State, and private lands, this critical habitat designation will require consultation by the Service under section 7 of the Act on actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat. We solicited data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation.

We have revised the proposal to eliminate lands at Camp Roberts under section 3(5)(A), and lands at Ft. Hunter Liggett under section 4(b)(2). It is our policy that if any areas containing the primary constituent elements are currently being managed to address the conservation needs of *Chlorogalum purpureum* management or protection, these areas would not meet the definition of critical habitat in section 3(5)(A)(i) of the Act and would not be included in this final rule. We have determined that this is the case at Camp Roberts due to their having an approved Integrated Natural Resources Management Plan which addresses the conservation needs of *Chlorogalum purpureum*.

We have also determined that the direct and indirect costs to the Army, including reduction in military readiness, from designation of critical habitat at Ft. Hunter Liggett are such that the benefits of excluding those lands exceed the benefits of their inclusion.

**DATES:** This rule becomes effective on November 25, 2002.

**ADDRESSES:** Comments and materials received, as well as supporting documentation used, in the preparation of this final rule will be available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA, 93003.

**FOR FURTHER INFORMATION CONTACT:** Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section) (telephone 805/644–1766; facsimile 805/644–3958).

**SUPPLEMENTARY INFORMATION:**

### Background

The genus *Chlorogalum* is a member of Liliaceae (lily family). *Chlorogalum purpureum* is endemic to clay soils that occur in the south coast ranges of Monterey and San Luis Obispo counties. *Chlorogalum purpureum* var. *purpureum* occurs in the Santa Lucia Range of southern Monterey County on lands managed by the U.S. Army Reserve (Army Reserve) at Fort Hunter Liggett, and in northern San Luis Obispo County on lands managed by the California Army National Guard (CANG) at Camp Roberts. *Chlorogalum purpureum* var. *reductum* occurs in one region of the La Panza Range of San Luis Obispo County on both private lands and public lands managed by the U.S. Forest Service (the Los Padres National Forest (LPNF)) and California Department of Transportation (CalTrans). The two varieties of *Chlorogalum* were listed as threatened species on March 20, 2000 (65 FR 14878).

*Chlorogalum purpureum* is a low-growing lily that forms a rosette at the base of the plant (basal rosette) that is made up of linear and flat, bright green leaves. It is the only member of the genus *Chlorogalum* with bluish-purple flowers that open during daylight hours. *Chlorogalum purpureum* produces a rosette of typically 4 to 7 basal leaves that are 2 to 5 millimeters (mm) (0.1 to 0.2 inch (in)) wide with wavy margins. The bulb is between 2.5 and 3 centimeters (cm) (0.98 to 1.2 in) and is found in the upper few inches of soil. The inflorescence (flower-cluster of a plant or arrangement of the flowers on the flowering stalk) produces bluish-purple flowers in a raceme (single stem with multiple branches). Each flower has six ovules (structure that develops into a seed if fertilized), six tepals (petals and sepals that appear similar), and six stamens (pollen-producing male organs) with bright yellow anthers (pollen sacs). Most fruits that have been examined, both in the field and under cultivation, produce between three and six seeds (D. Wilken, Santa Barbara Botanic Garden, *in litt.*, 2001). *Chlorogalum purpureum* var. *purpureum* has an inflorescence that is 25 to 40 cm (10 to 16 in) high, in contrast to *C. p.* var. *reductum* which has a shorter inflorescence that is 10 to 20 cm (4 to 8 in) high (Hoover 1964, Jernstedt 1993, Wilken 2000). Studies are currently underway to examine the phylogenetic relationships within *Chlorogalum* species (D. Wilken, *in litt.*, 2001).

*Chlorogalum purpureum* is a summer-dormant perennial herb that forms a bulb. The inflorescence develops during early spring, followed by flowering and fruit development during May and June. By the time the fruit has matured, the leaves wither and the inflorescence dries and turns light brown in color. Reproduction is primarily by seed, and the seed set apparently increases with insect pollination (D. Wilken, *in litt.*, 1998). Like other members of the lily family, *C. purpureum* is probably in a mycorrhizal relationship with a fungus (a close association between the plant and soil fungus, where the fungus aids in nutrient and water uptake), which can alter growth and competitive interactions between species (Allen 1991). The taxon has also been observed to grow on undisturbed soils that are cryptogamic or have cryptogamic crusts (E. L. Painter, pers. comm., 2002). Cryptogamic crusts consist of nonvascular photosynthetic plants (primarily cyanobacteria, green algae, lichens, and mosses) that protect the soils from erosion, aid in water infiltration, augment sites for seed germination, aid in carbon and nitrogen fixation, and increase soil nutrients (Beymer 1992, Belnap *et al.* 2001). These special crusts may enhance the habitat conditions (*e.g.*, retain soil moisture, reduce wind and water erosion, contribute to soil organic matter, etc.), thus increasing the likelihood that young bulbs will survive over the long term. Although the relationship is not well understood and more research is needed, presence of cryptogamic crusts is also known to discourage annual weed growth by functioning as a living mulch (Belnap *et al.* 2001).

*Chlorogalum purpureum* var. *purpureum*

*Chlorogalum purpureum* var. *purpureum* is located on Fort Hunter Liggett and Camp Roberts military

lands, which are located on the eastern side of the Santa Lucia Range in southern Monterey and northern San Luis Obispo counties. The known populations primarily exist within an open grassland community, with a smaller number of individuals found within scattered oak woodland communities and open areas within shrubland communities. A low amount of cover of herbaceous species is present, possibly reducing competition for resources. Cryptogamic crusts are frequently found where *C. p.* var. *purpureum* occurs in areas that have had little to no disturbance (E. L. Painter, pers. comm., 2001).

The species was first described by Townsend Stith Brandegee in 1893. Following the initial collection and description, historic occurrences of plants were identified at ''Milpitas Ranch,'' ''the plain west of Jolon,'' ''near Jolon,'' ''open grassy areas near Jolon,'' and a number of other locations within what is currently Fort Hunter Liggett property (Hoover 1940, Skinner and Pavlik 1994, Matthews 1997 and Painter 1999 *in* Wilken 2000). Although currently known to exist only on military property at Fort Hunter Liggett and Camp Roberts, recent surveys along the boundary of Training Area 13 at Fort Hunter Liggett suggest that the species may be found on privately-owned property adjacent to Fort Hunter Liggett (Wilken 2000).

While a thorough survey of the installation has not yet been completed, *Chlorogalum purpureum* var. *purpureum* has been found at a number of sites on Fort Hunter Liggett, including the cantonment, Ammunition Supply Point (ASP), and Training Areas 10, 13, 22, 23, 24, and 25. Surveys of *C. p.* var. *purpureum* conducted at Fort Hunter Liggett have found the plants to occur in scattered clusters. Recent surveys have characterized the species' habitat, including general soil types, topography, and microhabitat communities. Depending on the location, plants may occur on both deep and relatively thin soils (Wilken 2000). Most of the soils are loamy, underlain by clay, and support fine gravel on the surface that is generally less than 5 mm (0.2 in) in diameter (Wilken 2000). Cryptogamic crusts with a dominant component of early-stage cyanobacteria have been observed frequently on the installation; advanced-stage cryptogamic crusts, that include mosses, have been observed in areas of the cantonment where little to no activities appear to have disturbed the sites (E. L. Painter, pers. comm., 2001, 2002). Cyanobacterial organisms within a cryptogamic crust may be visible as black filaments on or near the soil's surface, primarily when soil conditions are moist (Belnap *et al.* 2001).

During surveys conducted in 1999, most (78 percent) of the sites where the species occurs were associated with flat topography (Wilken 2000). The majority of the other sites were on slopes of less than 10 percent (Wilken 2000). Sites were commonly associated with flat topography or found along the base of hills; a few populations occurred along ridge-top terraces (H. Crowell, Service, pers. obs., 2001; D. Wilken, *in litt.,* 2001; Wilken 2000). These areas are between 300 and 620 meters (m) (1,000 and 2,050 feet (ft)) in elevation. Examination of digital data shows a small percentage of plants occur on slopes up to 50 percent at Fort Hunter Liggett. No strong association appears to exist between presence of plants and slope aspect (Wilken 2000).

Of the known sites surveyed in 1999, approximately 42 percent were found in grassland communities, 29 percent were found between tree canopies in oak savanna or woodland communities, 13 percent were found to occur along ecotones between grassland and either oak woodland or shrubland communities, and the remaining were located within open areas between shrub species, most commonly *Eriogonum fasciculatum* (California buckwheat) and *Adenostoma fasciculatum* (chamise) (Wilken 2000). Within the grassland community, the most common grass species (*e.g.*, nonnative *A. caryophylla* and *B. hordeaceus*) did not always dominate in terms of frequency or cover; the most frequent species were native annual forbs such as *Lasthenia californica, Linanthus liniflorus, Micropus californicus,* and *Navarretia* spp. (Navarretia) (Wilken 2000). Insect species, which may contribute to *C. p.* var. *purpureum* pollination, were observed during recent surveys and include unidentified native bees and an unidentified, small blue butterfly (L. Clark, Fort Hunter Liggett, pers. comm., 2002). Detailed studies of pollinators need to be conducted. During surveys conducted by the Fort Hunter Liggett Environmental Office since 1999, new patches of plants have been documented within the same range and localities of known occurrences (*i.e.*, Training Areas 10, 13, 22, 25, the ASP and the Cantonment.)

Surveys conducted at Camp Roberts have led to the discovery of *Chlorogalum purpureum* var. *purpureum* at one location on the west side of the installation. This occurrence is almost entirely restricted to claypan soils, which are frequently cryptogamic (CANG 2001a). The *C. p.* var. *purpureum* population (estimated at approximately 10,000 individuals in 2000 and over 200,000 individuals in 2001) at Camp Roberts occupies approximately 81 ha (200 ac) and occurs in annual grasslands north of the Nacimiento River in Training Areas O2 and O3 (CANG 2001a). *Chlorogalum purpureum* var. *purpureum* predominately occurs on soils with a high concentration of pebbles or gravel underlain by hard-packed clay (CANG 2001a). The claypan soils are of the Placentia complex (sandy loam soils, underlain by clay soils, which become very hard on a 5 to 9 percent slope), with a much smaller percentage of plants occurring on the Arbuckle-Positas complex (very deep, well-drained sandy and gravelly loam soils with a 9 to15 percent slope) (USDA 2000, CANG 2001a). As at Fort Hunter Liggett, the frequently observed cryptogamic soil crusts are composed primarily of cyanobacteria (E. L. Painter, pers. comm., 2001). The elevation of the *C. p.* var. *purpureum* population is lower than what is found at Fort Hunter Liggett, ranging between 244 and 256 m (800 and 840 ft) at Camp Roberts. At Camp Roberts, *C. p.* var. *purpureum* occupies microhabitat sites found within open grasslands or surrounded by scattered oak woodlands. Little cover by other grasses and forbs is present where *Chlorogalum purpureum* var. *purpureum* is found. Common plant associates include *Erodium* spp., *Hemizonia* spp. (tarplant, tarweed), *Trichostema lanceolatum* (vinegar weed), *Eremocarpus setigerus* (turkey mullein, dove weed), *Bromus* spp. (brome), *Amsinckia* spp. (fiddleneck), and *Nassella* spp. (needlegrass) (J. Olson *in* CANG 2001a). During recent surveys, *Erodium* spp. were the most common associate (J. Olson in CANG 2001a). Based on their recent surveys, researchers at Camp Roberts believe grazing by sheep (through a Camp Roberts agricultural lease) may be beneficial to *C. p.* var. *purpureum* by reducing competition from nonnative herbaceous species and found that the direct impact to the plants was minimal during surveys (CANG 2000a). However, more research is needed to test this hypothesis.

*Chlorogalum purpureum* var. *reductum*

*Chlorogalum purpureum* var. *reductum* has been found at only two sites in central San Luis Obispo County. The larger site, located near Camatta Canyon, is located on both sides of the two-lane State highway 58 on a narrow, flat-topped ridge that supports blue oak savannah on Forest Service lands within

the LPNF. The population continues north of the highway on private lands. A few plants (213 individuals counted in 2000) also exist on the right-of-way along the highway, which is designated as a Botanical Management Area by CalTrans (J. Luchetta, CalTrans, *in litt.*, 2001). The taxon occurs on hard, red claypan soils on flat or gently sloping terrain. *Chlorogalum purpureum* var. *reductum* occupies microhabitat sites found within open grasslands, oak (*Quercus douglasii*) woodlands and oak savannah, and open areas between shrub species, most commonly chamise (Borchert 1981, Warner 1991). Cover from other herbaceous species is minimal, with most herbaceous species not growing above 10 cm (4 in) high (Borchert 1981). As with *C. p.* var. *purpureum,* plants appear to be associated with a cryptogamic crust (E. L. Painter, pers. comm., 1998). The elevation of the larger site, located near Camatta Canyon, is between 305 and 625 m (1,000 and 2,050 ft). This population is estimated to cover approximately 3 ha (8 ac) on the south side of the highway, with additional plants found on private property on the north side of the highway covering likely a smaller amount of area (Gaskin 1990, Lopez 1992). Site visits during 2001 revealed a decrease in the number of flowering plants compared to 1994 and 1995 (A. Koch, California Department of Fish and Game (CDFG), pers. comm., 2001). The second site is located approximately 5 to 8 kilometers (km) (3 to 5 miles (mi)) south of the large site and is estimated to occupy less than 0.1 ha (0.25 ac), consisting of several hundred plants in two or more patches on private land (D. Chipping, California Polytechnic State University, *in litt.,* 1997; A. Koch, pers. comm., 2001).

The well-drained red clay soils where this taxon occurs contain a large amount of gravel and pebbles (Hoover 1964, Lopez 1992). A soil survey at LPNF found this general area to be made up of the Modesto-Yorba-Agua Dulce families of soils. Modesto soils (30 percent) are soft, grayish-brown coarse sandy loams with 10 percent pebbles. Yorba soils (30 percent) are slightly hard, light olive-brown loams with 10 percent pebbles. Agua Dulce soils (25 percent) are soft, brown sandy loams with 10 percent pebbles and 2 percent cobbles (USDA 1993). However, this soil survey may have been too general to have captured the exact soil type at this site. A substantial amount of gopher activity has been observed surrounding, but not within, the large *Chlorogalum purpureum* var. *reductum* population, suggesting that the hard soils where the plant occurs may be difficult for gophers to move through (M. Borchert, LPNF, pers. comm., 2001). Native plants associated with *C. p.* var. *reductum* include *Achyrachaena mollis* (blow-wives); chamise; *Allium* spp. (onion); *Brodiaea coronaria* (crown brodiaea); *Calystegia malacophylla* (morning-glory, Sierra false bindweed); *Clarkia purpurea* (winecup clarkia); *Crassula erecta* (= *Crassula connata* var. *connata,* sand pygmy weed); *Dichelostemma pulchellum* (= *Dichelostemma capitatum* ssp. *capitatum,* blue dicks); *Erigonum elongatum* (wild or longstem buckwheat); *Eriogonum fasciculatum* (California buckwheat); *Lasthenia chrysostoma* (goldfields); *Layia platyglossa* (tidy-tips); *Lepidium* spp. (peppergrass); *Linanthus liniflorus* (narrow flowered flaxflower); *Lupinus* spp. (lupine), including *L. concinnus* (Bajada lupine); *Malacothrix* spp. (desert dandelion); *Matricaria matricarioides* (pineapple weed); *Micropus californicus* (slender cottonweed); *Castilleja* spp. (Indian paintbrush); *Triphysaria* spp. (owl's clover); *Pinus sabiniana* (gray or foothill pine); *Plagiobothrys nothofulvus* (popcorn flower); *Poa* spp. (bluegrass); *Quercus douglasii* (blue oak); *Quercus lobata* (valley oak); *Sanicula* spp. (sanicle), including *Sanicula bipinnatifida* (purple sanicle); *Vulpia* microtachys *var. pauciflora* (Pacific fescue); and *Zigadenus* spp. (death camas); and nonnative plants, including *Avena barbata* (slender wild oat), *Bromus hordeaceus* (soft brome), *Bromus rubens* (red brome), *Erodium botrys* and *E. moschatum* (storksbill, filaree), *Hypochaeris glabra* (smooth cat's ear), and *Schismus barbatus* (Mediterranean grass).

*Chlorogalum purpureum* var. *purpureum* and *C. p.* var. *reductum* appear to be narrowly distributed. Some discontinuities in their distribution are likely due to unsuitable intervening habitat and establishment of roadways that fragment the existing patches of plants. In addition, *C. p.* var. *purpureum* distribution was likely affected by the settlement of Jolon in Monterey County, row crop farming, establishment of nonnative invasive plant species such as *Centuarea solstitialis* (yellow star-thistle) and annual nonnative grasses, and possibly the establishment of the San Antonio Reservoir in southern Monterey County. Habitats for both varieties of *Chlorogalum* may change as a result of rainfall, fires, and other naturally occurring events. These factors may cause the habitat suitability of given areas to vary over time, thus affecting the distribution of *C. p.* var. *purpureum* and *C. p.* var. *reductum.*

**Previous Federal Action**

Federal actions for *Chlorogalum purpureum* began when a report (House Doc. No. 94–51) of plants considered to be endangered, threatened, or extinct in the United States was prepared by the Smithsonian Institution and presented to Congress on January 9, 1975. Both *C. p.* var. *purpureum* and *C. p.* var. *reductum* were included as endangered plant species. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) stating its acceptance of the report as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3)) of the Act and its intention to review the status of the plant taxa named therein.

On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. This list included *Chlorogalum purpureum* var. *purpureum* and *C. p.* var. *reductum* based on comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. In 1978, amendments to the Endangered Species Act required that all proposals more than two years old be withdrawn. On December 10, 1979, the Service withdrew the portion of the June 16, 1976 proposal that had not been made final, including *C. p.* var. *purpureum* and *C. p.* var. *reductum.*

On December 15, 1980, the Service published an updated Candidate Notice of Review for plants (45 FR 82480) which included *Chlorogalum purpureum* var. *purpureum* and *C. p.* var. *reductum* as category 2 candidates (species for which data in our possession indicated listing may be appropriate, but for which additional biological information was needed to support a proposed rule). Both *Chlorogalum* taxa were included in the revised plant notices of review that were published on September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144) as category 1 candidates (species for which we had on file sufficient information on biological vulnerability and threats to support the preparation of listing proposals, but issuance of the proposed rule was precluded by other pending listing proposals of higher priority). In the Notice of Review published February 28, 1996 (61 FR 7596), we discontinued the use of

different categories of candidates, and defined ''candidate species'' as those meeting the definition of former category 1. We maintained *C. purpureum* var. *purpureum* and *C. p.* var. *reductum* as candidate taxa in that Notice.

The proposed rule to list both varieties of *Chlorogalum purpureum* as threatened species was published in the **Federal Register** on March 30, 1998 (63 FR 15158). The final rule listing them as threatened was published in the **Federal Register** on March 20, 2000 (65 FR 14878).

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time *Chlorogalum purpureum* was listed, we found that designation of critical habitat was prudent but not determinable and stated that we would designate critical habitat once we had gathered the necessary data.

On June 17, 1999, our failure to issue final rules for listing *Chlorogalum purpureum* and eight other plant species as endangered or threatened, and our failure to make a final critical habitat determination for the nine species was challenged in *Southwest Center for Biological Diversity and California Native Plant Society* v. *Babbitt* (Case No. C99–2992 (N.D.Cal.)). On May 22, 2000, the judge signed an order for the Service to propose critical habitat for the species by September 30, 2001, and to make a final critical habitat designation for the species by May 1, 2002. Subsequently, the parties agreed to extend the deadline to submit a proposed critical habitat designation for publication in the **Federal Register** to November 2, 2001 and a final critical habitat designation to October 11, 2002. The proposed rule to designate critical habitat for the species was published on November 8, 2001 (67 FR 56508). In the proposal, we proposed to designate approximately 8,898 ha (21,980 ac) of land in Monterey and San Luis Obispo counties as critical habitat. The publication of the proposed rule opened a 60-day public comment period, which was scheduled to close on January 7, 2002. Due to unforeseen circumstances resulting from the closure of the Department of the Interior's internet service and subsequent inability for public comments to be sent through electronic mail by the closing date, comments were accepted until January 14, 2002. On May 7, 2002 we published a notice of availability of the draft economic analysis on the proposed determination (67 FR 30644). On May 15, 2002, we published a notice in the Monterey Herald and the San Luis Obispo Telegram Tribune announcing the reopening of the comment period on the proposal to designate critical habitat for *C. purpureum.* This second public comment period closed on June 6, 2002.

## Summary of Comments and Recommendations

We solicited comments from appropriate Federal, State, and local agencies, scientific organizations, and other interested parties. Additionally, we invited public comment through the publication of a notice in the Monterey Herald on November 15, 2001, and in the San Luis Obispo Telegram Tribune on November 16, 2001, on the proposed critical habitat; we invited public comment again on May 15, 2002, for the publication of the draft economic analysis. We received individually written letters from 24 parties, which included 5 designated peer reviewers, 5 Federal agencies, 1 county jurisdiction outside of California, and 13 private citizens or interested nonprofit organizations. One Federal agency provided a letter commenting on the proposed critical habitat and one commenting on the draft economic analysis. One additional letter was received from a private party after the closing date. Of the 24 parties responding individually, 20 supported the proposed designation, 4 were opposed, and no responses were neutral. Ten of the individual letters that supported the proposal appeared to be identical. The four commenters opposing the proposal specifically opposed designation of critical habitat on lands they own or manage on Fort Hunter Liggett and Camp Roberts and requested that these areas be excluded from critical habitat designation.

We reviewed all comments received for substantive issues and new information regarding critical habitat and *Chlorogalum purpureum.* Similar comments were grouped into four general issues (*i.e.*, Biological Justification and Methodology, Economic Analysis, Site-specific Areas and Other Comments, Legal and Procedural Comments) relating specifically to the proposed critical habitat determination and draft economic analysis on the proposed determination. These are addressed in the following summary.

### *Issue 1: Biological Justification and Methodology*

*Comment 1:* The proposed rule was not based on the best scientific data available, thus resulting in a ''broad-brush'' approach to the critical habitat proposal. The commenter believed the proposed critical habitat includes lands that do not contain the primary constituent elements (especially soils and plant communities).

*Our Response:* We disagree that the rule was not based on the best scientific data available. As stated in the proposed rule, we are required to make decisions based on the best information available at the time of designation. Our policy on information standards is found under the section entitled ''Critical Habitat'' in the rule. It states that we should use the listing package for the species as well as additional information obtained from recovery plans, 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). In addition, we have consulted with biologists and experts who are familiar either with the species or the geographic area in which it occurs. The final critical habitat rule also incorporates new life-history information submitted during the comment periods by Fort Hunter Liggett and various individuals. Many new locations of *Chlorogalum purpureum* var. *purpureum* were reported to us following the publication of the proposed rule. In all cases, these sites occurred within the proposed critical habitat boundary. Therefore, we are confident that the GIS model we used to identify the proposed critical habitat boundaries represents the best current assessment of habitat that is essential for the long-term conservation of this taxon.

As stated in the proposed and final rules under the section entitled ''Criteria Used to Identify Critical Habitat,'' we made an effort to avoid developed areas, structures, facilities, or unsuitable areas that are unlikely to contain the primary constituent elements of *Chlorogalum purpureum* habitat. However, we did not map critical habitat in sufficient detail to exclude all areas not likely to contain the primary constituent elements essential for the conservation of the species (*i.e.*, too small a scale). Federal actions conducted in areas within the boundaries of the mapped

units that do not contain any of the primary constituent elements therefore would not trigger a section 7 consultation unless those activities may affect the species or primary constituent elements in the adjacent critical habitat.

*Comment 2:* Eleven commenters (including 10 identical comment letters) recommended that we conduct thorough surveys (preferably before the final designation) for plants at Fort Hunter Liggett and Camp Roberts to ascertain the full extent of the range of *Chlorogalum purpureum* var. *purpureum*. They suggested that optimal habitat for *C. purpureum* appears to be associated with the presence of cryptogamic crusts (biological soil crusts composed of cyanobacteria, green algae, lichens, mosses, microfungi, and other bacteria). Therefore, it seems appropriate to survey and map the occurrences of such crusts at both installations. Additionally, they recommended that surveys should be focused on areas with other suitable habitat features and species compositions, and with known historical occurrences.

*Our Response:* Both the Army Reserve at Fort Hunter Liggett and the CANG at Camp Roberts have conducted surveys for *Chlorogalum purpureum* var. *purpureum* in multiple areas containing suitable habitat with associated species (R. Root, pers. comm. 2002, L. Clark, pers. comm. 2002, D. Wilken 2000). Additional distribution surveys are expected by both installations according to the Service's review of recent draft INRMP documents or conversations with installation biologists (H. Crowell, pers. comm. 2002). In the last decade, surveys conducted for the military by Colorado State University, the Santa Barbara Botanic Garden, Jones and Stokes Associates, and the Fort Hunter Liggett Environmental Office have documented approximately 685 acres of *C. p.* var. *purpureum* of varying densities on the Fort Hunter Liggett installation (Fort Hunter Liggett unpublished digital data, 2002). Each year, the Fort Hunter Liggett Environmental Office continues to discover new sites where *Chlorogalum purpureum* var. *purpureum* occurs during their environmental review process for ongoing activities on the installation. However, new sites identified are generally clustered within the known range on Fort Hunter Liggett.

*Chlorogalum purpureum* var. *purpureum* was first discovered at Camp Roberts in 2000 (CANG 2001b). Approximately 200 acres of varying densities of plants have been documented in one location on the Camp Roberts installation based on surveys conducted by biologists from the Santa Barbara Botanic Garden, the Jepson Herbarium, and the Camp Roberts Environmental Office. Fairly thorough surveys have been conducted at Camp Roberts in 2000 and 2001 by the Santa Barbara Botanic Garden and the Camp Roberts Environmental Office staff and consultants; sensitive plant surveys will continue throughout the installation regularly (R. Root, CANG, pers. comm., 2002). According to their Integrated Natural Resource Management Plan (INRMP), an amendment to their INRMP, and recent coordination meetings, Camp Roberts also plans to survey and monitor impacts of rotational grazing, effects of military training activities on *Chlorogalum purpureum* var. *purpureum*, and the taxon's association with cryptogamic soils (CANG 2001b; R. Root, pers. comm., 2002). These studies and surveys will be conducted as part of their long-term *Chlorogalum purpureum* var. *purpureum* monitoring program.

Based on the life-history characteristics of the species (*e.g.*, timing of flowering, annual dormancy, etc.) there is a narrow period each year when the taxon is identifiable and within which surveys can be conducted. In addition, surveys are needed for multiple years to determine presence or absence of the species due to its potential to remain seasonally dormant for an extended period of time. The ongoing life-history study conducted at Fort Hunter Liggett has found known individual mature plants to be dormant for at least three years, indicating that it is likely common for this species to remain dormant during the growing season (Liz Clark, Fort Hunter Liggett, pers. comm., 2002). During dormancy, *Chlorogalum purpureum* is not detectable on the surface. Thus, thorough surveys to document the full range of *C. purpureum* in suitable habitat throughout the installation will likely require multiple years to be completed. In summary, new *C. p.* var. *purpureum* sites are being found within previously known locations at Fort Hunter Liggett, and the 2000 discovery of the Camp Roberts population is concentrated within one location. Additional surveys and research studies are expected to occur at both installations during the next five years that will assist both the Service and the military agencies in determining additional occurrences of *C. purpureum*, impacts of activities, and the taxon's association with other biological features (*e.g.*, cryptogamic crusts). While additional survey information would be helpful, we are using the best information available at this time, and we do not believe the lack of additional surveys hinders our ability to evaluate which areas should be designated as critical habitat.

*Comment 3:* One commenter questioned why Camp Roberts was included in the proposed critical habitat designation when the Service did not know *Chlorogalum purpureum* occurred there at the time the species was listed. The commenter specifically asked ''why critical habitat within the geographic area occupied by the taxon at the time the species was listed would be inadequate to ensure the conservation of the species.''

*Our Response:* While we were unaware of the Camp Roberts population at the time the species was listed, we believe that, based on information we have received regarding the Camp Roberts population and the species' life history, the population at Camp Roberts falls within the geographic area occupied by the species at the time it was listed. Although there are no historical records of the taxon *C. p. purpureum* at the Camp Roberts location, the location of its discovery in 2000 still falls within the range of the species, which, at the time of listing, ranged from Fort Hunter Liggett in southern Monterey County to the La Panza Range, LPNF, in San Luis Obispo County where *C. p.* var. *reductum* is known to occur. Because *C. p.* var. *purpureum* also has such a restricted range (*i.e.*, found at only two locations), it was important to include both locations in the proposed critical habitat. However, we have removed the Camp Roberts Unit from the final critical habitat because adequate conservation measures are now in place for the taxon. This removal is discussed further in comment #17 and the ''Relationship of Critical Habitat to Military Lands'' and ''Summary of Changes from the Proposed Rule'' sections of this document.

*Comment 4:* One commenter questioned the Service's statement that ''* * *some areas not included in the critical habitat designation * * *may include habitat appropriate for introduction of *Chlorogalum purpureum* in the future.'' The commenter questioned whether the Service refers to ''introduction'' of *C. purpureum* into unoccupied, suitable habitat in the future as an introduction by natural or human means.

*Our Response:* If an event triggers a decline in the *Chlorogalum purpureum* population to such an extent that human-induced introduction is warranted to prevent extinction of the

species, it may be necessary for the recovery of the species to ''introduce'' plants by human means. Introduction of plants would occur in suitable areas that the plant could naturally re-colonize, but is impeded by existing threats. These types of actions are more appropriately addressed as part of recovery planning for this species.

*Comment 5:* One commenter stated ''scientific data is lacking to support the Service's conclusion that military activities are likely to destroy any crypotgamic crusts and that *Chlorogalum purpureum* relies on cryptogamic crusts.''

*Our Response:* We disagree with the commenter's interpretation that the Service stated that *Chlorogalum purpureum* relies on cryptogamic crusts in the proposed critical habitat designation. We stated that ''the taxon frequently grows on soils that are cryptogamic or have cryptogamic crusts;'' ''these special crusts may enhance the habitat conditions, thus increasing the likelihood that young bulbs will survive over the long term;'' and that certain activities ''will likely destroy any cryptogamic crusts that are present, thus negatively affecting vascular plant germination and decreasing the amount of nutrients available for proper plant development.'' While we believe there may be an association between the species and cryptogamic crusts, we have no evidence demonstrating the relationship.

At least one species expert has identified a possible relationship between *Chlorogalum purpureum* and the presence of cryptogamic crusts (E. L. Painter, pers. comm., 1998, 2001, 2002). Therefore, we believe it is important to examine this association further when considering the long-term conservation and recovery of this species. Cryptogamic crusts are good indicators of physical disturbance, such as livestock, human foot traffic, and motorized vehicles (Belnap 1995 *in* Belnap *et al.* 2001). These activities can destroy the soil structure by compacting it into an impermeable surface layer that causes reduced infiltration rates and increased surface runoff (Belnap *et al.* 2001). Vehicles can also turn soils over and bury crustal organisms. Disturbance that removes or kills crustal organisms results in greater impact and slower recovery of the soil surface than disturbance that leaves crushed crust in place (Belnap *et al.* 2001). In addition, preliminary Land Condition Trend Analysis (LCTA) data from Fort Lewis, Washington, has documented negative impacts to cryptogamic crusts and vegetation in grassland ecosystems due to uses by M1A1 Abrams tanks, which are also used at Camp Roberts and Fort Hunter Liggett. We believe it is important to consider these potential vehicles impacts on cryptogamic soils (during *C. purpureum* monitoring and LCTA monitoring at Fort Hunter Liggett and Camp Roberts) when examining long-term effects on *C. purpureum* and its habitat, and potential impacts to other federally threatened and endangered species.

*Comment 6:* One commenter stated that scientific data is lacking to support the Service's conclusion that the model used for the proposed critical habitat designation for *Chlorogalum purpureum* var. *purpureum* (based on soil type) should be expanded to include additional areas beyond those identified in the model (*i.e.*, areas between the model boundaries and the nearest ridgeline). Additionally, the commenter stated that the Service inappropriately included formerly cultivated areas within the proposed critical habitat boundary.

*Our Response:* We disagree with the comment that formerly cultivated areas were inappropriately included within the proposed critical habitat boundary. We believe that habitat within formerly cultivated areas still contains the appropriate soil and vegetation types (which are crucial physical components the species requires) that could support *Chlorogalum purpureum* var. *purpureum*. These areas are essential to the conservation of the species because the species will require areas for dispersal. Some formerly cultivated areas are identified within a zone that provides connectivity between populations, and thus supports pollinator activity and gene flow between patches of plants, and are thus also essential to the conservation of the species.

During preparation of the proposed critical habitat designation for this species, we used SPOT Corporation 30 meter Imagery, dated June 1993, in an attempt to exclude areas that we knew were under cultivation or were formerly cultivated and were likely not essential to the conservation of the species. For the final critical habitat designation, we also excluded all areas identified by the military who provided additional information that was not available for the proposed rule. These excluded areas are formerly cultivated lands found throughout the proposed critical habitat on FHL property, or areas that do not provide population connectivity between patches of plants.

*Issue 2: Economic Comments*

*Comment 7:* Two commenters believed the negative economic impact on the CANG, the Army Reserve, and their military missions outweighs the benefit of the proposed critical habitat designation. The commenters believed a critical habitat designation would cause adverse economic impacts, disrupt the military's ability to perform their mission, and require additional consultation and technical support for new consultations. One of the commenters believed the critical habitat designation at Fort Hunter Liggett would require rescheduling of military training until consultations are completed, thus increasing the costs for modifying or moving the existing infrastructure to support relocated training activities, and diverting resources from conservation management to administrative efforts for the Army and the Service.

*Our Response:* We recognize the direct costs identified by the military are significant, and indirect costs and impacts on military training and readiness are even greater.

The proposed critical habitat area on Camp Roberts military installation is essential to the conservation of *Chlorogalum purpureum* var. *purpureum.* However, designation of critical habitat is not necessary due to the long-term conservation measures that the CANG has agreed to implement as part of their INRMP. This is further discussed in the section entitled ''Relationship of Critical Habitat to Military Lands.''

The lands proposed to be designated on Fort Hunter Liggett are essential for the conservation of *Chlorogalum purpureum* var. *purpureum.* These lands currently provide habitat for the species, and have done so since military training commenced there in the 1940s. The conservation needs on these lands will likely also be adequately addressed under the management plan currently being developed by Ft. Hunter Liggett and the Service. This is further discussed in the section entitled ''Relationship of Critical Habitat to Military Lands.'' Fort Hunter Liggett has already reinitiated consultation on their programmatic biological opinion, including a conference opinion on the proposed critical habitat for *C. p.* var. *purpureum.* This reinitiation was necessitated by new information on federally listed species in addition to the listing of *C. purpureum,* not by the proposal of critical habitat for *C. purpureum.* Therefore, rescheduling of military training would not be necessary regarding ongoing military activities

that have been addressed as part of the programmatic consultation.

*Comment 8:* Fort Hunter Liggett stated they believe the draft economic analysis is based on considerations and factors that the Service is no longer considering. The commenter also stated the Service recommended curtailing military training and land use, and the new restrictions proposed by the Service are qualitatively different from those found in the draft economic analysis or the proposed critical habitat designation.

*Our Response:* The Service met with Fort Hunter Liggett on multiple occasions to discuss the status of *Chlorogalum purpureum* var. *purpureum*, the Service's concerns, the Service's recommended strategy for the long-term conservation of the taxon on the installations, and the adequacy of their draft INRMP. The Service identified a number of military activities that may influence critical growth stages of *C. p.* var. *purpureum* and recommended that Fort Hunter Liggett minimize the adverse effects and severity of those effects. The Service proposes to continue to work with the military to ensure that implementation of such recommended minimization measures would not curtail training.

*Comment 9:* Fort Hunter Liggett stated the increased monitoring recommended by the Service would require the new employment of two GS–11 equivalent biologists for 10 years, costing Fort Hunter Liggett approximately $2,100,000.

*Our Response:* As discussed in Comment 8, the Service provided long-term conservation recommendations to Fort Hunter Liggett for *Chlorogalum purpureum* var. *purpureum.* Regarding monitoring, the Service recommended that Fort Hunter Liggett develop management strategies to minimize threats to *C. p.* var. *purpureum* based on research, life history monitoring, and the species' responses to vegetation management. We recognize this is a real cost to the Army.

*Comment 10:* Fort Hunter Liggett stated the cordon required to permanently restrict the proposed critical habitat areas recommended by the Service would cost the Army Reserve approximately $250,000 plus additional maintenance costs over 10 years.

*Our Response:* As discussed in Comments 8 and 9, the Service provided long-term conservation recommendations in a consultation with Fort Hunter Liggett for *Chlorogalum purpureum* var. *purpureum* that should be considered regardless of a critical habitat designation and as part of their long-term management plans in their INRMP. Regarding protection of *C. p.* var. *purpureum,* the Service recommended that patches of plants be protected from those types of activities that are known to damage vegetation (*e.g.*, crushing seeds with the wheels or tracks of vehicles, bivouacking activities, soil surface scraping, introducing or spreading nonnative plant species, etc.).

*Comment 11:* Fort Hunter Liggett stated that increased restrictions on training would make many Army Reserve, National Guard, and other military units incapable of training at Fort Hunter Liggett. They stated that units would be forced to travel to another state to meet their training requirements and the cost for units to travel extensive distances to train would be significant. Fort Hunter Liggett stated the direct economic costs to the installation would be $2,350,000 if the Service's recommendations were implemented, and the costs to military readiness would be much higher. Types of training that the Army believes would no longer be viable at Ft. Hunter Liggett with the proposed designation of critical habitat include: training in the establishment of emergency airfields; training in the defense of emergency and established airfields; use of the machine gun and grenade ranges; use of the long-established tank trail between Camp Roberts and the Fort; and staging for a variety of other types of training, including live-fire exercises.

*Our Response:* We will continue to work with Fort Hunter Liggett to identify conservation measures and adaptive management considerations for *Chlorogalum purpureum* var. *purpureum.* The conservation recommendations provided to Fort Hunter Liggett during our consultation on their draft INRMP were designed to be implemented without necessitating the relocation of military training units to another state. However, we are not military experts, and defer to their judgement regarding the actual, as opposed to intended, impacts of the recommendations.

We recognize and have considered fully the concerns of Fort Hunter Liggett that critical habitat on their installation would impact the training mission and cause adverse economic impacts and adverse impacts to military readiness.

*Issue 3: Site-Specific Areas and Other Comments*

*Comment 12:* One commenter urged the Service to support Fort Hunter Liggett's effort to control *Centuarea solstitialis* (yellow star-thistle) and to consider this in the implementation of the critical habitat designation, suggesting that the Service should not restrict the installation's efforts to control such an invasive species.

*Our Response:* The Service has participated in meetings and discussions with Fort Hunter Liggett and supports the control efforts that the installation has made for *Centuarea solstitialis*. The Service has also expressed concerns to Fort Hunter Liggett regarding the use of herbicides on the installation due to potential adverse effects to federally-listed species, including *Chlorogalum purpureum* var. *purpureum*, vernal pool fairy shrimp (*Branchinecta lynchi*), and arroyo toad (*Bufo californicus*).

*Comment 13:* Due to the absence of historical occurrences, one commenter questioned the Service's suggestion that *Chlorogalum purpureum* var. *purpureum* could re-colonize both occupied and adjacent unoccupied habitat at Camp Roberts.

*Our Response:* Because historical records are not available for the *Chlorogalum purpureum* var. *purpureum* population at Camp Roberts, there is no data available to estimate if *C. p.* var. *purpureum* could re-colonize areas of the installation. However, future annual monitoring may show that the population could increase by natural means into adjacent unoccupied habitat.

*Comment 14:* One commenter stated that the Service did not take into account efforts being made by the Army at Fort Hunter Liggett to protect *Chlorogalum purpureum* var. *purpureum* through distribution surveys, life history research, military land stewardship, and carnivore management (*e.g.*, wild pig control) that protects against excessive herbivory.

*Our Response:* We disagree. Fort Hunter Liggett biologists provided us with what they indicated were the most current data on *Chlorogalum purpureum* var. *purpureum* occurrences at Fort Hunter Liggett during the time the proposed rule was being prepared. We also used biological assessments, environmental assessments, and annual reports submitted to us by the Directorate of Public Works at Fort Hunter Liggett when reviewing areas we believed were essential for the proposed critical habitat designation. We also reviewed additional surveys conducted by the Santa Barbara Botanic Garden (Wilken 2000) and data from the life history study conducted by the Fort Hunter Liggett Environmental Office. However, based on our review of the management actions and conservation measures described in Fort Hunter Liggett's recent programmatic biological assessment (Army Reserve 2002) and

draft INRMP, we conclude that areas on the installation would still benefit from special management as described in the Act and to that end we continue to work with the military to develop an INRMP. This is further discussed in the section entitled ''Relationship of Critical Habitat to Military Lands.''

*Comment 15:* One commenter stated that data and indicator species show the compatibility of military training and sensitive species. They suggested that the presence of sensitive species and cryptogamic crusts amidst low levels of disturbance at established monitoring plots at Fort Hunter Liggett are evidence of their compatibility. The commenter stated that the presence of many sensitive species on Fort Hunter Liggett is an indicator that the installation's stewardship maintains ecosystem functions and processes, compared to the agricultural practices on surrounding lands that have reduced habitat for many of these listed species. In addition, the commenter stated that military training results in a patchy distribution of temporary soil surface disturbance that typically recovers within a growing season for annual vascular plants and within three to five years for fully formed cryptogamic crusts. They stated that scientific data are also lacking to support the Service's conclusions that soil surface disturbance from military training will likely result in death of seeds, seedlings, and adult plants through burial or grinding, and that tracked vehicles will turn over soils, thus killing any adults or seedlings that are in their first year of growth and burying any crustal organisms that were present. The commenter stated that *C. p.* var. *purpureum* thrives in heavily-used training areas and protected sites on Fort Hunter Liggett. The commenter was concerned about the inclusion of lands containing the taxon that were recently and formerly heavily used for military training.

*Our Response:* The Service commends the Army Reserve for efforts they have made to date to reduce further losses of sensitive species and other species native to the San Antonio Valley, Nacimiento Valley, and the Santa Lucia Mountains. We agree that much of the surrounding habitat has been lost due to agricultural use, including crop farming and vineyard development, likely resulting in the loss of *Chlorogalum purpureum* var. *purpureum* plants and other sensitive species. Indicators of *C. p.* var. *purpureum* compatibility with military training include such parameters as recruitment or survivorship. Although Fort Hunter Liggett has conducted monitoring since 1998, the monitoring was not designed to assess the effects of military training activities on *C. p.* var. *purpureum,* according to Fort Hunter Liggett staff (Liz Clark, FHL, pers. comm., 2002). Moreover, changes to the monitoring program in 2000 have resulted in the availability of only two years of data to assess such factors as survivorship and recruitment. Based on the biology of this species and our preliminary analysis of data collected at monitoring plots at Fort Hunter Liggett, additional data are needed to accurately assess levels of recruitment. While it has survived through many years of military training, monitoring focused on military activities or a rigorous assessment of population trends is needed to determine the effect of military activities conducted at Fort Hunter Liggett on *C. purpureum*.

Studies conducted at other military installations have shown that military activities such as bivouacking and soil surface disturbance (*e.g.*, excavations, grading) do have adverse effects on vegetation and the soil surface (Trame and Harper 1997, Whitecotton *et al.* 1999, Wolford 2001). Activities in Training Area 25 (a heavily-used training area) at Fort Hunter Liggett have caused soil compaction and soil ruts that alter microhabitat characteristics (Painter and Neese 1998; D. Steeck, pers. obs., 1998; J. Chesnut, consulting biologist, *in litt.*, 1998), and loss of most herbaceous vegetation (D. Steeck, pers. obs., 1997, 1998, aerial photography). Vehicle tracks were also evident in 45 of 188 patches of *Chlorogalum purpureum* var. *purpureum* visited during 1999 surveys (Wilken 2000). Tracks or roads were adjacent to another 35 patches (Wilken 2000). Tracks in populations of *C. p.* var *purpureum* have also been reported by others familiar with Fort Hunter Liggett (Painter and Neese 1998; J. Chesnut, *in litt.*, 1998). These types of activities damage seedlings and adult plants, especially if they occur during the growing season. However, we are unable to confirm the commenter's statement that cryptogamic crusts are fully formed within three to five years. According to the reports and data available to us at this time, we are unaware of any data collected on cryptogamic crusts or the extent of cryptogamic crusts on Fort Hunter Liggett. Species experts have identified a possible relationship between *Chlorogalum purpureum* and the presence of cryptogamic crusts. Thus, we recommend studies and surveys to provide a better understanding of cryptogamic crusts at Fort Hunter Liggett. The first biological soil crusts to develop following a disturbance are cyanobacteria, appearing in colonies that are black to blue-green and are visible primarily when the surface is moist (Belnap *et al.* 2001). The development of these crusts is followed by growth of algae, bryophytes (mosses, liverworts), and lichens. Timing, the type of soil surface disturbance, and its intensity can influence the composition of these cyptogamic crusts. Repeated disturbances to cryptogamic soils will generally keep the crusts at an early-successional stage (*i.e.*, cyanobacteria-dominated) by preventing lichen or moss colonization (Belnap *et al.* 2001). Recovery rates to fully formed crusts (mosses, liverworts, and lichens) are dependent on many factors. Visual assessments can be used to assess moss and lichen cover, but cannot be used to measure the degree of recovery of cyanobacterial biomass and soil stability (Belnap *et al.* 2001). Studies have found various linear recovery rates which differ from region to region. These studies have determined that shady sites with less sandy soils are quicker to recover than exposed sites with sandier soils (Belnap *et al.* 2001). Unfortunately, we are currently unaware of available data that identifies the recovery rates of cryptogamic crusts in the California coastal areas.

*Comment 16:* One commenter stated that scientific data is lacking to support the Service's conclusion that Fort Hunter Liggett could support a larger population of purple amole. They believed that special management considerations should focus on agricultural and urban development.

*Our Response:* Unoccupied areas (located adjacent to or between occupied habitat) that are not fully protected or currently known to support the taxon likely contain favorable habitat conditions for plants to occur. These areas also support the surrounding habitat by helping maintain ecosystem processes and functions, such as connectivity between patches of plants, pollinator activity between existing colonies, and seed dispersal mechanisms between existing colonies and other potentially suitable sites. Thus, the area may support additional *Chlorogalum purpureum* var. *purpureum* occurrences provided proper management occurs. We agree that management for *C. purpureum* should include consideration of the needs of the species in management of cultivation and control of nonnative vegetation. However, when considering the long-term conservation and recovery of this species we must consider all threats to the species, which also

include potential threats from military training activities.

*Comment 17:* Two commenters believed that a critical habitat designation for *Chlorogalum purpureum* var. *purpureum* would not provide any net benefit to the species because ''assured management'' is already in place at Fort Hunter Liggett and Camp Roberts. One commenter stated that Camp Roberts has completed an INRMP and Endangered Species Management Plan (ESMP), that Fort Hunter Liggett is coordinating with the Service on development of their INRMP and associated ESMP, and that the plans from both installations are certain to be implemented, as they are requirements that are given ''resourcing priority.'' The second commenter stated that existing management actions at Fort Hunter Liggett are currently protecting purple amole, the ecosystem, and the functions listed by the Service. Additionally, they suggested that Fort Hunter Liggett's INRMP and ESMP, although currently in draft form, provide an adequate method for Fort Hunter Liggett and the Service to actively promote the protection and recovery of *C. p.* var. *purpureum*.

*Our Response:* We agree that the military is currently implementing special management on the lands. INRMPs can provide special management for lands such that they no longer meet the definition of critical habitat when the following criteria are met: (1) A current INRMP must be complete and provide a conservation benefit to the species, (2) the plan must provide assurances that the conservation management strategies will be implemented, and (3) the plan must provide assurances that the conservation strategies will be effective (*i.e.*, provide for periodic monitoring, adaptive management, and revisions as necessary). If all of these criteria are met, then the lands covered under the plan would likely no longer meet the definition of critical habitat and designation would not be necessary.

To date, Camp Roberts has amended their final INRMP to provide for sufficient conservation management and protection for *Chlorogalum purpureum* var. *purpureum.* An ESMP has not been prepared for *C. p.* var. *purpureum* at Camp Roberts. As a result of the Camp Roberts INRMP, we are not designating critical habitat on Camp Roberts.

Adequate management for the conservation of *Chlorogalum purpureum* var. *purpureum* is currently under development at Fort Hunter Liggett though an INRMP. The installation has prepared a draft INRMP that is being revised. Fort Hunter Liggett's ESMP expired in September 2001 and is not scheduled to be updated until 2003. Nevertheless, Fort Hunter Liggett does continue to implement conservation measures and management actions. We believe that the additional protection and management are necessary, as well as a structured monitoring program that provides information on recruitment, survival, and effects of military actions on the species and its habitat and will be addressed in the INRMP.

*Comment 18:* If critical habitat is designated at Camp Roberts, the commenter requested that the proposed acreage be reduced to minimize adverse effects on military training activities. Part of this request was based on the absence of purple amole on 90 percent of the proposed critical habitat.

*Our Response:* We have removed Camp Roberts from the final designation of critical habitat. See the section entitled ''Relationship of Critical Habitat to Military Lands'' for further information.

*Comment 19:* One commenter questioned the use of the word ''recovery'' regarding *Chlorogalum purpureum* var. *purpureum* at Camp Roberts military installation because it implies a historical presence, even though there is no historical record of the taxon at the installation.

*Our Response:* As mentioned in Comment 13 above, we acknowledge that historical records are not available for the *Chlorogalum purpureum* var. *purpureum* population at Camp Roberts. For conservation of the species to occur, all methods and procedures should be utilized to bring *C. p. purpureum* to the point at which the measures provided by the Act are no longer necessary. These measures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, and transplantation. Because *C. p.* var. *purpureum* is only known to occur at Camp Roberts and Fort Hunter Liggett at this time, the CANG and Army Reserve are in the best and primary position to influence the long-term conservation of this species. In addition, according to section 2(c) of the Act, Federal agencies shall seek to conserve endangered and threatened species and shall utilize their authorities in furtherance of the purposes of the Act.

*Comment 20:* One commenter recommended that the Service request access from private landowners for annual surveys.

*Our Response:* The Act requires that the best available data be used to make decisions on critical habitat designations. Conducting new surveys falls outside of this requirement. Further, the Service must have specific permission of private landowners to conduct surveys on private property. Funding and timing limitations also preclude the collection of new information at this time. However, as part of the recovery process for this species, additional survey needs may be identified and implemented.

*Issue 4: Legal and Procedural Comments*

*Comment 21:* Camp Roberts stated that they should be excluded from the critical habitat designation because the benefit of excluding military lands from critical habitat designation outweighs the benefits of including military lands in the designation. Fort Hunter Liggett requested to be excluded from the final critical habitat designation because they believe the proposed critical habitat will preclude military training on 11,840 acres of land at Fort Hunter Liggett, resulting in a severe impact to Fort Hunter Liggett's military mission, operations, and protection of cultural and natural resources. Fort Hunter Liggett stated they believe the continued use of military training sites and the operations and maintenance activities of existing facilities are at risk, including established conservation measures. They also stated that future training missions are at risk, and compounding mitigation and conservation measures are eroding training capabilities.

*Our Response:* We address the issue of military lands and the role of INRMPs in detail in the section entitled ''Relationship of Critical Habitat to Military Lands.'' As discussed in that section, subsection 4(b)(2) of the Act allows us to exclude areas where the benefits of exclusion outweigh the benefits of inclusion. In addition, under subsection 3(5)(A) of the Act, areas where an INRMP provides a conservation benefit to the species, such that additional special management is unnecessary, may not meet the definition of critical habitat.

Our analysis of the costs and benefits leads us to conclude that the benefits of including lands on Fort Hunter Leggett do not outweigh the costs. Camp Roberts' lands have been removed based on their INRMP. Our analysis is discussed in comment 18 above, the section entitled ''Relationship of Critical Habitat to Military Lands.'' And the section entitled, ''Summary of Changes from the Proposed Rule''.

Fort Hunter Liggett has recently initiated formal consultation with us on both *Chlorogalum purpureum* var. *purpureum* and its proposed critical

habitat. Once consultation is complete, Fort Hunter Liggett will not need to reinitiate it unless their proposed actions have changed or new information becomes available on the species that would warrant a re-evaluation. The population of *Chlorogalum pupureum* var. *purpureum* found in Fort Hunt Liggett has survived in the midst of military training. There is little basis for expecting this circumstance will change in the absence of a critical habitat designation, particularly in light of the fact that the military and the Service are developing an INRMP to ensure special management. Conversely, the cost of disruption of military training is large in terms of both additional expenditures and adverse impacts to military readiness.

*Comment 22:* Eleven commenters recommended that the Service initiate section 7 consultation with the Army as soon as possible, and on an ongoing basis.

*Our Response* Section 7(a)(2) of the Act requires Federal agencies to consult with the Service to insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat determined to be critical to a species. Therefore, it is the responsibility of the Army Reserve, the CANG, and LPNF to initiate consultation with the Service for those actions that may jeopardize the continued existence of *Chlorogalum purpureum*.

*Comment 23:* Based on survey results, eleven commenters suggested that changes in the critical habitat designation should be considered on an ongoing basis.

*Our Response* We have taken into account additional information, including additional survey results, that were provided to us during the comment period on the proposed rule. We will continue to monitor and collect new information and may revise the critical habitat designation in the future if new information supports a change.

*Comment 24:* One commenter suggested that it is possible that the proposed designation has minimized the review of scientific data available at the installations in an attempt to comply with court-ordered schedules.

*Our Response* We disagree with this comment. We agree that we are required under a court approved settlement agreement to finalize this critical habitat designation by October 11, 2002. When developing any listing proposal or proposed critical habitat designation we use the best information available at the time, and solicit information from a variety of sources. We use information from Federal and State agencies, consultants, and researchers during the development of the proposal. When available, we incorporate information from recovery plans as well. These plans often have information that was not available at the time a species was listed. Comments received on the proposed designation, the draft economic analysis, and additional information received during the comment periods have been taken into account in the development of this final determination.

**Peer Review**

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from six experts who have knowledge of the species, the geographic region where the species occurs, and/or familiarity with the principles of conservation biology. Five of the peer reviewers responded and supported the proposal, providing us with comments which were summarized in the previous section and incorporated into the final rule. One reviewer did not respond.

**Summary of Changes From the Proposed Rule**

Based on a review of public comments and the draft economic analysis, we reevaluated our proposed critical habitat designation and made changes as necessary. These include the following:

(1) We modified the description of the primary constituent elements. These modifications include a more defined soil surface definition, and removal of the wording ''frequently cryptogamic soils'' and the proposed primary constituent element No. 3, which are addressed in further detail in the ''Special Management Considerations or Protections'' section below.

(2) We added a section describing the special management considerations or protections that *Chlorogalum purpureum* may require. We believe that this new section will help to identify activities that address section 3(5)(A)(i)(II) of the Act, and also assist land managers in developing management strategies for *C. purpureum*.

(3) We removed the Camp Roberts Unit from the final designation. Camp Roberts' INRMP includes long-term conservation measures and adaptive management for *Chlorogalum purpureum* var. *purpureum* on Camp Roberts property and because information received since proposing critical habitat for this species indicates that the private lands proposed within this unit are not essential to the conservation of the species.

A survey was conducted in 2002 by the Santa Barbara Botanic Garden within suitable habitat on adjacent private land (*i.e.*, Palm property) north of the known Camp Roberts population. This survey confirmed the absence of the taxon on the property during the peak flowering season and the lower likelihood of the plants to occur on the property due to less suitable habitat (*e.g.*, different soil type, high density of cobbles and rocks) interspersed throughout most of the suitable areas (D. Wilken, *in litt.*, 2002). Review of recent aerial photographs unavailable at the time of the critical habitat proposal revealed a significant amount of ground disturbance (*i.e.*, grading, excavation) on other private land areas proposed as critical habitat north of Camp Roberts (H. Crowell, pers. obs., 2002). Therefore, we have determined that the private lands proposed within this unit do not currently provide the primary constituent elements that are essential to the conservation of the species.

Camp Roberts' INRMP includes an assessment of the species' ecological needs on the installation, a statement of goals and priorities, a detailed description of management actions to be implemented to provide for the ecological needs of the taxon, and a monitoring and adaptive management plan that will be peer-reviewed and approved by the Service. Since Camp Roberts' INRMP addresses the needs of the species, we have concluded that no additional special management or protection of the habitat is necessary, and that the Camp Roberts portion of this unit does not meet the definition of critical habitat.

(4) Military lands at Fort Hunter Liggett were removed because the costs associated with loss of training areas and traveling to alternate training sites outweighs the benefit of inclusion as critical habitat. In addition, we note that the military is developing an INRMP and undertaking other measures designed to provide special management for the species. This INRMP and the other measures would most likely justify exclusion of this area under section 3(5)(A) in the near future, but the actual decision was based on our decision that the benefits of exclusion exceed the benefits of designation. For clarity we have renamed the proposed Fort Hunter Liggett Unit to Jolon Unit to reflect these changes.

(5) The boundary for the Camatta Canyon critical habitat unit was reduced

in size from 1,933 ha (4,770 ac) to 1,772 ha (4,378 ac). The 159 ha (392 ac) reduction is a result of more defined and detailed mapping using aerial photographs to exclude those areas where unsuitable habitat types (*e.g.*, dense woodland or scrub vegetation) exist.

**Critical Habitat**

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

Section 7(a)(2) of the Act requires Federal agencies to consult with the Service to ensure that any action it authorizes, funds, or carries out is not likely to result in the destruction or adverse modification of habitat determined to be critical to a species. Section 7 of the Act also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

To be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify (to the extent known using the best scientific and commercial data available) habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat for a species, to the extent such habitat is determinable, at the time of listing. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will not often have sufficient information to identify all areas essential for the conservation of the species. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential to the conservation of the species. We will not speculate about what areas might be found to be essential if better information becomes available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life-cycle needs of the species, then the area will not be included in the critical habitat designation. Within the geographic area occupied by the species, we will not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), which provide essential life cycle needs of the species. However, we may be restricted by minimum mapping unit or map scale.

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species'' (50 CFR 424.12(e)). Accordingly, we will not designate critical habitat in areas outside the geographic area occupied by the species when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of those areas.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should, at a minimum, be the listing rule for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, unpublished materials, and expert opinions.

Habitat is often dynamic, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, it should be understood that critical habitat designations do not suggest that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information to these planning efforts calls for a different outcome.

**Methods**

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12) we used the best scientific information available to determine areas that contain the physical and biological features essential for the conservation of *Chlorogalum purpureum*. This included information from the California Natural Diversity Data Base (CNDDB 2000), soil survey maps (Soil Conservation Service 1978, 1980), recent biological surveys and reports, additional information provided by interested parties, and discussions with botanical experts.

We believe that future conservation and recovery of this species depends not only on protection of areas it currently occupies, but also the opportunity to increase its current distribution. This is

supported by the historic loss of the habitats that likely harbored additional populations of *Chlorogalum purpureum*.

The private property adjacent to the Camatta Canyon critical habitat unit is occupied by above-ground plants and most likely a seed bank. In addition, each of the units includes areas that are considered unoccupied by the species. ''Occupied'' is defined here as any area with above-ground *Chlorogalum purpureum* plants or a seed or bulb bank of indefinite boundary. All occupied sites contain the primary constituent elements and are essential to the conservation of the species, as described below. ''Unoccupied'' is defined here as an area that contains no above-ground *Chlorogalum purpureum* plants and for which it is unknown if dormant plants exist or a seed or bulb bank is present. Both occupied and unoccupied areas that are designated as critical habitat are essential to the conservation of the species.

Determining the specific areas that this species occupies is difficult for two reasons: (1) The way the current distribution of *Chlorogalum purpureum* is mapped can be variable, depending on the scale at which patches of individuals are recorded (*e.g.*, many small patches versus one large patch); and (2) depending on the climate and other annual variations in habitat conditions, the extent of the distributions may either appear to shrink or temporarily disappear due to the dormancy characteristics of the species, or, if there is a residual seed bank present, enlarge and cover a more extensive area. Because it is logistically difficult to determine how extensive the seed bank is at any particular site and because above-ground plants may or may not be present in all patches within a site each year, we cannot quantify in a meaningful way what proportion of each critical habitat unit may actually be occupied by *C. purpureum.* Therefore, patches of unoccupied habitat are interspersed among patches of occupied habitat; the inclusion of unoccupied habitat in our critical habitat units reflects the dynamic nature of the life history characteristics of this species. Unoccupied areas provide habitat into which populations might expand, provide connectivity or linkage between colonies within a unit, and may support populations of pollinators and seed dispersal organisms.

**Primary Constituent Elements**

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, when determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and may require special management considerations or protection. These include, but are not limited to—space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the known historic geographical and ecological distributions of a species.

Changes in habitat for both varieties of *Chlorogalum purpureum* have occurred due to alteration of lands, direct loss of plants due to construction, widening of roads, displacement by nonnative annual grasses, inappropriate livestock grazing, and potentially by alteration of fire cycles. Livestock grazing may be detrimental to this taxon depending on the intensity of livestock use and the extent to which livestock congregate in the area. Special management for critical habitat may also be needed for conditions where indirect, negative impacts from recreation, military activities, and competition or predation from nonnative species (*i.e.*, pigs, nonnative annual grasses, etc.) occur. Most if not all of these activities may destroy any cryptogamic crusts that are present, and could potentially affect vascular plant germination and decrease the amount of nutrients available for proper plant development (Belnap *et al.* 2001). However, as noted earlier, additional research is necessary to confirm this. In addition to indirect impacts, direct loss of individual plants can occur from military training activities at Fort Hunter Liggett and Camp Roberts, and off-road vehicle use at LPNF. Ideally, the habitat that supports both varieties of C. purpureum should have little to no soil surface disturbance. Death of seeds, plants and any cryptogamic crust organisms can occur depending on the severity, size, frequency, and timing of soil disturbance. Soil surface disturbance can result in the death of seeds, seedlings and adult plants through burial or grinding.

Based on our knowledge to date, the primary constituent elements of critical habitat for *Chlorogalum purpureum* var. *purpureum* consist of, but are not limited to:

(1) Soils that are sandy clay to loamy clay, well drained on the surface, and are often overlain with fine gravel; and,

(2) plant communities in functioning ecosystems that support associated plant and animal species (*e.g.*, pollinators, predator-prey species, etc.), including valley and foothill grassland (most similar to the needlegrass series and California annual grassland series *in* Sawyer and Keeler-Wolf (1995)), blue oak woodland or oak savannahs (Holland 1986), and open areas within shrubland communities (most similar to the Chamise series *in* Sawyer and Keeler-Wolf (1995), although percent cover of chamise at known *Chlorogalum purpureum* var. *purpureum* areas is unknown). Within these vegetation community types, *C. p.* var. *purpureum* typically appears where there is little cover from other species which compete for resources available for growth and reproduction.

Based on our knowledge to date, the primary constituent elements of critical habitat for *Chlorogalum purpureum* var. *reductum* consist of, but are not limited to:

(1) Well-drained, red clay soils with a large component of gravel and pebbles on the upper soil surface; and,

(2) Plant communities in functioning ecosystems that support associated plant and animal species (*e.g.*, pollinators, predator-prey species, etc.), including grassland (most similar to the California annual grassland series *in* Sawyer and Keeler-Wolf (1995) or the pine bluegrass grassland, non-native grassland and wildflower field descriptions in Holland (1986)), blue oak woodland or oak savannahs (Holland 1986), oak woodland, and open areas within shrubland communities (most similar to the Chamise series *in* Sawyer and Keeler-Wolf (1995), although percent cover of chamise at known *Chlorogalum purpureum* var. *reductum* areas is unknown). Within these vegetation communities *C. p.* var. *reductum* appears where there is little cover of other species which compete for resources available for growth and reproduction.

At least one of the primary constituent elements must be present in order for an area to be considered critical habitat. Because *Chlorogalum purpureum* is documented to occur within trails (*i.e.*, passageways that are established, not graded, and do not support a paved surface) that support the appropriate soils and vegetation, as described in the primary constituent elements, these areas may constitute critical habitat. Surveys and information provided to us by land owners or species experts have contributed to our understanding that *C. purpureum* readily grows on well-drained surfaces that are underlain by clay soils that are

embedded with a fine gravel, and are found in areas where competition with other plant species is minimal (Wilken 2000; E. L. Painter, pers. comm., 2001). In most areas where *C. purpureum* occurs, it occupies microhabitat sites where there is little cover from other herbaceous species. Where *C. purpureum* occurs within grassland communities, the likelihood of plants occurring may decrease with an increase in the density of other nonnative herbaceous species, such as, but not limited to *Avena* ssp., *Bromus* ssp., and *Centuarea solstitialis.*

**Site Selection**

We selected critical habitat areas to provide for the conservation of *Chlorogalum purpureum* at one site where it is known to occur. Two other locations (Camp Roberts and Fort Hunter Liggett) are also essential to the conservation of the species and were identified in the proposed critical habitat designation. However, we have removed these areas from the final designation as described in the ''Summary of Changes From the Proposed Rule'' and ''Relationship of Critical Habitat to Military Lands'' sections of this critical habitat rule because special management is already being provided at Camp Roberts and costs outweigh the benefits of designation at Fort Hunt Liggett. Additionally, special management provisions are being developed for lands at Fort Hunter Liggett.

The long-term conservation of *Chlorogalum purpureum* var. *purpureum* and *C. p.* var. *reductum* is dependent upon the protection of existing populations, and the maintenance of ecological functions within these sites, including connectivity between sites within close geographic proximity. This connectivity facilitates pollinator activity, seed dispersal mechanisms, and the ability to maintain occasional fire that promotes the openness of vegetative cover which is advantageous to the species.

Threats to the habitat of *Chlorogalum purpureum* include: alteration of lands, direct loss of plants due to construction, widening of roads, displacement by nonnative annual grasses, inappropriate livestock grazing, and potential alteration of fire cycles (65 FR 14878; March 20, 2000). Direct loss of individual plants can also occur due to military training activities at Fort Hunter Liggett and Camp Roberts, and off-road vehicle (ORV) use at LPNF. (65 FR 14878; March 20, 2000). The areas we are designating as critical habitat provide the habitat components essential for the conservation of *Chlorogalum purpureum.* Given the species' need for an open plant community structure, the risk from nonnative species competition, predation (*e.g.*, herbivory), or soil surface disturbance, we believe that these areas may require special management considerations or protection.

**Special Management Considerations or Protections**

Special management considerations or protections may be needed to maintain the primary constituent elements for *Chlorogalum purpureum* within the units being proposed as critical habitat. In some cases, protection of existing habitat and current ecological processes may be sufficient to ensure that populations of *C. purpureum* are maintained at those sites, and have the ability to reproduce and disperse into surrounding habitat. In other cases, however, active management may be needed to maintain the primary constituent elements for *C. purpureum.* We have outlined below the most likely kinds of special management and protection that *C. purpureum* critical habitat may require.

(1) The soils on which *Chlorogalum purpureum* is found should be maintained. Physical properties of the soil, such as its chemical composition, structure, and drainage capabilities, would best be maintained by limiting or restricting the use of herbicides, fertilizers, or other soil amendments; and by minimizing or avoiding activities that result in soil compaction (*e.g.*, off-road wheeled and tracked vehicle use, trampling by people and livestock) and those that would alter the hydrology of areas immediately adjacent to or upslope of the species and its critical habitat.

(2) The soil surface should be maintained to enhance cryptogamic crust formation by minimizing the intensity, frequency, duration, and acreage of soil surface disturbance. The soil surface should be protected at relict sites (*i.e.*, sites with well-developed crusts) to provide reference areas and baseline comparisons for research. Because cryptogamic crusts are highly susceptible to hot fires (Belnap *et al.* 2001) and the presence of nonnative annual grasses in *Chlorogalum purpureum* habitat may promote fires. Annual, intense fires should be avoided. The effects of activities that can damage biotic soil crusts (*e.g.*, excavations, off-road vehicle use, trampling) should be reduced by moving them to areas where crusts are less vulnerable, limiting the area affected, and conducting such activities in dryer seasons.

(3) The associated plant and animal communities should be maintained to ensure the habitat needs of pollinators and seed dispersal agents are maintained, and predator-prey relationships are functioning. The use of pesticides should be restricted so that viable populations of pollinators are present to facilitate reproduction of *Chlorogalum purpureum.* Fragmentation of habitat through road construction, development, and certain types of fencing should be limited. Additionally, predator-prey relationships should be managed and protected. For example, installation of fencing could exclude predator species (*e.g.*, coyotes, bobcats, San Joaquin kit fox), thus causing an increase in prey species (*e.g.*, ground squirrels, gophers, rabbits) abundance. A change such as this could result in increased herbivory, bulb predation, or burrowing that could affect *C. purpureum* growth and survival.

(4) In all plant communities where *Chlorogalum purpureum* occurs, invasive, nonnative species such as *Centuarea solstitialis* (yellow star-thistle), *Avena* spp. (wild oats), *Bromus* spp. (*B. hordeaceus*, *B. diandrus*, *B. madritensis*, *B. rubens* (brome)), *Erodium* spp. (storksbill or fillaree), and other species need to be actively managed and controlled to maintain the open habitat that *Chlorogalum purpureum* needs. Nonnative annual grasses may promote fires by providing recurring annual fuel sources. Thus, proactive management should be implemented to prevent annual fires, unless future research demonstrates that a series of annual fires can benefit *Chlorogalum purpureum* by reducing competition from nonnative species.

(5) Certain critical habitat areas (*i.e.*, suitable, unoccupied habitat between or adjacent to known patches of *Chlorogalum purpureum*) may need to be temporarily fenced or demarcated to identify exclusion areas for protection from accidental or intentional trampling by humans, livestock, or off-road vehicle use. Heavy disturbance to these critical areas may be detrimental to this species' persistence. Seasonal exclusions may work in certain areas to protect the critical habitat and *C. purpureum* plants during the critical season of growth and reproduction.

(6) In areas where *Chlorogalum purpureum* and its habitat occur in conjunction with off-road vehicle traffic (*e.g.*, military wheeled and tracked vehicles, OHVs), we recommend managing to minimize the severity of those effects. Management should include: limiting or avoiding new structures and permanent roads and

trails; managing excavations, scrapings, or other ground surface disturbance; managing tracked and wheeled vehicle use during *C. purpureum* growing and dormant seasons; and managing foot traffic, bivouacking, and congregations of high numbers of people during *C. purpureum* growing and dormant seasons. These types of activities should be managed to limit loss of adults, bulbs, and seeds, loss of habitat, increased soil compaction, and increased nonnative species encroachment.

(7) Monitoring programs should be developed or enhanced so that areas occupied by purple amole are studied, allowing for a full range of life-history data and a thorough analysis of the compatibility and impacts of those activities that may adversely affect the species. Representative areas should be chosen throughout the distribution of the species, including large, high-density populations that have a higher potential for persistence. Monitoring studies should be designed to aid in the determination of population stability as well as provide basic life-history information and data on the ecological needs of the species (*e.g.*, identification and status of pollinator species, disturbance factors, etc.).

**Criteria Used To Identify Critical Habitat**

*Chlorogalum purpureum* was likely more widespread in the past, and the current population size is small. Therefore, the likelihood that chance or unforeseen disturbance will reduce the population size is high, and we believe it is important to preserve all areas that currently support populations of *Chlorogalum purpureum.* We included some areas that may not currently contain *C. purpureum* (due to former cultivation, threats from nonnative species, or other factors) but harbor the necessary primary constituent elements. These areas were included to maintain connectivity between sites. We also included habitat for *C. purpureum* adjacent to, and contiguous with, areas of known occurrences to maintain landscape-scale processes. Each mapping unit contains habitat that is occupied by *C. purpureum.*

As described in the ''Background,'' ''Primary Constituent Elements,'' and ''Special Management Considerations or Protections'' sections, the species depends upon habitat components beyond the immediate, occupied areas. These components include specific soil types, supporting vegetation communities with which the species is associated, and sufficient habitat areas to support the ecological processes on which the species depends (*e.g.*, hydrologic regimes, a diverse ecosystem that supports the appropriate pollinators and seed dispersal mechanisms, sufficient areas of appropriate habitat so the plant can expand and re-colonize areas, natural predator-prey relationships that promote species survival, and minimal competition from non-native species).

A seed or bulb bank likely exists within habitat that occurs adjacent to the current known distribution of *Chlorogalum purpureum.* The extent of this seed or bulb bank is unknown. However, other studies have determined that ecosystems with annual weed species have large seed banks, especially where the land has been grazed (Baskin and Baskin 1998). The critical habitat units for both varieties of *Chlorogalum* contain habitat with annual native and weed species and have experienced livestock grazing either currently (LPNF) or historically (Fort Hunter Liggett). Because it is logistically difficult to determine how extensive a seed or bulb bank is at any particular site, and because above-ground plants may or may not be present in all patches within a site each year, we cannot quantify what proportion of critical habitat units may actually be occupied by a seed or bulb bank. However, any seed or bulb bank present is critical for the species' survival. If, for example, a fire destroys adult plants prior to seed dispersal, no seeds will be set for next year's growth. Therefore, a seed or bulb bank that occurs in the surrounding habitat could aid in reducing population declines and extirpation. The inclusion of unoccupied habitat in the critical habitat unit reflects the dynamic nature of the life history characteristics (*e.g.*, seasonal dormancy, timing of flowering, etc.) of this species.

Species necessary for pollination and seed dispersal of *Chlorogalum purpureum* extend beyond the boundary of the known distribution of *C. purpureum.* It is necessary to protect sufficient areas surrounding the known occurrences of *C. purpureum* because occupied habitat that is limited in size can maintain few pollinators. Additionally, pollinators of *C. purpureum* are likely to be generalist species that also pollinate other plants in the habitats where *C. purpureum* occurs. A reduction in pollinator visitation to the species could reduce seed output, resulting in decreases in flowering plant density, inflorescence density, or population size.

Plants with life-history characteristics such as *Chlorogalum purpureum* have distributions that are known to fluctuate (expand or decrease) over long time periods in response to both natural and human-induced events (*e.g.*, rainfall, fire, recreation activities, herbicide use, change in private land use practice, etc.). These factors may cause the habitat suitability of given areas to vary over time, and thus affect the distribution of *C. purpureum.* Those areas with appropriate soil conditions outside of the known occurrences of both varieties of *C. purpureum* and adjacent to the plateau areas where *C. p.* var. *reductum* occurs are favorable for population expansion and reintroductions.

The ability of an organism to survive and reproduce depends upon available resources. For *Chlorogalum purpureum*, those resources occur within and beyond the boundaries of the known distribution of the species. Without including the surrounding area, the fitness (*i.e.*, the extent to which the species' genes are passed on and represented in subsequent generations) of *C. purpureum* may be reduced. For many wildlife and plant species, the entire landscape (rather than site-specific characteristics) may be influential. The exact amount of area needed for *C. purpureum* cannot be determined without obtaining detailed information on measurable variables that reflect the plant's health, reproduction, and survival. These data are currently not available. Unless further studies are conducted that suggest otherwise, we believe the habitat encompassed within the critical habitat boundaries is necessary for *C. purpureum* expansion, reproduction, and survival. It incorporates those characteristics needed by the taxon, in addition to supporting those ecological functions necessary for *C. purpureum* persistence.

When selecting areas of critical habitat for *Chlorogalum purpureum*y, we made an effort to avoid developed areas that are unlikely to contribute to the conservation of the species. However, we did not map critical habitat in sufficient detail to exclude all developed areas, or other lands unlikely to contain the primary constituent elements essential for the conservation of *C. purpureum.* Areas within the boundaries of the mapped units, such as buildings, hard-packed roads (*e.g.*, asphalt, paved, etc.), parking lots, railroads, airport runways and other paved areas, lawns, and other urban landscaped areas will not contain any of the primary constituent elements. Federal actions limited to these areas would therefore not trigger a section 7 consultation, unless they may affect the

species and/or primary constituent elements in adjacent critical habitat.

Critical habitat for *Chlorogalum purpureum* var. *reductum* includes one unit, the Camatta Canyon unit, which currently supports one population of this taxon with two known occurrences. Limited data on soils and habitats were available for delineating the critical habitat boundaries for *C. p.* var. *reductum.* No GIS data layers were available to create a combined soil, slope, and vegetation model such as that created for *C. p.* var. *purpureum.* Therefore, the critical habitat designation is based on the existing known populations, and observations of soil characteristics and vegetation community types made by various researchers and agencies. This unit was developed by encompassing the extent of appropriate topography and vegetation community types surrounding the known populations. Because the ecological processes, soil types, and vegetation community upon which *C. p.* var. *reductum* depends extend beyond the boundary of its known distribution, we included the plateau areas, the known distribution, and a portion of the adjacent vegetation community in the critical habitat boundary. Encroaching activities not conducive to *C. p.* var. *reductum* persistence, that may adversely affect or destroy the plant and habitat that is critical for its expansion and survival, should be limited by the current boundaries. These activities include, but are not limited to, off-road vehicle use, livestock grazing, herbivory, expansion of nonnative species (that out-compete smaller, herbaceous species), and ground disturbance by gophers.

Thorough surveys of the distribution of *Chlorogalum purpureum* var. *reductum* have not been conducted in San Luis Obispo County. Additionally, life-history characteristics (*e.g.*, seasonal dormancy) of the species make it difficult to quantify the taxon's exact distribution. Therefore, the plants are likely more widespread than observed. Multi-year surveys are needed to determine the presence or absence of the species. Monitoring *C. p.* var. *purpureum* at Fort Hunter Liggett has revealed that individual mature plants can be dormant for at least three years (Liz Clark, Fort Hunter Liggett, pers. comm., 2002). During dormancy, *C. purpureum* is not detectable on the surface. Additionally, new *C. p.* var. *purpureum* sites are being found within the range of the taxon at Fort Hunter Liggett. We expect ''new patches'' of *C. p.* var. *reductum* also to be revealed in the Camatta Canyon Unit if surveys are conducted within the critical habitat boundary in those areas where the primary constituent elements occur. Data collected on *C. p.* var. *purpureum* indicate that the species commonly grows on slopes less than 20 percent. However, plants have also been documented on steeper slopes up to 50 percent. Therefore, steeper areas are incorporated into the critical habitat boundary.

An extension of the plateau where *Chlorogalum purpureum* var. *reductum* is currently known to occur exists between the northern and southern site. These plateau extensions may potentially support *C. p.* var. *reductum* (D. Chipping, California Polytechnic State University, *in litt.,* 1997). Additional *C. p.* var. *reductum* plants likely occur on private property which falls between the two known sites and within the critical habitat boundary (A. Koch, pers. comm., 2001). This area harbors the soils and vegetation appropriate for *C. p.* var. *reductum* growth and expansion. We believe protecting the habitat between the two sites provides connectivity and therefore provides for gene flow and an increase in population size in the long term.

**Critical Habitat Designation**

The critical habitat areas described below constitute our best assessment of the areas needed for the conservation of *Chlorogalum purpureum* at this time. Critical habitat for *C. purpureum* includes (1) private property adjacent to Fort Hunter Liggett property, Monterey County; and (2) on LPNF property, a small strip of state lands adjacent to Highway 58, and adjacent private property in San Luis Obispo County. We have excluded approximately 4,282 ha (10,586 ac) of land as critical habitat for *C. p.* var. *purpureum.* We have designated approximately 1,772 ha (4,378 ac) of land as critical habitat for *C. p.* var. *reductum.* Approximately 25 percent of this total area consists of Federal lands, private lands comprise approximately 75 percent, and State lands comprise less than 0.1 percent.

As discussed throughout this rule, the long-term conservation of *Chlorogalum purpureum* var. *purpureum* and *C. p.* var. *reductum* is dependent upon the protection of existing populations, and the maintenance of ecological functions within these sites, including connectivity between sites within close geographic proximity. *Chlorogalum purpureum* was likely more widespread in the past, and the current population size is small and faces threats to its habitat as described in the final listing rule and this critical habitat designation. Therefore, the likelihood that chance or unforseen disturbance will reduce the population size is high, and we believe it is important to preserve all areas that currently support populations of *Chlorogalum purpureum.*

In addition, the designated areas surrounding the known distribution of both varieties of *Chlorogalum purpureum* are essential because:

(1) Thorough surveys of the distribution of *Chlorogalum purpureum* have not been conducted. Additionally, life-history characteristics (*e.g.*, seasonal dormancy) of *C. purpureum* make it difficult to quantify the species' exact distribution. Therefore, the plants are likely more widespread than observed. Surveys conducted for several years are needed to determine the presence or absence of the species.

(2) A seed or bulb bank likely exists within habitat that occurs adjacent to the current known distribution of *Chlorogalum purpureum* var. *purpureum* and *C. p.* var. *reductum.* The extent of this seed or bulb bank is unknown. However, other studies have determined that ecosystems with annual species have large seed banks, especially where the land has been grazed (Baskin and Baskin 1998). Because it is logistically difficult to determine how extensive the seed or bulb bank is at any particular site, and because above-ground plants may or may not be present in all patches within a site each year, we cannot quantify what proportion of the critical habitat unit may actually be occupied by *C. purpureum.* However, any seed or bulb bank present is critical for the species' survival. If, for example, a fire destroys adult plants prior to seed dispersal, no seeds will be set for the following years' growth. A seed or bulb bank that occurs in the surrounding habitat could help limit population declines and extirpation. The inclusion of unoccupied habitat in the critical habitat unit reflects the dynamic nature of the life history characteristics (*e.g.*, seasonal dormancy, timing of flowering, etc.) of this species.

(3) Species necessary for pollination and seed dispersal of *Chlorogalum purpureum* extend beyond the boundary of the known distribution of *C. purpureum.* It is necessary to protect sufficient areas surrounding the known occurrences of *C. purpureum* because occupied habitat that is limited in size can maintain few pollinators. Additionally, the pollinators of *C. purpureum* are likely to be generalists that also pollinate other plants in the grassland, oak savannah, and chaparral habitat where the plant occurs. A reduction in pollinator visitation to *C. purpureum* could reduce seed output,

resulting in decreases in flowering plant density, inflorescence density, or population size.

(4) Plants with life-history characteristics such as *Chlorogalum purpureum* have distributions that are known to fluctuate (expand or decrease) over long time periods in response to natural and unpredictable events (*e.g.*, rainfall, fire, recreation activities, herbicide use, change in private land use practice). These factors may cause the habitat suitability of given areas to vary over time, and thus affect the distribution of *C. purpureum.* Areas beyond the known occurrences of *C. purpureum* that have appropriate soil conditions are favorable for population expansion and reintroductions (if necessary in the future).

The ability of an organism to survive and reproduce depends upon available resources. For *Chlorogalum purpureum,* those resources occur beyond the boundaries of the known distribution of the species. Without including the surrounding area, the fitness (*i.e.*, the extent to which the species genes are passed on and represented in subsequent generations) of *Chlorogalum purpureum* may be reduced. For many wildlife and plant species, the entire landscape (rather than site-specific characteristics) may be influential. The exact amount of area needed for *Chlorogalum purpureum* cannot be determined without studying measurable variables which reflect the plant's health, reproduction, and survival. Very little of this information is available for *C. p.* var. *purpureum* or *C. p.* var. *reductum.* Therefore, unless the results of future studies suggest otherwise, we believe the habitat encompassed within the critical habitat boundaries is necessary for *C. purpureum* expansion, reproduction, and survival because the area has those characteristics needed by the species, in addition to supporting those ecological functions necessary for *C. purpureum* persistence.

A brief description of the critical habitat units are given below:

*Jolon Unit*

This unit consists of 620 ha (1,532 ac) of private property near Jolon Road. This population is probably a remnant of a much larger population that historically extended beyond the immediate Fort Hunter Liggett area. The land within this unit provides those characteristics essential for the species discussed above.

*Camatta Canyon Unit*

This unit consists of one area that encompasses the similar topographic features and vegetative communities that surround the only two known occurrences of this species. The Camatta Canyon Unit (1,772 ha (4,378 ac)) encompasses the plateau on both the north and south sides of Highway 58 near Camatta Canyon, extending south approximately 5 km (3 mi) to include two private inholding areas within the LPNF boundaries.

The land within this unit provides those characteristics essential for the species discussed above. More specifically, the area surrounding the known distribution of *Chlorogalum purpureum* var. *reductum* and the plateau adjacent to the known distribution (*i.e.*, finger-like extensions in northern portion of the unit) are essential because:

(1) *Chlorogalum purpureum* var. *reductum* is found at only two sites in the La Panza Range in central San Luis Obispo County. The two sites likely make up one ''population'' of plants due to the close proximity of the sites and the characteristic ''patchiness'' of plants that has been observed with both varieties of *C. purpureum.* The limited geographic distribution of *C. p.* var. *reductum* increases the likelihood of its extinction. The risk of extinction elevates the need for protecting all existing plants, habitat, and soil conditions for the taxon's expansion. Additionally, ecological attributes upon which the species relies (*e.g.*, pollinators, seed dispersal agents) should be protected. Activities that may adversely affect or destroy the plant and the habitat that is critical for its survival and expansion should be limited. These activities include, but are not limited to, off-road vehicle use, livestock grazing, herbivory, and ground disturbance by gophers.

(2) Thorough surveys of the distribution of *Chlorogalum purpureum* var. *reductum* have not been conducted in the area. Surveys are needed across multiple years to determine the presence or absence of the species. Monitoring of *C. p.* var. *purpureum* at Fort Hunter Liggett has found known individual mature plants to be dormant for at least three years. During dormancy, both varieties of *Chlorogalum* are not detectable on the surface. Because discoveries of new *C. p.* var. *purpureum* sites are being found within the range of the taxon at Fort Hunter Liggett, one may expect ''new patches'' of *C. p.* var. *reductum* to occur in the Camatta Canyon Unit if surveys were conducted within the critical habitat boundary in those areas where the primary constituent elements occur.

(3) An extension of the plateau/flat-top area where *Chlorogalum purpureum* var. *reductum* is currently known to occur exists between the northern site and the southern site. This area harbors the soils and vegetation appropriate for *C. p.* var. *reductum* growth and expansion. We believe it is important to provide connectivity between the two sites. Additionally, the area encompasses what appear to be flat-top/mesa-like extensions (which likely contain suitable habitat) that occur between the two known distributions (D. Chipping, California Polytechnic State University, *in litt.,* 1997). A. Koch (CDFG, pers. comm., 2001) also notes that *C. p.* var. *reductum* occurs on private property which falls between the two known sites and within the critical habitat boundary line.

(4) The vegetation community that *Chlorogalum purpureum* var. *reductum* depends on extends beyond the boundary of the known distribution. By encompassing plateau areas, the known distribution, and a portion of the adjacent vegetation community that the species depends on, ecological functions (*e.g.*, cryptogamic crust formation, predator-prey relationships, pollinator activity) within the habitat are maintained such that ''edge effects'' from encroaching activities not conducive to *C. p.* var. *reductum* persistence (*e.g.*, off-road vehicle use, livestock grazing, etc.) do not inhibit the taxon's expansion or survival. Additionally, adjacent grassland and oak woodland habitat that is adversely affected could result in greater rates of herbivory or regeneration/expansion of nonnative plants that can outcompete smaller, herbaceous species such as *C. p.* var. *reductum.*

Lands proposed are under private, State, and Federal jurisdiction. State lands are managed by CalTrans, and Federal lands are managed by the the Forest Service (*i.e.*, LPNF). The approximate areas of proposed critical habitat by land ownership are shown in Table 1.

TABLE 1.—APPROXIMATE AREAS, GIVEN IN HECTARES (HA) AND ACRES (AC) [1] OF PROPOSED CRITICAL HABITAT FOR *Chlorogalum purpureum* BY LAND OWNERSHIP

| Unit name | Private | State | Federal | Total |
|---|---|---|---|---|
| Jolon | 620 ha (1,532 ac) | | | 620 ha (1,532 ac) |

TABLE 1.—APPROXIMATE AREAS, GIVEN IN HECTARES (HA) AND ACRES (AC) [1] OF PROPOSED CRITICAL HABITAT FOR *Chlorogalum purpureum* BY LAND OWNERSHIP—Continued

| Unit name | Private | State | Federal | Total |
|---|---|---|---|---|
| Camatta Canyon | 1,324 ha (3,271 ac) | 7 ha (18 ac) | 441 ha (1,089 ac) | 1,772 ha (4,378 ac) |
| Total | 1,944 ha (4,803 ac) | 7 ha (18 ac) | 441 ha (1,089 ac) | 2,443 ha (5,910 ac) |

[1] Approximate acres have been converted to hectares (2.47 ac = 1 ha). Based on the level of precision of mapping of each unit, hectares and acres have been rounded to the nearest whole number. Totals are sums of units.

**Effects of Critical Habitat Designation**

*Section 7 Consultation*

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify a species' critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a)(2) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the action agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide ''reasonable and prudent alternatives'' to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on Federal lands that may affect *Chlorogalum purpureum* or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act or any other activity requiring Federal action (*i.e.*, funding, authorization) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, as well as actions on non-Federal lands that are not federally funded, authorized, or permitted, will not require section 7 consultation.

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 adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for the conservation of *Chlorogalum purpureum* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Destruction of grassland, oak woodland, and oak savannah communities, and open areas found within shrubland communities, including but not limited to, introduction of nonnative species, heavy recreational use, maintenance of an unnatural fire regime, development, road maintenance, agricultural activities, discing, mowing, or chaining;

(2) Unmanaged soil compaction or disturbance of upper soil surfaces. These activities include, but are not limited to, grazing, fire management, or mechanical disturbance such as by vehicles with tracks or heavy wheels, and trampling by livestock and people; and,

(3) Unmanaged application or runoff of pesticides, herbicides, fertilizers, or other chemical or biological agents.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 ensures that actions funded, authorized, or carried out by Federal agencies are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify the listed

species' critical habitat. Actions likely to jeopardize the continued existence of a species are those that would appreciably reduce the likelihood of the species' survival and recovery, and actions likely to destroy or adversely modify critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. The units we are designating are occupied by either above-ground plants or a *Chlorogalum purpureum* seed bank. Federal agencies already consult with us on activities in areas where the species may be present to ensure that their actions do not jeopardize the continued existence of the species. The units also contain some areas which are considered unoccupied. However, we believe for those areas we have ultimately identified as critical habitat, that the designation of critical habitat is not likely to result in a significant regulatory burden above that already in place due to the presence of the listed species. Few additional consultations are likely to be conducted due to the designation of critical habitat. Actions on which Federal agencies consult with us include, but are not limited to:

(1) Development on private lands requiring permits from Federal agencies, such as authorization from the Corps, pursuant to section 404 of the Clean Water Act, or a section 10(a)(1)(B) permit from the Service, or some other Federal action that includes Federal funding that will subject the action to the section 7 consultation process (*e.g.*, from the Federal Highway Administration, Federal Emergency Management Agency, or the Department of Housing and Urban Development);

(2) Military activities of the U.S. Department of Defense (Army Reserve) on their lands or lands under their jurisdiction;

(3) Activities of the Forest Service on their lands or lands under their jurisdiction;

(4) The release or authorization of release of biological control agents by the U.S. Department of Agriculture;

(5) Regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act; and

(6) Construction of communication sites licensed by the Federal Communications Commission, and authorization of Federal grants or loans.

Where federally-listed wildlife species occur on private lands proposed for development, any Habitat Conservation Plans (HCPs) submitted by the applicant to secure a permit to take, according to section 10(a)(1)(B) of the Act, would be subject to the section 7 consultation process. Several other species that are listed under the Act have been documented to occur in the same general areas as the current distribution of *Chlorogalum purpureum*. Listed wildlife species identified either on Fort Hunter Liggett or in close proximity to this area include San Joaquin kit fox (*Vulpes macrotis mutica*), vernal pool fairy shrimp (*Branchinecta lynchi*), California red-legged frog (*Rana aurora draytonii*), arroyo toad (*Bufo californicus*), bald eagle (*Haliaeetus leucocephalus*), California condor (*Gymnogyps californianus*), and least Bell's vireo (*Vireo bellii* pusillus). The California tiger salamander (*Ambystoma tigrinum californiense*), a candidate wildlife species (taxon for which the Service has sufficient biological information to support a proposal to list as endangered or threatened), has also been documented at Fort Hunter Liggett. Species that are listed under the Act that may occur in the same general area as *C. p.* var. *reductum* include vernal pool fairy shrimp, longhorn fairy shrimp (*Branchinecta longientenna*), California red-legged frog, and California condor.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181 (503/231–6131, FAX 503/231–6243).

*Relationship of Critical Habitat to Military Lands*

Section 3(5)(A) and Exclusions Under Section 4(b)(2)

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and, (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Special management and protection are not required if adequate management and protection are already in place. Adequate special management or protection is provided by a legally operative plan/agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and that manages for the long-term conservation of the species. If any areas containing the primary constituent elements are currently being managed to address the conservation needs of *Chlorogalum purpureum* management or protection, these areas would not meet the definition of critical habitat in section 3(5)(A)(i) of the Act and would not be included in this final rule.

To determine if a plan provides adequate management or protection we consider—(1) Whether there is a current plan specifying the management actions and whether such actions provide sufficient conservation benefit to the species; (2) whether the plan provides assurances that the conservation management strategies will be implemented; and (3) whether the plan provides assurances that the conservation management strategies will be effective. In determining if management strategies are likely to be implemented, we consider whether—(a) A management plan or agreement exists that specifies the management actions being implemented or to be implemented; (b) there is a timely schedule for implementation; (c) there is a high probability that the funding source(s) or other resources necessary to implement the actions will be available; and (d) the party(ies) have the authority and long-term commitment to implement the management actions, as demonstrated, for example, by a legal instrument providing enduring protection and management of the lands. In determining whether an action is likely to be effective, we consider whether—(a) The plan specifically addresses the management needs, including reduction of threats to the species; (b) such actions have been successful in the past; (c) there are provisions for monitoring and assessment of the effectiveness of the management actions; and (d) adaptive management principles have been incorporated into the plan.

The Sikes Act Improvement Act of 1997 (Sikes Act) requires each military installation that encompasses land and

water suitable for the conservation and management of natural resources to have completed, by November 17, 2001, an INRMP. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the installation. Each INRMP includes an assessment of the ecological needs of the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. Under section 7 of the Act, we consult with the military on the development and implementation of INRMPs for installations with listed species. Military installations with approved INRMPs which address the needs of species generally do not meet the definition of critical habitat discussed above, as they require no additional special management or protection. Therefore, we generally do not include these areas in critical habitat designations if they meet the following three criteria: (1) A current INRMP must be complete and provide a benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan likely would not meet the definition of critical habitat. The Department of Defense has prepared an INRMP for the CANG at Camp Roberts that meets these criteria, and we have determined that these lands do not meet the definition of critical habitat under section 3(5)(A). We believe the assurances provided through the INRMP are sufficient to provide for the conservation of *Chlorogalum purpureum* var. *purpureum*. Consequently, these lands have not been included in this critical habitat designation.

The Department of the Army is currently developing an INRMP for Fort Hunter Liggett that addresses long-term conservation measures and adaptive management for *Chlorogalum purpureum* var. *purpureum*. We met with Fort Hunter Liggett on March 6, June 4, and June 17, 2002, to discuss the content of the installation's draft INRMP regarding the adequacy of conservation measures for *C. p.* var. *purpureum*. We provided written comments for consideration in developing the draft INRMP on May 31, June 4, and June 17, 2002. Our written comments conveyed the current status of the plant, criteria necessary for INRMPs to successfully preclude critical habitat designation, our concerns with Fort Hunter Liggett management of *C. p.* var. *purpureum* habitat, and a recommended strategy detailing measures that would provide for the long-term conservation of the species on the installation.

Fort Hunter Liggett biologists initiated a long-term monitoring program in 1998 to investigate life-history information on *Chlorogalum purpureum* var. *purpureum* in 23 plots placed subjectively where *C. p.* var. *purpureum* was known to occur. This monitoring program was reviewed and revised by academicians in 2000 and changes were made such that only two years of data are available for analysis. Data on leaf number, leaf width, flowering, numbers of fruits, and seed production were collected during the monitoring effort. Vegetative cover and disturbance type were recorded if found. Although the monitoring program provided life-history information, it was not designed to assess either population trends or effects of military activities on *C. p.* var. *purpureum*. We have reviewed the data and determined that it cannot be used to assess the above issues since—(1) The data cannot describe levels of recruitment on the installation, as seedlings cannot be accurately identified; (2) the relative age of individuals cannot be reliably determined from leaf number or width; (3) the monitoring effort lacked adequate sample size and random placement of plots; and (4) the plant undergoes dormancy for several years at a time. However, future experiments that expose plants of known age (by using lab-grown plants) to varying levels of impacts could provide valuable information on the effects of military training. Because the species is relatively slow to mature, an assessment of changes in population size would likely require more than a decade. Discussion regarding the INRMP will include a review of the monitoring program.

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Fort Hunter Liggett has commented that critical habitat on their installation would impact the training mission and cause adverse economic impacts. The military has provided information detailing annual direct costs of $2.3 million. These costs do not include additional costs, both monetary and human, incurred by local units that travel to Fort Hunt Liggett to train and who likely would be forced to train in other states. Types of training that the Army believes would no longer be viable at Ft. Hunter Liggett with the proposed designation of critical habitat include: training in the establishment of emergency airfields; training in the defense of emergency and established airfields; use of the machine gun and grenade ranges; use of the long-established tank trail between Camp Robert and the Fort; and staging for a variety of other types of training, including live-fire exercises.

We are working with Fort Hunter Liggett to identify conservation measures and adaptive management considerations for the conservation of *Chlorogalum purpureum* var. *purpureum*. Because the habitat identified as the Fort Hunter Liggett Unit does provide one or both of the primary constituent elements and requires special management considerations or protection, it was proposed for designation as critical habitat. We note that the military is developing an INRMP and is currently undertaking other measures designed to provide special management for the species. This INRMP, when completed, and the other measures would most likely justify exclusion of this area under section 3(5)(A) at that time. However, because the benefits of exclusion of critical habitat on Fort Hunter Liggett outweigh the benefits of the designation, we are excluding Fort Hunter Liggett under section 4(b)(2).

**Economic Analysis**

As stated above, 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.

Following the publication of the proposed critical habitat designation, a draft economic analysis was prepared to estimate the potential economic effect of the designation. The draft analysis was made publicly available for review on May 7, 2002 (67 FR 30644). We accepted comments on the draft analysis through June 6, 2002.

Our draft economic analysis evaluated the potential future effects associated with the listing of *Chlorogalum purpureum* as a threatened species under the Act, as well as any potential effect of the critical habitat designation above and beyond those regulatory and economic impacts associated with 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. Information received during the comment period further informed our economic review. As a result, we have identified significant but unquantified indirect costs that would be incurred by the military related to redirection of training activities and reduced military readiness.

The majority of consultations resulting from the critical habitat designation for *Chlorogalum purpureum* are likely to address ongoing activities (*e.g.*, grazing) at LPNF. Every consultation must consider how an action would affect the listed species and its habitat, whether or not critical habitat has been designated; for this reason, consultations that are reinitiated solely because of the designation of critical habitat will not result in recommendations or requirements for projects to be modified.

Our economic analysis recognizes that there may be costs from delays associated with reinitiating completed consultations after a critical habitat designation is made final.

Following the close of the comment period on the draft economic analysis, a final addendum was completed which incorporated public comments on the draft analysis.

We concluded that the designation of critical habitat as proposed would result in a significant economic impact to the military. Based on data provided by the military during the comment period, total estimated section 7 costs are likely to exceed $2.3 million in direct costs, plus the currently unquantified economic and human costs associated with changes in military training activities at Fort Hunter Liggett and a potential resulting reduction in military readiness. This data supported our decision to exclude Fort Hunter Liggett under section 4(b)(2). State agencies are not expected to be impacted by the designation of critical habitat. Costs to private landowners are expected to be approximately $28,000 for section 7 consultations, all attributable solely to the critical habitat designation. These estimates are based on the existing consultation history with agencies in the area and increased public awareness and technical assistance regarding clarification of the requirements that critical habitat might impose on private landowners. Therefore, we conclude that minimal incremental costs are anticipated as a result of this designation of critical habitat for *Chlorogalum purpureum*.

A copy of the final economic analysis and supporting documents are included in our administrative record and may be obtained by contacting our Ventura Fish and Wildlife Office (see **ADDRESSES** section).

## Required Determinations

### *Regulatory Planning and Review*

In accordance with Executive Order (EO) 12866, this is a significant rule and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below.

(a) In the economic analysis, we determined that this rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. *Chlorogalum purpureum* was listed as threatened in March of 2000. Since that time we have conducted, and will continue to conduct, formal and informal section 7 consultations with other Federal agencies to ensure that their actions will not jeopardize the continued existence of *C. purpureum*.

Under the Act, Federal agencies shall consult with the Service to ensure 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. The Act does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency (see Table 2 below). Based upon our experience with this species and its needs, we conclude that any Federal action or authorized action that could potentially result in the destruction or adverse modification of critical habitat would also be considered as ''jeopardy'' under the Act in areas occupied by the species.

Accordingly, the designation of currently occupied areas as critical habitat is not anticipated to have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding beyond the effects resulting from the listing of this species. Non-Federal persons who do not have a Federal ''sponsorship'' in their actions are not restricted by the designation of critical habitat. The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding that are not attributable to the species listing. These impacts were evaluated in our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule).

TABLE 2.—IMPACTS OF CHLOROGALUM PURPUREUM LISTING AND CRITICAL HABITAT DESIGNATION

| Categories of activities | Activities potentially affected by species listing only | Additional activities potentially affected by critical habitat designation [1] |
|---|---|---|
| Federal Activities Potentially Affected [2]. | Activities such as field maneuvers by troops or vehicles, training, bivouacking, construction and facility development conducted by the Army Reserve at Fort Hunter Liggett. Activities authorized or conducted by the Forest Service at LPNF, such as livestock grazing, road maintenance or construction, and recreation. | Activities by these Federal agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation. |

TABLE 2.—IMPACTS OF CHLOROGALUM PURPUREUM LISTING AND CRITICAL HABITAT DESIGNATION—Continued

| Categories of activities | Activities potentially affected by species listing only | Additional activities potentially affected by critical habitat designation [1] |
|---|---|---|
| Private or other non-Federal Activities Potentially Affected [3]. | Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for *Chlorogalum purpureum* by mechanical, chemical, or other means or appreciably decrease habitat value or quality through indirect effects (*e.g.*, edge effects, invasion of exotic plants or animals, fragmentation of habitat). | Funding, authorization, or permitting actions by Federal agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation. |

[1] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of *Chlorogalum purpureum* since its listing in 2000. We evaluated the impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation in our economic analysis (see Economic Analysis section of this rule). We do not expect prohibition against adverse modification of critical habitat to impose any restrictions in addition to those that currently exist on currently occupied land and will not create inconsistencies with other agencies' actions on unoccupied lands.

(c) We do not expect this final rule to materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above, we do not anticipate that the adverse modification analysis (resulting from critical habitat designation) will have any incremental effects.

(d) OMB has determined that this rule raises novel and legal or policy issues. Therefore, this rule is significant under E.O. 12866, and, as a result, has undergone OMB review.

*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 effect 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 an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. In this rule, we are certifying that the critical habitat designation for *Chlorogalum purpureum* will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

Small entities include small organizations, such as independent non-profit organizations, small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects 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. In areas where the species may be present, Federal agencies already are required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect *Chlorogalum purpureum.* Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. However, since *C. purpureum* was proposed for listing we have conducted only one formal consultation with Fort Hunter Liggett and one with LPNF. We are currently in the process of preparing two biological opinions for *C. p.* var. *purpureum.* None of the past or ongoing consultations involves an applicant that qualifies as a small entity.

In the draft economic analysis, we found that the proposed designation could potentially impose total economic costs for consultations and modifications to projects within proposed critical habitat for *Chlorogalum purpureum* var. *purpureum* on privately-owned land up to $12,000 over a 10-year period in the

Jolon Unit (formerly Fort Hunter Liggett Unit) and up to $2,000 over a 10-year period in the Camp Roberts Unit. We also found the proposed designation could potentially impose total economic costs for consultations and modifications to projects within proposed critical habitat for *C. p.* var. *reductum* on privately-owned land up to $14,000 over a 10-year period in the Camatta Canyon Unit.

For the final designation, the Service has concluded that the proposed lands within the boundaries of Camp Roberts, as discussed in the ''Relationship of Critical Habitat to Military Lands'' section of this rule, do not meet the definition of critical habitat under section 3(5)(A) of the Act. Therefore, any projects or activities on these lands will not be subject to consultations as a result of critical habitat designation for *Chlorogalum purpureum* var. *purpureum* and the estimated cost of up to $2,000 over a 10-year period for private lands in the Camp Roberts Unit would no longer be applicable.

While SBREFA does not explicitly define either ''substantial number'' or ''significant effect,'' the Small Business Administration, as well as other Federal agencies, have interpreted these terms to represent an impact on 20 percent or greater of the number of small entities in any industry and an effect equal to three percent or more of a business' annual sales. 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.

On Federal lands included in this proposed critical habitat designation, grazing is the only activity identified as possibly having an economic effect on small entities. Currently, there is only one grazing permittee at LPNF out of all Federal lands included in this rule, and there is no indication that other entities will apply for grazing permits in the foreseeable future. This does not represent a substantial number of small grazing entities. The grazing permittee at LPNF is for the Navajo Allotment in the Santa Lucia Ranger District. Only a portion of critical habitat lies within this grazing allotment. The draft economic analysis and final addendum address the potential costs associated with activities taking place in LPNF, totaling approximately $38,000 to all parties including LPNF, the Service, and private landowners.

Most of the remainder of the proposed designation is on private land. On private lands, activities that lack Federal involvement would not be affected by the critical habitat designation. Current activities of an economic nature that occur on private lands in the area encompassed by this proposed designation are primarily agricultural, such as live-stock grazing and farming. Because these areas are zoned rural and not near cities or towns, multiple-unit residential or commercial development is unlikely. Therefore, Federal agencies such as the Economic Development Administration, which is occasionally involved in funding municipal projects elsewhere, are unlikely to be involved in projects in these areas. In rural regions of San Luis Obispo and Monterey counties, previous consultations under section 7 of the Act between us and other Federal agencies most frequently involved the Corps or the Federal Highway Administration (FHWA). In FHWA consultations, the applicant is either the California State Department of Transportation or the County, neither of which is considered a small entity as defined here. Corps consultations involve wetlands or waterways and occur due to the presence of species (or their critical habitat) that spend at least part of their life in aquatic habitats. *Chlorogalum purpureum* is an upland plant species and unlikely to be the subject of consultations with the Corps. In agricultural areas, the Natural Resources Conservation Service (NRCS) occasionally funds activities on farms or ranches that require consultation with us. These consultations are infrequent, however. In the last decade, in all of Monterey and San Luis Obispo counties combined, the NRCS has completed only four formal consultations with the Service. NRCS is currently initiating two additional formal consultations, although neither involve *C. purpureum.* San Luis Obispo and Monterey counties encompass about 4 million acres of land and support over 40 listed species. Based on the low level of past activity, we expect few, if any, consultations with the NRCS or other federal agencies on the approximately 4,821 acres of non-federal lands in this rule. For these reasons, the Service determines that the number of small entities likely to be affected by this rule will not be substantial.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements for any small businesses that may be required to consult with us regarding their project's impact on *Chlorogalum purpureum* and its critical habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with consultations pursuant to section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have a very limited consultation history for *Chlorogalum purpureum,* we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats

it faces, as described in the final listing rule and this critical habitat designation.

It is likely that an agricultural land owner or developer could modify a project or take measures to protect *Chlorogalum purpureum.* Based on the types of modifications and measures that have been implemented in the past for plant species, steps could be taken such as installing fencing or re-aligning a project to avoid sensitive areas. The cost for implementing these measures for one project is expected to be of the same order of magnitude as the total cost of the consultation process, *i.e.*, approximately $10,000. It should be noted that a developer likely would already be required to undertake such measures due to regulations in the California Environmental Quality Act (CEQA). These measures are not likely to result in a significant economic impact to project proponents.

As required under section 4(b)(2) of the Act, we conducted an analysis of the potential economic impacts of this critical habitat designation, and that analysis was made available for public review and comment before finalization of this designation. Based on estimates provided in the economic analysis, the potential economic impact of critical habitat designation for *Chlorogalum purpureum* over the next 10 years is about $96,000. Out of this about 27 percent, or $26,000, could potentially be borne by the private sector. However, due to the 2,217-acre reduction of designation of private lands in the final rule, the actual impact of critical habitat designation on private landowners will be less than that estimated in the economic analysis.

In summary, we have considered whether this rule would result in a significant economic effect 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. Furthermore, we believe that the potential compliance costs for the remaining number of small entities that may be affected by this rule will not be significant. Therefore, we are certifying that the designation of critical habitat for *Chlorogalum purpureum* will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis is not required.

*Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))*

In the economic analysis, we determined whether designation of critical habitat would cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

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

(a) This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that they must ensure that any programs involving Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the 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.

*Executive Order 13211*

On May 18, 2001, the President issued an Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

*Takings*

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for *Chlorogalum purpureum* in a takings implication assessment. The takings implications assessment concludes that this final rule does not pose significant takings implications.

*Federalism*

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by *Chlorogalum purpureum* would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning, rather than waiting for case-by-case section 7 consultation to occur.

*Civil Justice Reform*

In accordance with Executive Order 12988, the 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. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Chlorogalum purpureum.*

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

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB Control Number.

*National Environmental Policy Act*

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

*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 recognized Federal Tribes on a Government-to-Government basis. The designated critical habitat for *Chlorogalum purpureum* 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 herein, as well as others, is available upon request from the Ventura 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, and 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 § 17.12(h) revise the entry for *Chlorogalum purpureum* under ''FLOWERING PLANTS'' to read as follows:

**§ 17.12 Endangered and threatened plants.**

* * * * *

(h) * * *

| Species | | Historic range | Family | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | | |
| FLOWERING PLANTS | | | | | | | |
| * | * | * | * | * | * | | * |
| *Chlorogalum purpureum*. | Purple amole (Camatta Canyon amole). | U.S.A. (CA) ..... | Liliaceae—Lily ..... | T | 689 | 17.96(a) | NA |
| * | * | * | * | * | * | | * |

3. Amend § 17.96(a), by adding critical habitat for purple amole (*Chlorogalum purpureum*) in alphabetical order under Family Liliaceae to read as follows:

**§ 17.96 Critical habitat—plants.**

(a) * * *

Family Liliaceae: *Chlorogalum purpureum* (purple amole)

(1) Critical habitat units are depicted for Monterey and San Luis Obispo counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Chlorogalum purpureum* var. *purpureum* consist of, but are not limited to:

(i) Soils that are sandy clay to loamy clay, well-drained on the surface, and are often overlain with fine gravel; and,

(ii) Plant communities in functioning ecosystems that support associated plant and animal species (*e.g.*, pollinators, predator-prey species, etc.), including valley and foothill grassland, blue oak woodland or oak savannahs, and open areas within shrubland communities. Within these vegetation community types, *C. p.* var. *purpureum* appears where there is little cover of other species which compete for resources available for growth and reproduction.

(3) The primary constituent elements of critical habitat for *Chlorogalum purpureum* var. *reductum* consist of, but are not limited to:

(i) Well-drained, red clay soils with a large component of gravel and pebbles on the upper soil surface; and,

(ii) Plant communities in functioning ecosystems that support associated plant and animal species (*e.g.*, pollinators, predator-prey species, etc.), including grassland, blue oak woodland (*Quercus douglasii*) or oak savannahs, and open areas within shrubland communities. Within these vegetation communities *C. p.* var. *reductum* appears where there is little cover of other species which compete for resources available for growth and reproduction.

(4) Critical habitat does not include existing features and structures, such as buildings, hard-packed roads (*e.g.*, asphalt, pavement), aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing any of the primary constituent elements.

(5) *Critical Habitat Map Units*—Data layers defining map units were mapped using Universal Transverse Mercator (UTM) coordinates.

(6) Note: Map 1—Index Map follows:

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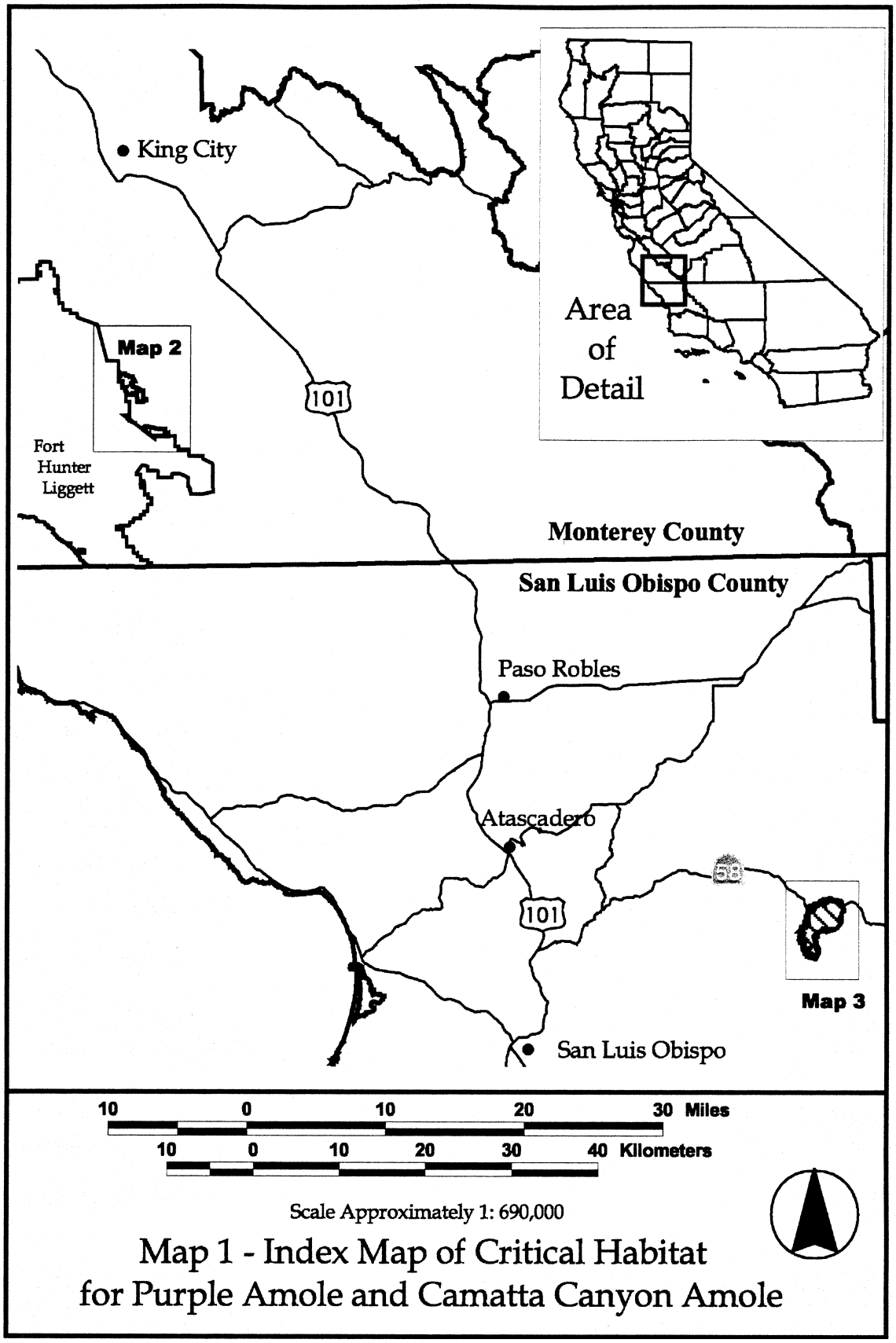
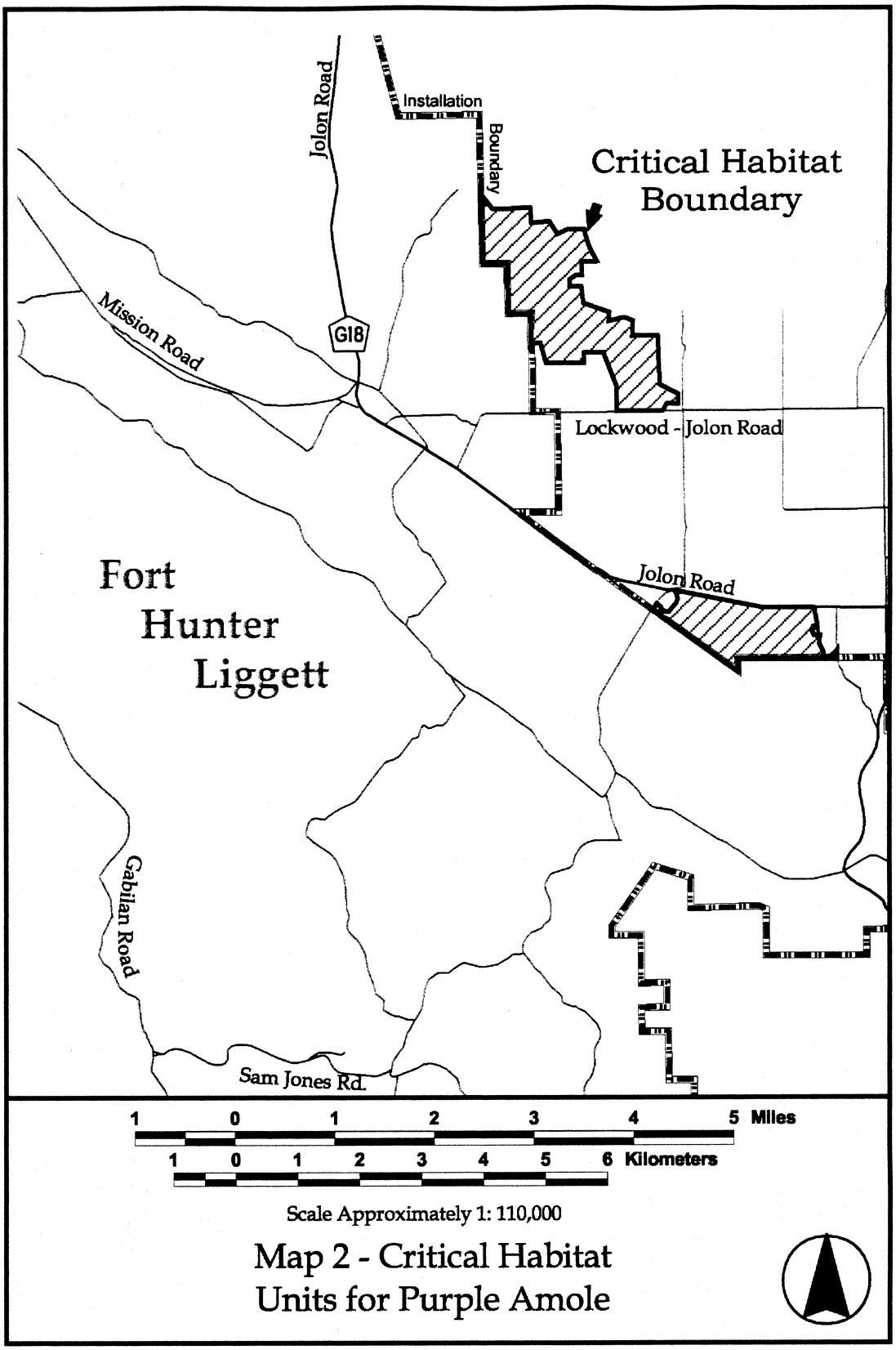



Map 1 - Index Map of Critical Habitat for Purple Amole and Camatta Canyon Amole

(7) *Jolon Unit.*

(i) *Chlorogalum purpureum* var. *purpureum.* Monterey County, California. From USGS 1:24,000 quadrangle map Jolon. Lands bounded by UTM zone 10 NAD83 coordinates (E,N): 666160, 3986620; 666160, 3986620; 666160, 3986620; 666160, 3986620; 666441, 3986630; 666441, 3986630; 666456, 3985980; 666441, 3986630; 666468, 3985460; 666471, 3985340; 666646, 3985110; 666965, 3985110; 667260, 3985130; 667281, 3984880; 667567, 3984910; 667699, 3984690; 667849, 3984770; 668125, 3984770; 668175, 3984600; 668224, 3984470; 668334, 3984260; 668086, 3984250; 668094, 3984040; 668004, 3984040; 667888, 3983960; 667891, 3983860; 668085, 3983860; 668118, 3983590; 668538, 3983430; 668526, 3983290; 668780, 3983360; 668909, 3983300; 668905, 3983060; 669317, 3983070; 669346, 3982270; 669638, 3982120; 669638, 3981950; 669463, 3981960; 669396, 3981850; 668647, 3981840; 668649, 3982250; 668435, 3982790; 668126, 3982790; 668122, 3982620; 667509, 3982620; 667426, 3982950; 667272, 3982930; 667261, 3983040; 667283, 3983420; 666998, 3983420; 666907, 3983410; 666887, 3984220; 666496, 3984220; 666468, 3985460; 667720, 3980200; 667067, 3980190; 667067, 3980190; 667720, 3980200; 667417, 3979930; 668171, 3979370; 668123, 3979400; 668061, 3979450; 668002, 3979490; 667943, 3979540; 667884, 3979580; 667829, 3979620; 667781, 3979650; 667741, 3979680; 667417, 3979930; 668283, 3979290; 668315, 3979270; 668335, 3979260; 668311, 3979270; 668283, 3979290; 669233, 3978620; 669242, 3978640; 669244, 3978640; 669255, 3978650; 669303, 3978720; 669365, 3978680; 669374, 3978620; 669441, 3978600; 669504, 3978600; 669542, 3978660; 669614, 3978730; 669639, 3978810; 669616, 3978890; 669610, 3978900; 669594, 3978940; 669654, 3978930; 670986, 3978670; 671848, 3978660; 671854, 3978560; 671879, 3978440; 671888, 3978350; 671880, 3978370; 671821, 3978350; 671804, 3978280; 671833, 3978220; 671933, 3978220; 671918, 3978130; 671922, 3978070; 671947, 3978020; 671981, 3977950; 671985, 3977900; 671964, 3977870; 671961, 3977850; 670600, 3977840; 670599, 3977640; 669239, 3978620; 669233, 3978620; 672077, 3977850; 672099, 3977870; 672171, 3977930; 672199, 3977970; 672200, 3977850; 672077, 3977850;

(ii) Note: See Map 2.




Map 2 - Critical Habitat Units for Purple Amole

BILLING CODE 4310–55–C

(8) *Camatta Canyon Unit.*

(i) *Chlorogalum purpureum* var. *reductum.* San Luis Obispo County, California. From USGS 1:24,000 quadrangle maps Camatta Ranch, La Panza Ranch, and Pozo Summit. Lands bounded by the following UTM zone 10 NAD83 coordinates (E, N): 747763, 3918050; 747749, 3918040; 747714, 3918020; 747690, 3918000; 747683, 3917980; 747690, 3917960; 747722, 3917940; 747754, 3917900; 747749, 3917870; 747724, 3917870; 747647, 3917860; 747633, 3917860; 747616, 3917850; 747612, 3917840; 747615, 3917830; 747641, 3917820; 747727, 3917790; 747718, 3917780; 747687, 3917760; 747655, 3917750; 747635, 3917740; 747612, 3917720; 747597, 3917690; 747590, 3917660; 747598, 3917630; 747593, 3917600; 747578, 3917580; 747544, 3917560; 747530, 3917550; 747525, 3917540; 747528, 3917510; 747527, 3917470; 747521, 3917430; 747510, 3917410; 747461, 3917370; 747434, 3917370; 747411, 3917360; 747398, 3917360; 747387, 3917350; 747385, 3917330; 747396, 3917280; 747396, 3917250; 747381, 3917220; 747368, 3917180; 747366, 3917150; 747357, 3917140; 747343, 3917130; 747319, 3917130; 747285, 3917140; 747270, 3917150; 747263, 3917160; 747261, 3917190; 747256, 3917230; 747246, 3917270; 747224, 3917340; 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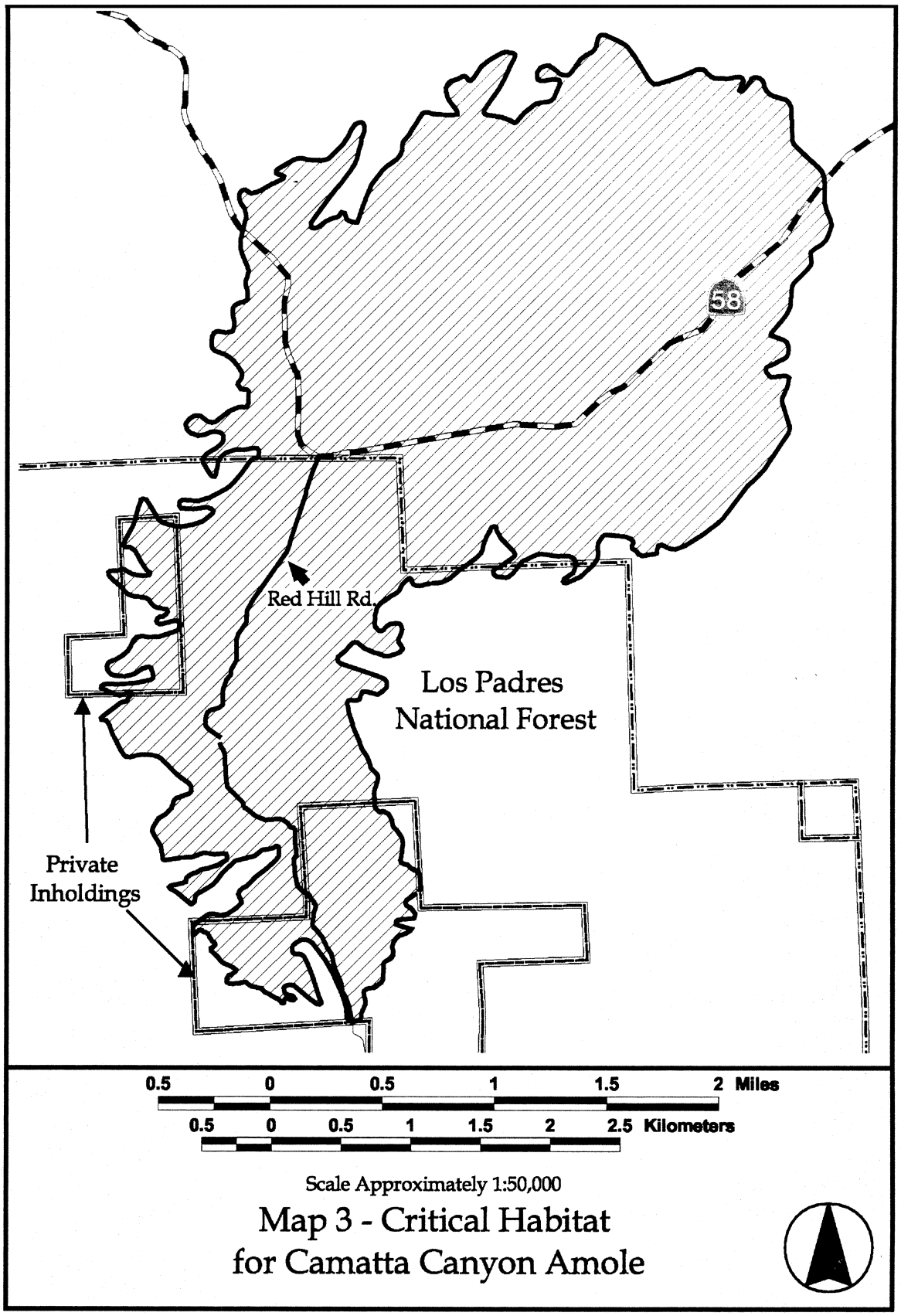
3921780; 750286, 3921780; 750300, 3921770; 750356, 3921770; 750401, 3921780; 750414, 3921770; 750424, 3921760; 750411, 3921690; 750373, 3921610; 750371, 3921590; 750381, 3921570; 750427, 3921410; 750429, 3921390; 750422, 3921370; 750261, 3921120; 750246, 3921100; 750229, 3921080; 750183, 3921030; 750128, 3920980; 749952, 3920750; 749915, 3920710; 749813, 3920640; 749685, 3920560; 749611, 3920530; 749582, 3920530; 749556, 3920540; 749531, 3920560; 749512, 3920560; 749493, 3920560; 749485, 3920530; 749480, 3920500; 749380, 3920480; 749352, 3920490; 749338, 3920510; 749324, 3920530; 749305, 3920530; 749300, 3920560; 749311, 3920580; 749307, 3920590; 749295, 3920600; 749255, 3920620; 749223, 3920620; 749121, 3920630; 749101, 3920630; 749090, 3920620; 749076, 3920600; 749063, 3920580; 749056, 3920550; 749057, 3920520; 749058, 3920480; 749053, 3920450; 749015, 3920410; 748981, 3920370; 748931, 3920330; 748829, 3920280; 748815, 3920290; 748807, 3920300; 748816, 3920320; 748878, 3920360; 748892, 3920390; 748897, 3920420; 748898, 3920440; 748890, 3920460; 748874, 3920470; 748855, 3920480; 748830, 3920480; 748771, 3920480; 748648, 3920490; 748619, 3920490; 748579, 3920470; 748511, 3920440; 748477, 3920390; 748451, 3920350; 748417, 3920330; 748396, 3920320; 748363, 3920330; 748330, 3920330; 748310, 3920350; 748308, 3920360; 748314, 3920380; 748333, 3920390; 748356, 3920400; 748398, 3920430; 748438, 3920460; 748459, 3920480; 748464, 3920490; 748457, 3920510; 748362, 3920610; 748332, 3920660; 748328, 3920690; 748312, 3920690; 748295, 3920690; 748283, 3920660; 748260, 3920620; 748237, 3920560; 748231, 3920520; 748216, 3920500; 748186, 3920470; 748067, 3920380; 747994, 3920310; 747954, 3920300; 747914, 3920280; 747853, 3920280; 747818, 3920270; 747778, 3920260; 747754, 3920260; 747736, 3920270; 747723, 3920290; 747719, 3920310; 747707, 3920320; 747694, 3920310; 747654, 3920270; 747640, 3920240; 747616, 3920210; 747578, 3920190; 747531, 3920160; 747501, 3920140; 747484, 3920120; 747471, 3920090; 747464, 3920070; 747460, 3920050; 747462, 3920030; 747456, 3920000; 747460, 3919980; 747466, 3919960; 747479, 3919950; 747488, 3919940; 747505, 3919940; 747521, 3919950; 747534, 3919960; 747549, 3919970; 747569, 3919990; 747588, 3919990; 747613, 3920000; 747631, 3919990; 747645, 3919980; 747652, 3919970; 747655, 3919950; 747648, 3919930; 747642, 3919900; 747629, 3919880; 747628, 3919870; 747649, 3919830; 747659, 3919810; 747658, 3919800; 747642, 3919790; 747618, 3919780; 747565, 3919760; 747534, 3919760; 747506, 3919770; 747446, 3919790; 747380, 3919820; 747335, 3919850; 747322, 3919860; 747304, 3919850; 747277, 3919830; 747253, 3919800; 747213, 3919770; 747196, 3919750; 747191, 3919730; 747196, 3919720; 747217, 3919700; 747426, 3919630; 747495, 3919610; 747519, 3919600; 747533, 3919590; 747545, 3919570; 747548, 3919550; 747545, 3919530; 747523, 3919510; 747498, 3919490; 747478, 3919480; 747442, 3919490; 747410, 3919500; 747391, 3919500; 747373, 3919500; 747363, 3919480; 747349, 3919450; 747328, 3919440; 747302, 3919440; 747282, 3919440; 747268, 3919440; 747262, 3919420; 747277, 3919340; 747295, 3919290; 747309, 3919240; 747329, 3919190; 747348, 3919140; 747360, 3919110; 747375, 3919080; 747398, 3919050; 747419, 3919000; 747435, 3918950; 747478, 3918910; 747484, 3918890; 747485, 3918870; 747470, 3918820; 747459, 3918790; 747455, 3918770; 747458, 3918740; 747457, 3918700; 747463, 3918670; 747474, 3918650; 747496, 3918640; 747524, 3918640; 747562, 3918620; 747581, 3918580; 747594, 3918540; 747600, 3918520; 747620, 3918510; 747636, 3918480; 747652, 3918460; 747659, 3918440; 747663, 3918420; 747662, 3918390; 747656, 3918370; 747656, 3918340; 747652, 3918310; 747645, 3918290; 747649, 3918270; 747670, 3918260; 747698, 3918250; 747720, 3918240; 747748, 3918220; 747777, 3918200; 747783, 3918190; 747787, 3918170; 747786, 3918140; 747790, 3918120; 747790, 3918080; 747778, 3918070; 747763, 3918050.

(ii) Note: Map 3 follows:

BILLING CODE 4310–55–P




Map 3 - Critical Habitat
for Camatta Canyon Amole

* * * * *

Dated: October 15, 2002.

**Paul Hoffman,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 02–26768 Filed 10–23–02; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Thursday,
October 24, 2002

# Part III

# Department of Health and Human Services

## Food and Drug Administration

21 CFR Part 314

**Applications for FDA Approval to Market a New Drug: Patent Listing Requirements and Application of 30-Month Stays on Approval of Abbreviated New Drug Applications Certifying That a Patent Claiming a Drug is Invalid or Will Not be Infringed; Proposed Rule**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 314**

**[Docket No. 02N–0417]**

**RIN 0910–AC48**

# Applications for FDA Approval to Market a New Drug: Patent Listing Requirements and Application of 30-Month Stays on Approval of Abbreviated New Drug Applications Certifying That a Patent Claiming a Drug Is Invalid or Will Not be Infringed

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to amend its patent listing requirements for new drug applications (NDAs). The proposal would clarify the types of patents that must and must not be listed and revise the declaration that NDA applicants must provide regarding their patents to help ensure that NDA applicants list only appropriate patents. The proposal would also revise the regulations regarding the effective date of approval for certain abbreviated new drug applications (ANDAs) and certain applications submitted under section 505(b)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (505(b)(2) applications). In certain situations, Federal law bars FDA from making the approval of an ANDA or 505(b)(2) application effective for 30 months if the applicant certified that the patent claiming a drug is invalid or will not be infringed, and the patent owner or NDA holder brings suit for patent infringement. The proposal also would state that there will be only one opportunity for a 30-month stay in the approval date of each ANDA or 505(b)(2) application. The proposal is designed to make the patent listing process more efficient and to enhance the ANDA and 505(b)(2) application approval processes.

**DATES:** Submit written or electronic comments by December 23, 2002. Submit written comments on the information collection requirements by November 25, 2002.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Submit written comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

**FOR FURTHER INFORMATION CONTACT:** Jarilyn Dupont, Office of Policy, Planning, and Legislation (HFW–14), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. What Is the Relationship Between Patent Listing, Patent Certification, and the Date of Approval for Certain Applications?*

Title I of the Drug Price Competition and Patent Term Restoration Act (Public Law 98–417, 98 Stat. 1585 (1984) (''Hatch-Waxman amendments'')) amended the act to authorize the approval of duplicate or ''generic'' versions of approved drug products. Title I also amended section 505(b)(1) of the act (21 U.S.C. 355(b)(1)) by requiring all NDA applicants to file, as part of the NDA, ''the patent number and the expiration date of any patent which claims the drug for which the applicant submitted the application or which claims a method of using such drug and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug.'' Section 505(c)(2) of the act imposes a similar patent listing obligation on persons whose NDAs we have approved when the NDA holder could not have filed the patent information with its application (either because the application was filed before the act required NDA applicants to submit patent information or because the patent issued after we had approved the NDA).

We publish patent information in our approved drug products list entitled ''Approved Drug Products With Therapeutic Equivalence Evaluations.'' The list is known popularly as the ''Orange Book'' because of its orange-colored cover.

The Hatch-Waxman amendments also require persons submitting a 505(b)(2) application or ANDA to make certifications regarding the listed patents pertaining to the drug which they intend to duplicate (see sections 505(b)(2)(A)(i) through (b)(2)(A)(iv) and 505(j)(2)(A)(vii)(I) through (j)(2)(A)(vii)(IV) of the act). In brief, these certifications state that:

- Patent information has not been filed;
- The patent has expired;
- The patent will expire on a specific date; or
- The patent is invalid or will not be infringed.

If the ANDA or 505(b)(2) application applicant certifies that the patent is invalid or will not be infringed (a certification known as a ''paragraph IV'' certification because it is the fourth type of patent certification described in the act), the act requires the applicant to notify the patent owner and NDA holder (see sections 505(b)(3) and 505(j)(2)(B) of the act.) In general, the notice states that an abbreviated application has been submitted for the drug with respect to which the paragraph IV certification is made and also includes a ''detailed statement of the factual and legal basis of the applicant's opinion that the patent is not valid or will not be infringed'' (*id.*). If an action for patent infringement is brought within 45 days after the paragraph IV certification has been received, then we may not make the approval of an abbreviated application effective for 30 months, or such shorter or longer period as a court may order or the date of a court decision (see sections 505(c)(3)(C) and 505(j)(4)(B)(iii) of the act).

These statutory provisions reflect the Hatch-Waxman amendments' attempt to balance two competing interests: Promoting competition between ''brand-name'' and ''generic'' drugs and encouraging research and innovation. The act promotes competition by creating a process to expedite the filing and approval of ANDAs and 505(b)(2) applications and for resolving challenges to patents before marketing begins. At the same time, the act seeks to protect the patent owner's or NDA holder's interests by giving it the opportunity to list patents, to receive paragraph IV certifications, and to delay an ANDA's or 505(b)(2) application's effective date of approval during patent infringement litigation. (We will refer to the date the approval is made effective as the ''approval date'' throughout the remainder of this preamble.)

We published regulations pertaining to patent listing and patent certifications in the **Federal Register** on October 3, 1994 (59 FR 50338). The regulations regarding the submission of patent information are at §§ 314.50(h) and 314.53 (21 CFR 314.50(h) and 314.53), while the patent certification requirements are at §§ 314.50(i) and 314.94(a)(12) for 505(b)(2) applications and ANDAs respectively.

*B. What Events Led to This Proposal?*

In recent years, we have seen NDA applicants list new patents shortly before other listed patents for the same drug product are scheduled to expire. Some listings, such as those for BuSpar (buspirone hydrochloride), Paxil (paroxetine hydrochloride), Tiazac (diltiazem hydrochloride), and Prilosec (omeprazole), have resulted in high profile litigation. (We discuss some of these cases in section II.A of this document.) A number of disputes over recently listed patents have addressed whether the patent meets the regulatory requirements for listing in the Orange Book and have sometimes resulted in decisions that are not entirely consistent with our regulatory policy or our interpretation of our regulations.

Additionally, on May 16, 2001, the Bureau of Competition and the Policy Planning Staff of the Federal Trade Commission (FTC) submitted a citizen petition (FDA docket number 01P–0248) (FTC Citizen Petition) that requested our guidance concerning the criteria that a patent must meet before it is listed in the Orange Book. The FTC Citizen Petition asked us to clarify several patent listing issues and indicated that FTC was conducting an extensive study of generic drug competition. FTC issued the study in July 2002, in a report entitled *Generic Drug Entry Prior to Patent Expiration: An FTC Study* (FTC Report). The FTC Report focused on the procedures used to facilitate a generic drug's entry into the market before the expiration of a patent or patents that pertain to the brand-name drug product. The FTC Report noted that FTC had submitted a citizen petition to us. FTC also recommended that the law be changed to ''permit only one automatic 30-month stay per drug product per ANDA to resolve infringement disputes over patents listed in the Orange Book prior to the filing date of the generic applicant's ANDA'' (see FTC Report at page ii). The FTC Report explained, ''To permit only one 30-month stay per drug product per ANDA should eliminate most of the potential for improper Orange Book listings to generate unwarranted 30-month stays'' (*id.* at page v (footnote omitted)). In an appendix to its report, FTC asked that we issue a regulation or guidance clarifying whether an NDA holder could list various types of patents in the Orange Book. The types of patents for which FTC sought clarification were patents that claimed metabolites, polymorphs, or intermediates, product by process patents, and double patents (see FTC Report at pages A–39–A–45).

**II. Description of the Proposed Rule**

Given these patent listing issues, the FTC citizen petition, and the FTC Report, we decided to issue this proposed rule to help NDA applicants and NDA holders determine whether specific patents must be submitted to us for listing and to help 505(b)(2) application applicants, ANDA applicants, and other interested parties determine whether a patent listing is proper. This proposed rule will address:

- The types of patents that must and must not be listed;
- The patent certification statement that NDA applicants must submit as part of an NDA, an amendment to an NDA, or a supplement to an NDA; and
- The 30-month stay in effective dates of approval for a 505(b)(2) application or an ANDA.

*A. Proposed § 314.53(b)—What Patents Must Be Listed in the Orange Book?*

1. *What Does the Current Regulation Say?*

Our patent listing regulation, at § 314.53, applies to persons submitting an NDA, an amendment to an NDA, or a supplement to an NDA. Section 314.53(b) describes the patents for which information must be submitted and states, in part, that the applicant:

> * * * shall submit information on each patent that claims the drug that is the subject of the new drug application or amendment or supplement to it and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product. For purposes of this part, such patents consist of drug substance (ingredient) patents, drug product (formulation and composition) patents, and method of use patents. Process patents are not covered by this section and information on process patents may not be submitted to FDA.

Section 314.53 reflects the statutory provision that requires NDA applicants to file the patent number and expiration date of any patent which ''claims the drug for which the applicant submitted the application or which claims a method of using such drug and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture[,] use, or sale of the drug'' (see section 505(b)(1) of the act). Thus, both the act and our regulations establish two distinct criteria for a patent intended for listing in the Orange Book: (1) The patent must claim the approved drug product or a method of using the approved drug product; and (2) the patent must be one with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the patent owner sought to engage in the drug's manufacture, use, or sale.

2. *How Have We Interpreted the Regulation?*

As we mentioned earlier in section I.B of this preamble, the FTC Citizen Petition sought our guidance on whether an NDA holder can list a patent claiming an unapproved aspect of an approved drug. The petition maintained that the act and our regulations do not allow listing of a patent that claimed ''only an unapproved component, an unapproved formulation, or an unapproved use of a drug product'' (see FTC Citizen Petition at page 3).

Our longstanding interpretation is that the term ''drug'' in the patent listing provisions means the approved drug product. We successfully argued in *Pfizer* v. *FDA*, 753 F. Supp. 171 (D. Md. 1990), that the term ''drug'' as used in sections 505(b)(1) and 505(c)(2) of the act refers to the ''drug product'' for which the NDA was filed. Pfizer had maintained that ''drug'' meant both the drug substance (active ingredient) and the drug product, and thus any patent claiming any drug product which contained the active ingredient that was the subject of the approved NDA must be submitted, regardless of whether the patent claims the approved drug product itself. This case began with our refusal to list a patent in the Orange Book because Pfizer did not certify that the drug and the formulation or composition of the drug claimed by the patent were currently approved. The drug dosage form covered by Pfizer's approved NDA was a capsule, but the patent Pfizer had sought to list claimed a tablet.

The court upheld our position that: (1) An NDA approval covers a specific drug product; (2) the approved drug product becomes the listed drug; and (3) ANDA applicants must certify only to patents claiming that listed drug. The court found that ''FDA's interpretation is not only reasonable but also consistent with the language of the statute, Congressional intent, prior judicial interpretations of [21 U.S.C.] § 355, and the agency's own regulations'' (see 753 F. Supp. at 171–72). It also found that section 505(b)(1) of the act modifies the statutory definition of ''drug'' at section 201(g)(1) of the Act (21 U.S.C. 321(g)(1)) to allow listing only of patents which claim the drug ''for which the applicant submitted the application.'' Further, the court noted that sections 505(b)(1)(B) and (C) of the act require that an NDA application contain ''a full list of the articles used as components of such drug'' and ''a full statement of the

composition of such drug,'' and that these requirements made sense only for a drug product and not for a drug substance that was independent of the approved NDA. Because Pfizer's NDA covered a specific drug product in capsule form (as opposed to covering the drug product's active ingredient alone or covering other dosage forms that contain the active ingredient), the court held that Pfizer could not list the patent covering the tablets.

In 1994, after the *Pfizer* decision had issued, we published a final rule that codified the patent listing requirement at 21 CFR 314.53 (see 59 FR 50338 (October 3, 1994)). Although the rule repeated the statutory requirement that the patent must claim the drug that is the subject of the NDA, the final rule replaced the proposed rule's reference to patents consisting of ''drug (ingredient) patents'' with patents consisting of ''drug *substance* (ingredient) patents'' (see 59 FR 50338 at 50343) (emphasis added). We also replaced ''patents that claim a drug or drug product'' with ''patents that claim a drug *substance* or drug product'' (*id.*) (emphasis added). Our intent was to clarify that the rule's reference to ''drug'' in the phrase ''drug or drug product'' was intended to mean ''drug substance'' rather than ''drug product.'' (The rule mentioned drug products separately.) We made this change because some patents claim the approved drug product's active ingredient rather than the entire drug product (i.e., the drug product's active and inactive ingredients). In other words, if the patent claims the drug substance that was approved in the NDA, it must be listed.

However, some courts interpreted § 314.53 differently than we had intended. In *Zenith Laboratories, Inc.* v. *Abbott Laboratories, Inc.*, 1996 WL 33344963 (D. N.J. 1996), Abbott had listed patents for the dihydrate form of terazosin hydrochloride (the drug substance in the NDA-approved product whose trade name was Hytrin) and also for the anhydrous form of terazosin hydrochloride that differed from Hytrin's drug substance only in its crystalline forms. (An anhydrous form of a chemical contains no water molecules, whereas a dihydrous form contains two water molecules.) Zenith had filed an ANDA to market a drug product containing a different form of terazosin hydrochloride, and claimed that the active ingredient in its product had a different crystalline structure from Hytrin, did not infringe the patent on Hytrin, and that Abbott's patents on the anhydrous form of the active ingredient did not cover the approved drug product. The court found that the patents at issue did claim the approved drug product. The court interpreted § 314.53(b) to mean that, if a patent claims the drug substance of an approved drug product, then the patent is covered by the approved drug product and may be listed in the Orange Book even if the patent claims a form of the drug substance that is different than the form in the approved drug product. Moreover, the court indicated that we may approve an ANDA for a drug product that contains the patented form of the active ingredient. The court also cited two statements from the Orange Book to support its ruling that different forms of the same active ingredient may be considered pharmaceutically equivalent if their dissolution, solubility, and absorption are the same as the listed drug. The court concluded that the patents were likely to be construed as claiming the drug substance for the NDA-approved drug regardless of the differences in hydration.

In *Ben Venue Laboratories, Inc.* v. *Novartis Pharmaceutical Corp.*, 10 F. Supp.2d 446 (D.N.J. 1998), Novartis had listed a patent which claimed the crystalline pentahydrate form of Aredia (pamidronate disodium). The ANDA applicant argued that the appropriateness of the patent listing turned on whether Novartis' approved product contained a crystalline hydrate of pamidronate (*id.* at page 453). The parties did not dispute that the final drug product did not contain the pentahydrate form of pamidronate. Novartis admitted that its dosage form contained an anhydrous form of pamidronate, but argued that patent was properly submitted because the patent covered the ''drug substance'' and because § 314.53 required the listing of such patents (*id.*). The court found that it was proper to list a patent that claims a component of the approved drug product even when that component does not appear in the exact same form in the final drug product (*id.* at pages 453–457). The court distinguished the *Pfizer* opinion as depending largely on the applicant's attempt to list a patent for a new, unapproved tablet (*id.* at page 455).

The court also noted that *Pfizer* predated our 1994 final rule and stated that:

> The statute governing listing of patents merely states that NDA applicants shall file ''any patent which claims the drug.'' 21 U.S.C. § 355(b)(1). The regulations clearly indicate that the FDA interprets the ambiguous term ''drug'' in 21 U.S.C. § 355(b)(1) to include certain drug substances or active ingredient patents, and requires their listing in the Orange Book. The Court concludes that the FDA's construction of the statute to require listing of certain drug substance patents as well as drug product patents is a permissible reading of the statute, and the parties do not argue otherwise. See *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Counsel* [sic], 467 U.S. 837 (1984). Therefore Ben Venue's assertion that ''the drug substance or active ingredient does not determine proper listing'' and that ''the drug product—and it alone—controls the proper listing,''* * * are inaccurate. See 10 F. Supp.2d at page 455.

Although we were not a party to the litigation, we implicitly did not accept the conclusion or reasoning of the *Zenith Laboratories* and *Ben Venue Laboratories* decisions. On February 7, 2001, we wrote to Biovail Laboratories to confirm the propriety of a corrected patent listing under § 314.53(f). Biovail had changed its manufacturing process for Tiazac (diltiazem hydrochloride), but had not sought our approval before making those changes. The approved product contained diltiazem hydrochloride in time-release coated beads, whereas Biovail's changed product contained both immediate release diltiazem hydrochloride powder and time-release coated beads. Biovail asserted that the changes were within the scope of its approved NDA, yet we learned about the changes only through litigation between Biovail and another company. In our letter to Biovail, we stated that, ''FDA does not list patents for drug substances, compositions, formulations and methods of use that are not approved for the listed drug'' (see Letter from Ralph Lillie, Director, Office of Information Technology, Center for Drug Evaluation and Research, to Biovail Laboratories, Inc., dated March 23, 2001). We also took the position that Biovail had to submit a supplement to its NDA to cover the immediate release diltiazem component and stated that:

> Patents for drug substances, composition, formulations, and methods of use that are not approved for the listed drug are not listed in the Orange Book. A patent submitted in an application or supplement that is not yet approved will be listed in the Orange Book only if, and when the drug product is approved.

(See *id.* at page 2.)

On November 21, 2000, we responded to a citizen petition (FDA docket number 00P–0499) submitted by Lord, Bissell & Brook on behalf of Apotex, Inc. The petition asserted, in part, that two patents claiming anhydrous forms of paroxetine hydrochloride did not claim the hemihydrate listed drug. (An anhydrous form of paroxetine hydrochloride has no water molecules associated with it, whereas a hemihydrate form has one water

molecule associated with every two paroxetine molecules.) Relying on the NDA holder's representations that the patents claimed the approved drug product, we concluded that the patents had been correctly submitted for listing. We stated that, ''Patents must be listed if they claim the drug substance, or active ingredient, of an approved drug product, or if they claim a drug substance that is the component of such a product'' (Response from Janet Woodcock, M.D., Director, Center for Drug Evaluation and Research, to Hugh L. Moore et al., Lord, Bissell & Brook, dated November 21, 2000, at page 6 (footnote omitted)). In a footnote, we noted that our position was ''fully consistent with *Pfizer*'' because the *Pfizer* case ''involved the question of the listing of patents for a drug in a dosage form other than the dosage form approved by FDA'' (*id.* at page 6, note 18), whereas the paroxetine situation involved a patent which, according to the NDA holder, claimed the approved drug product. We further stated that we considered anhydrous and hemihydrous forms of drug substances to be pharmaceutical equivalents and to contain the same active ingredient (*id.* at page 6, note 16). We cited *Zenith Laboratories* and *Ben Venue Laboratories* for the proposition that courts, rather than FDA, would resolve whether the patent covered the approved drug. Our letter did not take issue with the holdings of those courts (*id.* at page 5, note 13).

Recently, in *Andrx Pharmaceuticals, Inc.* v. *Biovail Corp.*, 276 F.3d 1368 (Fed. Cir. 2002), a case involving the patent listing correspondence with Biovail Laboratories described in a preceding paragraph, the court held that ''the critical question is the relationship of the patent to the drug products and drug substances covered by the NDA'' (*id.* at page 1376). The issue in the *Andrx Pharmaceuticals* case was Biovail's listing of a patent that claimed an extended release formulation of diltiazem that was different from the one we had approved. In a footnote, the Court of Appeals for the Federal Circuit cited our 1994 final rule and interpreted the final rule as changing our patent listing procedures (*id.* at page 1377, note 5). The court stated that our supposed change in position was a ''more liberal construction'' of the statute and led to more patents being listed in the Orange Book (*id.*).

3. *Which Patents Would the Proposal Require to Be Listed or Not Listed?*

Given these court decisions which are not entirely consistent with our policies, the FTC Report, the FTC Citizen Petition, and other documents questioning patent listing requirements, we decided to clarify our regulations to describe the types of patents that must and must not be listed. Consequently, proposed § 314.53(b) would state, in relevant part, that an applicant submitting an NDA, amending an NDA, or submitting a supplement to an NDA:

> * * * shall submit information on each patent that claims the drug or a method of using the drug that is the subject of the new drug application or amendment or supplement to it and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product. For purposes of this part, such patents consist of drug substance (ingredient) patents, drug product (formulation and composition) patents, *product by process patents*, and method of use patents. Process patents, *patents claiming packaging*, *patents claiming metabolites*, and *patents claiming intermediates* are not covered by this section, and information on these patents may not be submitted to FDA. *For patents that claim the drug substance, the applicant shall submit information only on those patents that claim the drug substance that is the subject of the pending or approved application or that claim a drug substance that is the same as the active ingredient that is the subject of the approved or pending application within the meaning of section 505(j)(2)(A)(ii) of the Act. For patents that claim a drug product, the applicant shall submit information only on those patents that claim a drug product that is the subject of a pending or approved application. For patents that claim a method of use, the applicant shall submit information only on those patents that claim indications or other conditions of use that are the subject of a pending or approved application. For approved applications, the applicant shall identify the indication or other condition of use in the approved labeling that corresponds to the listed patent and claim identified.* * * *

We have italicized the new or revised regulatory language to make it more readily identifiable for this preamble discussion. We explain the proposed changes in more detail in the following paragraph.

a. *What Patents Must Not Be Listed Under the Proposal?*

Proposed § 314.53(a) would expressly state that information on patents claiming packaging, patents claiming metabolites, and patents claiming intermediates must not be submitted. In general, we find that these patents fail to meet the two prong criteria for listing because they do not claim the approved drug product.

Patents claiming a drug product's packaging or container may not be listed. We find that, although information regarding a drug's packaging or container is part of an NDA (see 21 CFR 314.50(d)(1)(ii)(a)), we do not approve that packaging or container per se. The packaging or container is therefore distinct from the approved drug product, so a patent that claims a type of packaging or container fails to satisfy the first prong because the patent does not claim the drug. In addition, in contrast to the active ingredient, inactive ingredients, and conditions of use, the Hatch-Waxman amendments do not identify a listed drug's packaging or container as an element for us to review or consider in determining whether to approve an ANDA or 505(b)(2) application.

The failure to claim the approved product is especially apparent for patents claiming metabolites because those metabolites exist only *after* a person has taken the drug and his or her body has broken the drug down into the metabolite. While there have been no court decisions regarding the listing of patents claiming a metabolite, one court has examined whether a person can seek patent term restoration for a patent claiming a metabolite rather than the approved drug itself. In *Hoechst-Roussel Pharmaceuticals, Inc.* v. *Lehman*, 103 F.3d 756 (Fed. Cir. 1997), a court had to decide whether the Patent and Trademark Office correctly interpreted the patent term extension provisions at 35 U.S.C. 156. The patent term extension provisions were part of the Hatch-Waxman amendments (as Title II of the Hatch-Waxman amendments). The patent term extension provisions require that the patent for which an extended term is sought to ''claim'' the approved drug (see 35 U.S.C. 156(a) and 156(g)(1)(B) (discussing how a product must have been subject to a regulatory review period before its commercial marketing or use and defining the regulatory review period, in part, in terms of an NDA approval)). However, the patent in question claimed a metabolite rather than the approved drug itself. The court considered the meaning of the term ''claim,'' and the term's relationship to the concept of infringement, and concluded that a patent claiming a metabolite or the use of a metabolite does not claim the approved drug product. The court's reasoning and conclusion are equally applicable to patent listings. Therefore, we conclude that a patent claiming a metabolite does not claim an approved drug and does not meet the statutory requirements for listing in the Orange Book.

The proposal would also instruct applicants not to submit patent information if the patent claims an intermediate. Intermediates are materials that are produced during the steps of the processing of active pharmaceutical ingredient, but are not

present in the final drug product themselves (see Food and Drug Administration, ''Guidance for Industry: Q7A—Good Manufacturing Practice Guidance for Active Pharmaceutical Ingredients'' (August 2001)). Under existing FDA regulations, intermediates are ''in-process materials'' rather than drug substances or even drug components (see 21 CFR 210.3(b)(9); 211.110). Thus, patents that claim intermediates do not claim the approved drug product and, for that reason, fail the first prong for listing.

We note that, as is currently the case, patents that claim methods of use that are not approved for the listed drug or are not the subject of a pending application may not be submitted.

b. *What Additional Patents Would the Proposal Require to be Listed?*

1. *Product by Process Patents*

The proposal would include ''product by process patents'' in the class of patents that must be listed because product by process patents are a type of product patent. In brief, a product by process patent claims a product by using or listing process steps to wholly or partially define the claimed product (see *In re Luck*, 476 F.2d 650 (C.C.P.A. 1973); *In re Brown*, 459 F.2d 531, 535 (C.C.P.A. 1972)). In a product by process patent, the claims must particularly point out and distinctly claim the product or genus of products for which patent protection is sought (see *In re Brown*, 459 F.2d at page 535). These patents, therefore, meet the two-prong criteria for patent listing because they claim the approved drug product and are of a type with respect to which a claim of patent infringement could reasonably be made if a person not licensed by the patent owner engaged in the manufacture, use, or sale of the drug; consequently, including product by process patents in the class of patents that must be listed is appropriate.

We must emphasize that product by process patents differ from process patents because, in a product by process patent, the patented invention is the product (as opposed to the process used to make the product) (see *In re Bridgeford*, 357 F.2d 679, 682 (C.C.P.A. 1966)). Section 505(b)(1) of the act does not require information on process patents, and we do not list process patents in the Orange Book (see §§ 314.50(i)(2) and 314.53(b)).

We are concerned, however, that persons unfamiliar with patent law might confuse product by process patents with process patents, and seek to list process patents with us. Therefore, we invite comment on ways to ensure that only appropriate product by process patents are listed, while maintaining the act's restriction against listing process patents.

2. *Patents Claiming a Different Form of the Drug Substance*

Section 314.53(b) currently states, ''For patents that claim a drug substance or drug product, the applicant shall submit information only on those patents that claim a drug product that is the subject of a pending or approved application.'' The proposal would revise this sentence to read as follows:

> For patents that claim the drug substance, the applicant shall submit information only on those patents that claim the drug substance that is the subject of the pending or approved application or that claim a drug substance that is the same as the active ingredient that is the subject of the approved or pending application within the meaning of section 505(j)(2)(A)(ii) of the act. For patents that claim a drug product, the applicant shall submit information only on those patents that claim a drug product that is the subject of a pending or approved application.

This would mean that an applicant would be able to submit patent information on a drug substance even when the patented drug substance was a different form than the drug substance that is the subject of the pending or approved NDA as long as the drug substances are the ''same'' active ingredient under section 505(j)(2)(A)(ii) of the act. Whether two different drug substances are the ''same'' active ingredient is a scientific determination based upon the specific characteristics of the drug substances involved. We have, for example, determined that anhydrous and hydrated entities, and different polymorphs (different crystalline forms of the same substance), may be the ''same'' active ingredient (see Food and Drug Administration, ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' 22nd Ed., section 1.7 at page xv (2002)). Therefore, for example, if the approved drug substance was an anhyrdrate, and the patent claimed a hemihydrate, proposed § 314.53(b) would allow the applicant to submit patent information for the hemihydrate *if* the anhydrate and hemihydrate are the ''same'' active ingredient.

In making a determination that two drug substances are the same active ingredient, the NDA holder should consider whether the drug substances can be expected to perform the same with respect to such characteristics as dissolution, solubility, and bioavailability. We invite comment on whether we should revise the codified language to require the NDA holder to submit additional information regarding the basis for the assertion that the drug substances are the same active ingredient.

We recognize that allowing NDA applicants and NDA holders to submit such patent information appears to conflict with our longstanding position that the patent must claim the approved drug product or the drug product that is the subject of the application. However, we believe this change in our patent listing policy is both reasonable and appropriate, and may even conserve agency and industry resources. Our rationale for allowing such drug substance patents to be listed depends, in large part, on our position concerning pharmaceutical and therapeutic equivalence. We consider drug products to be pharmaceutically equivalent if they have the same active ingredient(s), the same dosage form, the same route of administration, and are identical in strength or concentration. We consider drug products to be therapeutically equivalent if they are pharmaceutically equivalent and can be expected to have the same clinical effect and safety profile when administered to patients under the conditions specified in the labeling. A major premise in the ANDA approval system is that the ANDA drug is therapeutically equivalent to the brand-name or ''reference listed drug.'' In assessing whether the active ingredients in the reference listed drug and the generic drug product are the ''same,'' and would support a determination of therapeutic equivalence, we have concluded that, in certain instances, the generic drug's active ingredient does not have to have the exact physical form as the reference listed drug's active ingredient (see Letter from Dennis Baker, Associate Commissioner for Regulatory Affairs, FDA, to Donald O. Beers and David C. Korn, Arnold & Porter, and to William J. McNichol, Jr., Marc J. Scheineson, and Tracy Zurzolo Frisch, Reed Smith LLP, dated February 15, 2002, at pages 3–4, 7, 9–11). We have approved ANDAs when the drug substance in the generic drug product was a different polymorph than the drug substance in the listed drug. These products are therapeutically equivalent.

If a generic drug product can be the ''same'' as the reference listed drug, notwithstanding differences in the drug substances' physical form, then it is consistent to interpret ''drug substance,'' for purposes of listing patent information, as including drug substances having different physical forms. We note that the Hatch-Waxman amendments contained the patent listing and ANDA provisions in the same title, so it would be logical for us to interpret these two provisions of the act in a consistent manner (see *Ben*

*Venue Laboratories*, 10 F.Supp.2d, at page 457).

Additionally, it is conceivable that an ANDA applicant may file an ANDA for a drug product that contains a drug substance that does not share the same chemical structure as the NDA-approved drug, but is nevertheless covered by a patent. For example, assume that the NDA drug is a hydrated form of the drug substance, and the ANDA drug substance would be an anhydrate. If the patent for the NDA drug claims the hydrated drug substance, the ANDA applicant would be able to certify, correctly under current FDA regulations, that it was not infringing the patent and file a paragraph IV certification. However, if the patent owner also had a patent on the anhydrous form and the NDA holder were not allowed to submit patent information on the anhydrate because the patent does not claim the approved drug product, the ANDA applicant consulting the Orange Book would have no notice of the patent claiming the anhydrate. The missing patent information could mislead potential ANDA applicants into submitting ANDAs containing the anhydrate and unknowingly infringing the patent claiming the anhydrate. We, in turn, could expend resources on reviewing an ANDA for a drug that is covered by the unlisted patent, and the patent owner could expend resources in defending the patent. This waste in agency and industry resources could be avoided if we require NDA applicants and NDA holders to submit information on patents that claim drug substances that are the same active ingredient as that in the listed drug product.

Again, we recognize that requiring the submission of patent information on drug substances that are the same active ingredient, even when those drug substances are in a form that differs from the drug substance in the approved drug product, appears to be a change from our previous position. As discussed previously, we believe this change is justified by our position on pharmaceutical and therapeutic equivalence. We invite comment as to the potential impact of this change on the submission of ANDAs and 505(b)(2) applications.

We also acknowledge that the interaction between the act's requirements, our pre-existing regulations, and our positions in court cases and elsewhere can make it difficult to interpret the act's patent listing requirements and ANDA and 505(b)(2) application approval requirements in a simple, harmonious manner. Although patents on different forms of an active ingredient are properly listed, and a pending ANDA containing a different form of the drug substance may be considered to have the ''same'' active ingredient as the reference listed drug, we must emphasize that this proposed rule does not alter the requirement for NDA holders to submit a supplement before changes are made to the synthesis of the drug substance (see 21 CFR 314.70(b)(1)(iv)). If an NDA holder wishes to use an active ingredient whose form is different from the active ingredient described in the approved NDA, the NDA holder must seek our approval before it uses the different form of the active ingredient. Changes in the form of an active ingredient warrant the filing of a supplemental NDA because of the possible health consequences associated with the new form of the drug substance.

*B. Proposed § 314.53(c)(2)(i)—What Does the Patent Declaration Say?*

Section 314.53(c)(2)(i) requires a person submitting an NDA, an amendment to an NDA, or an NDA supplement, to submit a signed declaration as part of its submission of patent information if the patent covers the drug's formulation, composition, and/or method of use. The declaration states:

> The undersigned declares that Patent No. _____ covers the formulation, composition, and/or method of use of (name of drug product). This product is (*currently approved under section 505 of the Federal Food, Drug, and Cosmetic Act*) [or] (*the subject of this application for which approval is being sought*).

(Emphases in original.) We designed this declaration to help ensure that appropriate patents are listed and to preclude any need on our part to decide patent issues because we lack the patent expertise, resources, and statutory mandate to scrutinize patent listings (see 54 FR 28872 at 28909 (July 10, 1989)).

This declaration may be insufficient in practice to prevent NDA applicants and NDA holders from attempting to list inappropriate patents. The FTC Report suggested that ''many of the later-issued patents do not appear to claim the approved drug product or an approved use of the drug'' (see FTC Report at 37), but recognized that we lack the expertise and resources to review or decide patents disputes (*id.* at page 41; see also *aai Pharma* v. *Thompson*, 296 F.3d 227 (4th Cir. 2002) (''the FDA has no expertise in making patent law judgments'')). The courts have also concurred in our view that we lack the authority to review the ''listability'' of patents (see *American Biosci.* v. *Thompson*, 269 F.3d 1077, 1084 (D.C. Cir. 2001); *In re Buspirone Patent Litigation*, 185 F.Supp.2d 363, 371 (S.D.N.Y. 2002); *Watson Pharm., Inc.* v. *Henney*, Civ. No. U.S. Dist. LEXIS 2477, at 7–8 (D. Md. Jan. 17, 2001); *Mylan Pharm., Inc.* v. *Thompson*, 139 F.Supp.2d 1, 10–11 (D.D.C.) *rev'd on other grounds*, 268 F.3d 1323 (Fed. Cir. 2001)). The FTC Report also noted that ANDA applicants must certify to a listed patent even if they dispute the appropriateness of the listing (see FTC Report at 37; see also 21 CFR 314.94(a)(12)(vii)). Although we continue to lack the expertise, resources, and legal authority to examine patent issues, we can ask NDA applicants and NDA holders to provide more patent information to help ensure that only appropriate patents are listed. The proposed rule, if finalized, will prompt NDA holders and NDA applicants to make careful and well-considered representations in their patent declarations and produce greater compliance with our patent listing requirements.

The proposed rule would, therefore, revise § 314.53(c)(1) and (c)(2) by rewording the general patent declaration requirement in paragraph (c)(1) and by replacing the existing, general declaration at paragraph (c)(2)(i) with a more detailed declaration that would act as a ''checklist'' that would focus on patent claims and would ensure that applicants submit only appropriate patent information and stand behind the accuracy of that information. Proposed § 314.53(c)(1) and (c)(2)(i) would read as follows:

(1) *General requirements.* An applicant described in paragraph (a) of this section shall submit the declaration described in paragraph (c)(2) of this section for each claim of the patent that meets the requirements described in paragraph (b) of this section.

(2) *Patent declaration.* For each patent that claims a drug substance (active ingredient), drug product (formulation and composition), and/or method of use, the applicant shall submit the following declaration:

This is a submission of patent information for an NDA submitted under section 505 of the Federal Food, Drug, and Cosmetic Act (the Act).
Time sensitive patent information pursuant to 21 CFR 314.53 for NDA # _____
The following is provided in accordance with section 505(b) of the Act:
Trade Name: _____
Active Ingredient(s): _____
Strength(s): _____
Dosage Form(s): _____

Approval Date (if the submission is a supplement to an approved NDA): _____

Please provide the following information for each patent submitted, and identify the relevant claim(s) by number.

A. 1. United States patent number: _____

2. Expiration date: _____

3. Name of the Patent Owner: _____

4. Agent (if patent owner or applicant does not reside or have a place of business in the United States) _____

B. For each patent identified in A, please provide the following information:

1. The type of patent claims that apply to the drug substance or drug product that is the subject of the application:

2. Drug Substance (Active Ingredient)

___ Yes ___ No

a. Claim number(s): _____

3. Drug Product (Composition/Formulation):

___ Yes ___ No

a. Claim number(s): _____

4. Method of Use:

___ Yes ___ No

a. Claim number(s): _____

C. For each drug substance claim identified, please provide the following information:

1. Is the claim one that claims the drug substance that is the active ingredient in the approved or pending NDA, an amendment to the NDA, or a supplement to the NDA?

___ Yes ___ No

If ''yes,'' please identify the claim(s) by number.

2. Is the claim one that claims a drug substance that is the ''same'' active ingredient as the active ingredient in the pending or approved NDA, amendment to the NDA, or a supplement to the NDA?

___ Yes ___ No

If ''yes,'' please identify the claim(s) by number.

3. If the answer to question C.1 or C.2 is ''yes,'' do you acknowledge that an ANDA or 505(b)(2) application containing the same active ingredient that is claimed by the patent is the ''same'' for ANDA or 505(b)(2) approval purposes?

___ Yes ___ No

[*If the answers to questions C.1, and C.2, or C.3 is ''no,'' stop here. The patent may not be listed in the Orange Book as a patent that claims the drug substance.*]

D. For each drug product claim identified, please provide the following information:

1. Is the claim one that claims the approved formulation or composition and/or the formulation or composition for which approval is being sought?

___ Yes ___ No

If ''yes,'' please identify the claim(s) by number.

[*If the answer to question D.1 is ''no'' in every instance, stop here. The patent may not be listed in the Orange Book as a patent that claims the drug product.*]

E. For each method of use claim identified, please provide the following information:

1. Is the claim one that claims:

(a) an approved method of use of the approved drug product? If ''yes,'' please identify the use with reference to the approved labeling for the drug product and identify the relevant patent claim number(s);

___ Yes ___ No

(b) a method of use of the approved drug product for which use approval is being sought; or

___ Yes ___ No

(c) a method of use of the drug product for which approval is being sought?

___ Yes ___ No

If the answer to questions E.1(b) or (c) is ''yes'', please identify the use with reference to the proposed labeling for the drug product and identify relevant patent claim number(s).

[*If the answers to questions E.1(a) through (c) are ''no,'' stop here. The patent may not be listed in the Orange Book as a patent that claims a method of use.*]

Note that the proposed declaration would emphasize identification of the relevant patent claims by number. The number would correspond to the patent claim number in the patent itself. Precise identification of the relevant patent claims will help all parties focus on the same claim and may prevent arguments as to whether a particular claim pertained to the approved drug product or was infringed by the product described in an ANDA or 505(b)(2) application.

We are also proposing to require NDA holders and NDA applicants to identify the specific pending or approved use claimed by a method of use patent. This information will assist parties in assessing patent infringement matters and should expedite our approval of ANDAs and 505(b)(2) applications that do not seek approval for the protected use.

The proposal would also amend § 314.53(c)(2)(ii) to place more emphasis on patent claims rather than on the patent generally. Section 314.53(c)(2)(ii) currently instructs an NDA holder to amend its patent declaration within 30 days after approval of its application.

Current FDA regulations also address the content of the notice of certification of invalidity or noninfringement of patent that ANDA and 505(b)(2) application applicants must submit if their applications contain a paragraph IV certification (see §§ 314.95(c) and 314.52(c) respectively (21 CFR 314.95(c) and 314.53(c))). Section 505(j)(2)(A) of the act, however, states that we may ''not require that an abbreviated application contain information in addition to that required by clauses (i) through (viii).'' (No comparable statutory restriction exists for 505(b)(2) applications.) We invite comment on whether our current regulations regarding notice to the NDA holder and patent owner by ANDA applicants and 505(b)(2) application applicants could or should be amended.

C. *Proposed §§ 314.94(a) and 314.52(a)—How Many Times Can an Application's Approval Date Be Delayed for a 30-Month Period?*

We have consistently maintained that the Hatch-Waxman amendments create the opportunity for multiple 30-month stays to an ANDA's or 505(b)(2) application's approval date if those applicants submitted a paragraph IV certification and an action is brought for patent infringement within the statutory 45-day period. For example, assume that an ANDA applicant submitted a paragraph IV certification, provided the proper notice to the NDA holder and patent owner, and was sued for patent infringement within 45 days after providing the notice. Under section 505(j)(4)(B)(iii) of the act, we would be obliged to not approve the ANDA for a 30-month period beginning on the date of the receipt of the notice provided by the ANDA applicant to the NDA holder and patent owner, although the 30-month period could be longer or shorter depending on a court order or resolution of the litigation. If the NDA holder submitted new patent information to us, and the new patent information resulted in another paragraph IV certification and another action for patent infringement, our position has been that another 30-month stay in the effective date of ANDA approval could result.

We recently stated our position in *Andrx Pharmaceuticals, Inc.* v. *Biovail Corp.*, No. 01–6194-civ-Dimitrouleas/Johnson (S.D. Fla.). We argued that the 30-month stay provided by section 505(j)(5)(B)(iii) of the act ''is not rendered inapplicable to a patent newly listed in the Orange Book simply because the holder of the NDA has already received the benefit of such a stay with respect to a previously listed patent for the same drug'' (see Memorandum of Federal Defendants in

Opposition to Plaintiff's Motion for Summary Judgment Declaring Additional 30-Month Stay Inapplicable or Eliminated, at page 5). Andrx had argued that a 30-month stay in the approval date applies only where an ANDA applicant provides notice in the context of an original ANDA and not in an amended ANDA. We argued that section 505(j)(5)(B)(iii) of the act provides for a stay of up to 30 months regardless of whether the paragraph IV certification was part of an original ANDA or an amended ANDA. We stated that the act's reference to section 505(j)(2)(B)(i) of the act, which itself refers to sections 505(j)(2)(B)(ii) and (B)(iii) of the act, required that section 505(j)(2)(B) be read as a whole and, as a result, requires us to make a 30-month stay available whenever a paragraph IV certification was filed and timely patent litigation ensued, thereby permitting multiple 30-month stays of a single ANDA approval.

We also maintained, in *Andrx Pharmaceuticals, Inc.*, that if the 30-month stay applied only when an original ANDA contained a paragraph IV certification, an applicant could amend an ANDA to include a paragraph IV certification, and there would be no notice to the NDA holder or patent owner and no opportunity for even a single, 30-month stay. We stated that such a result could not be reconciled with the Hatch-Waxman amendments' intent to strike a balance between generic drug approval and encouraging future innovation (*id.* at page 9, note 6).

We note, along with the FTC Report, that the number of 30-month stays per product has been increasing. The FTC Report found that, before 1998, patent infringement litigation ''generated, at most, one 30-month stay per drug product per ANDA,'' and most cases (eight out of nine) involved alleged infringement of one or two patents (see FTC Report at page 36). However, after 1998, FTC found that, for drug products with substantial annual net sales, patent litigation was increasing, with a growing number of NDA holders or patent owners (five out of eight cases) alleging infringement of three or more patents (*id.*). The FTC Report even noted one instance where the NDA holder had listed 12 patents in the Orange Book (*id.* at page 45). The FTC Report also found that NDA holders were beginning to list later-issued patents, many of which ''do not appear to claim the approved drug product or an approved use of the drug,'' after an ANDA had been filed, and this resulted in a delay of FDA approval by 4 to 40 months (*id.* at page 36). In some cases, a single ANDA has been subject to as many as five stays (*id.* at page 46). The FTC Report addressed multiple stays in the context of a limited number of ''blockbuster'' drugs. The total number of stays in ANDA approvals is higher, and we agree with FTC that the number of stays appears to be increasing over time.

Consequently, we examined the act to assess whether requiring successive 30-month stays was the only reasonable interpretation of the act. We determined that another reasonable interpretation existed. Accordingly, through this proposed rule, we intend to adopt a different interpretation of the act. Our revised interpretation would limit the number of 30-month stays to the opportunity for only one stay per ANDA. Our reasoning is as follows:

- Section 505(j)(2)(B)(iii) of the act states that if an ANDA is amended to ''include'' a paragraph IV certification, then the notice to the NDA holder and to the patent owner ''shall be given when the amended application is submitted.''
- However, if the ANDA contained a paragraph IV certification, then any ANDA amendment containing a paragraph IV certification does not amend the ANDA to ''include'' a paragraph IV certification because the ANDA already contained a paragraph IV certification.
- In the circumstances described previously, the submission of a second paragraph IV certification in an ANDA amendment or supplement does not trigger the notice requirement in section 505(j)(2)(B)(ii) of the act because the ANDA is never amended or supplemented to ''include'' (i.e., contain) a paragraph IV certification.
- Consequently, under section 505(j)(5)(B)(iii) of the act, only one 30-month stay in the ANDA's approval date is possible, because the subsequent paragraph IV certifications will not have resulted in a second notice to the patent owner and NDA holder, and the 45-day period for filing a patent infringement suit, as described in section 505(j)(5)(B)(iii) of the act, will not have run. To put it another way, if the ANDA applicant is not obliged to submit the notice to the patent owner and NDA holder, then the pre-requisites to trigger the 30-month stay in an ANDA's approval date are not met, so the 30-month stay would not be available.

A similar argument for a single, 30-month stay per application can be made for 505(b)(2) applications that contain a paragraph IV certification.

Under this interpretation of the act, ANDA and 505(b)(2) application applicants would still be required to make paragraph IV certifications where applicable, but the addition of a second paragraph IV certification to an ANDA or a 505(b)(2) application that had already contained at least one paragraph IV certification would not trigger an obligation to provide a second notice to the NDA holder or to the patent owner and would not result in another opportunity for a 30-month stay. Instead, as in the case of paragraph I (no patent information has been filed) or paragraph II (patent has expired) certifications, the subsequent paragraph IV certification would allow us to approve the ANDA or 505(b)(2) application immediately if the Act would otherwise permit us to do so.

The parties would, of course, be free to litigate issues regarding patent infringement, but proposed multiple, 30-month stays per ANDA or 505(b)(2) application would no longer be possible. Our interpretation would not adversely affect a patent owner's ability to protect its patent rights. If an ANDA or 505(b)(2) application applicant makes one paragraph IV certification, the patent owner and the NDA holder would always receive notice and would always have the opportunity to protect the patented invention. If the NDA holder files *another* patent later, and the ANDA or 505(b)(2) application applicant believes that the later-filed patent is invalid or will not be infringed, the patent owner and NDA holder are still able to protect the later-filed patent because: (1) The notice already alerted the patent owner and NDA holder to the existence of the ANDA or 505(b)(2) application; and (2) any defense of the later-filed patent will not depend on the existence of a subsequent notice to the patent owner or NDA holder. In other words, with respect to later-filed or subsequently filed patents, the patent owner and NDA holder still have patent infringement and judicial remedies available to them even without receiving another notice. The patent owner, for example, can still seek an injunction to protect the patent on such terms as a court deems reasonable under 35 U.S.C. 283. If a court finds that the patent is infringed, the patent owner may be entitled to damages under 35 U.S.C. 284.

We recognize that there are other arguments to support a single, 30-month stay in each ANDA or 505(b)(2) application's approval date. For example, one argument could be that the act contemplates only one 30-month stay in an ANDA's approval date because section 505(j)(5)(B)(iii) of the act refers to ''the'' 30-month stay. This argument presumes that the original ANDA contained a paragraph IV certification and resulted in a 30-month stay. We do not concur with this

interpretation of the act because, in certain situations, it could result in no notice to the patent owner or NDA holder. For example, if the original ANDA contained a paragraph III certification (stating that the patent will expire on a specific date), and the ANDA applicant later amends the ANDA to contain a paragraph IV certification, one could argue that no notice to the patent owner or NDA holder would be necessary, and there would not be an opportunity for even a single, 30-month stay. In contrast, under our proposed interpretation of the act, the opportunity for one 30-month stay in the abbreviated application's effective date always exists, and the patent owner and NDA holder would always receive one notice from the ANDA or 505(b)(2) application applicant who challenges at least one of the listed patents. This would preserve the balance between encouraging ANDA and 505(b)(2) application approvals and encouraging innovation because: (1) The elimination of multiple 30-month stays will lead to faster ANDA or 505(b)(2) application approvals, and (2) the patent owner and NDA holder will still receive notice and will be able to take steps to defend the patented invention from alleged patent infringement. As courts have observed, ''The Hatch-Waxman Act represented Congress's efforts to strike a compromise between the competing interests of pioneer pharmaceutical companies and generic manufacturers'' (see *Mylan Pharmaceuticals, Inc.* v. *Thompson*, 139 F.Supp.2d 1, 4 (D.D.C. 2001); see also *Mylan Pharmaceuticals, Inc.* v. *Henney*, 94 F.Supp.2d 36, 52–53 (D.D.C. 2000) (interpretation of Hatch-Waxman must take into account the compromise nature of the statute); *Fisons Corp.* v. *Shalala*, 860 F.Supp. 859, 862 (D.D.C. 1994) (''A variety of federal courts have recognized that this Act represents a compromise, and aids both sets of drug manufacturers; see, e.g., *Tri-Bio Laboratories* v. *United States*, 836 F.2d 136, 139 (3rd Cir. 1987)).'' A maximum of one 30-month stay per ANDA or 505(b)(2) application represents a reasonable compromise.

Additionally, we note that interpreting the act to allow only a maximum of one 30-month stay per ANDA or 505(b)(2) application is consistent with the specific legislative history that accompanied the passage of the Hatch-Waxman amendments.[1] When the 97th Congress considered patent term extension legislation, many members were concerned that the bill would not prevent brand-name companies from obtaining multiple patent term extensions for patents that claimed a drug and, by doing so, inhibit competition from generic drugs (see 128 Cong. Rec. H6916, H6919 (September 13, 1982) (remarks of Rep. Kastenmeier)). Some charged that the bill would extend the effective patent life of top-selling drugs for more than 17 years (the patent term that existed at the time) through ''pyramiding'' or ''evergreening'' of patents (*id.* at page H6922) (remarks of Rep. Gore). The House of Representatives, by a vote of 250 to 132, rejected passing the bill by suspension of the rules, and so the bill failed to be passed despite unanimous support in the Senate and strong support in the House. When the Senate revisited the legislation in the next year, the President of the Pharmaceutical Manufacturers Association (now known as the Pharmaceutical Research and Manufacturers of America) testified that, in 1982:

> * * * critics of the bill sought to create the impression that innovative firms were acquiring patents in constellation, pyramiding one on top of another to extend effective protection. Among people not knowledgeable about the intricacies of patent law, this understandably occasioned alarm and suspicion.

(See Hearing on S. 1306, Senate Judiciary Cmte., 98th Cong., 1st Sess. 56–57 (testimony of Lewis A. Engman, President, Pharmaceutical Manufacturers Association)).

The statutory language creating paragraph IV certifications, provisions for giving notice of such certifications, and rules governing amended applications is identical to language in S. 2748 as introduced by Senator Hatch in 1984. The House Judiciary Committee reported essentially identical language by voice vote, and the only relevant report language states that notice is required under paragraph 505(j)(2)(B)(iii) when an ANDA ''is subsequently amended so as to bring it *within* this notice requirement'' (see H. Rep. 98–857, Part 2, 98th Cong., 2d Sess. 14 (1984) (emphases added)). This understanding by the House Judiciary Committee suggests that if an ANDA applicant had provided notice to the patent owner and NDA holder, and then amended the ANDA to make a patent certification regarding a newly-filed patent, then the ANDA applicant would not have to provide another notice because, by virtue of its first notice to the patent owner and NDA holder, the ANDA applicant was *already* within the notice requirement. Our proposed interpretation is thus consistent with the legislative history.

For all these reasons, we propose to amend §§ 314.95(a)(3) and 314.52(a)(3) to state that the requirement to provide a notice of invalidity or noninfringement of patent:

> * * * does not apply to a use patent that claims no uses for which the applicant is seeking approval. This paragraph also does not apply if the applicant amends its application to add a certification under [§ 314.94(a)(12)(i)(A)(*4*) for an ANDA applicants or § 314.50(i)(1)(i)(A)(*4*) for 505(b)(2) application applicants] when the application already contained a certification under [§ 314.94(a)(12)(i)(A)(*4*) or § 314.50(i)(1)(i)(A)(*4*)] to another patent.

The proposed amendments to §§ 314.95(a)(3) and 314.52(a)(3), if made final, will lead to a changed interpretation of §§ 314.95(d) and 314.52(d) respectively. Sections 314.95(d) and 314.52(d) state that if an application is amended to include a paragraph IV certification, then the ANDA or 505(b)(2) application applicant shall send the notice of certification of invalidity or noninfringement of patent at the same time that it submits its amendment to us. Under the proposed rule, an ANDA or 505(b)(2) applicant who is amending its application to include a paragraph IV certification must provide notice to the patent owner and NDA holder only if the ANDA or 505(b)(2) application did not previously contain a paragraph IV certification.

## III. Implementation

### *A. How Would the Rule Affect Notices?*

Under the framework proposed in this rule, the possibility exists that if two ANDA applicants file paragraph IV certifications to a later-filed patent, and one ANDA applicant has already submitted a paragraph IV certification to a previously-filed patent, one ANDA applicant could be subject to a 30-month stay with respect to the later-filed patent while the other would not. To illustrate this problem:

1. Assume that ANDA applicant #1 files a paragraph IV certification to a patent, while ANDA applicant #2 files a paragraph III certification to the same patent. The patent owner brings a suit for patent infringement against ANDA applicant #1 and obtains a 30-month stay in the ANDA's approval date.

2. Assume that the NDA holder files another patent.

3. If ANDA applicants ## 1 and 2 both file paragraph IV certifications for the second patent, the proposed rule, if finalized, would not require ANDA applicant #1 to provide notice to the

[1] We further note that, although reliance on legislative history may have its perils, its use is more justified where, as in this case, the statute is ambiguous (see, e.g., *PanAmSat Corp.* v. *FCC*, 198 F.3d 890, 895 (D.C. Cir. 1999) (stating that a court does not resort to legislative history ''to cloud a statutory text that is clear'') (citation omitted).

patent owner and NDA holder, because the ANDA previously contained a paragraph IV certification. However, ANDA applicant #2 is subject to a potential 30-month stay in the ANDA approval date because it would be required to provide notice to the patent owner and NDA holder.

While this hypothetical situation appears to treat the two ANDA applicants differently, we believe that our interpretation does treat the ANDA applicants alike, because both ANDA applicants would be subject to the possibility of only one 30-month stay in the ANDA approval date.

Our proposed interpretation of the 30-month stay does not affect an ANDA applicant's eligibility for 180-day exclusivity. In brief, section 505(j)(5)(B)(iv) of the act gives the ANDA applicant who files the first paragraph IV certification for a listed patent 180 days of exclusivity (against other ANDA applicants). We interpret the 180-day exclusivity provision as providing 180-day exclusivity to the first ANDA applicant whose ANDA contains a paragraph IV certification to a patent, even if the paragraph IV certification is one that would not result in an obligation to notify the patent owner and NDA holder and would not subject the applicant to the risk of patent litigation and a 30-month stay. The FTC Report suggested that if only a single, 30-month stay per ANDA were allowed, the number of patents listed after NDA approval might decrease (see FTC Report at page v).

*B. How Would the Rule Affect Pending Applications?*

Assuming that we issue a final rule, we intend to apply the rule to pending applications as follows:

• For patents filed for an NDA that has not been approved by the effective date of a final rule, the rule would apply on the effective date. For example, if the final rule were to become effective 60 days after the date of publication in the **Federal Register**, and an NDA was pending on the 60th day after the final rule's publication date, the NDA applicant would have to comply with the final rule's patent listing and patent declaration requirements. ANDA and 505(b)(2) application applicants would be subject to the revised notice requirement. Each ANDA or 505(b)(2) application referencing that NDA would be subject to the possibility of only one 30-month stay per ANDA or 505(b)(2) application.

• If we have approved the NDA as of the final rule's effective date, and no ANDA has been filed before that date, then any patent listed before that date would be subject to the pre-existing regulation. For example, if the final rule were to become effective 60 days after the date of publication in the **Federal Register**, and we approved the NDA on the 59th day after the date of publication, the NDA applicant would *not* have to amend its patent listing and patent declaration to comply to the final rule. ANDA and 505(b)(2) applications submitted after the effective date would be subject to the revised notice requirement. Each ANDA or 505(b)(2) application referencing that NDA would be subject to the possibility of only one 30-month stay per ANDA or 505(b)(2) application.

• If we have approved the NDA as of the final rule's effective date, and an ANDA or 505(b)(2) application has been filed before that date, then any patent listed before that date would be subject to the pre-existing regulation, as described in the example immediately above. The ANDA or 505(b)(2) application applicant would have to provide notice to the patent owner and NDA holder if the ANDA or 505(b)(2) application contained a paragraph IV certification. Multiple 30-month stays in the approval date would be possible.

• If the NDA holder or NDA applicant files patent information after the final rule's effective date, then the NDA holder or applicant is subject to the final rule's patent listing and patent declaration requirements, and ANDA or 505(b)(2) application applicants would not have to provide notice if their applications previously contained a paragraph IV certification. Only one 30-month stay per each ANDA's or 505(b)(2) application's approval date would be possible.

This proposed rule provides sufficient notice to all interested parties, whether they are NDA holders, NDA applicants, ANDA applicants, or 505(b)(2) application applicants, to adjust their submissions and actions by the time we issue a final rule. (This assumes, of course, that we issue a final rule.) NDA holders who wish to receive the benefits of the pre-existing regulation will have enough time to decide whether to pursue additional patents and to list them. ANDA and 505(b)(2) application applicants will be able to plan their submissions more efficiently as they will know whether their applications will be subject to the possibility of one or more 30-month stays of approval if they make a paragraph IV certification. If we were to adopt an alternative implementation plan, we would risk upsetting legitimate expectations held by those who had relied on our earlier interpretation of the act. However, we invite comments on how a final rule should be implemented.

## IV. Legal Authority

Our principal legal authority for the proposed rule exists at sections 505 and 701 (21 U.S.C. 371) of the act. Section 505(b) of the act describes the contents of an NDA and 505(b)(2) applications, including the patent listing and patent certification requirements. Section 505(j) of the act describes the contents of an ANDA, including patent certification requirements. Both sections 505(b) and 505(j) of the act also describe the 30-month stay of approval dates of a 505(b)(2) application or ANDA if the 505(b)(2) applicant or ANDA applicant made a paragraph IV certification and a timely action for patent infringement ensues.

The proposed rule would clarify the types of patents which NDA applicants and NDA sponsors must and must not submit to FDA for listing in the Orange Book. It would also require a more detailed patent declaration from NDA applicants and NDA holders.

For 505(b)(2) applicants and ANDA applicants, the proposal would have the effect of reducing the number of notifications sent to patent owners and NDA holders. Sections 505(b)(2)(A) and 505(j)(2)(A)(vii) of the act, respectively, require patent certifications, while sections 505(b)(3)(A) and 505(j)(2)(B) of the act require those applicants who have made a paragraph IV certification to provide a notice to the patent owner and NDA holder. Because the proposal would not require ANDA applicants and 505(b)(2) applicants to provide notice if: (a) the original ANDA or 505(b)(2) application contained a paragraph IV certification; and (b) the applicants amend their applications to include another paragraph IV certification in response to another patent listing, fewer notifications of invalidity or noninfringement of a patent would result.

Thus, section 505 of the act, in conjunction with our general rulemaking authority in section 701(a) of the act, serves as our principal legal authority for this proposal.

## V. Environmental Impact

The agency has determined under 21 CFR 25.30(h) and 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**VI. Executive Order 13132: Federalism**

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

**VII. Paperwork Reduction Act of 1995**

This proposed rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). We describe these provisions below in this section of the document with an estimate of the annual reporting burden. Our estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

We invite comments on: (1) Whether the collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Applications for FDA Approval to Market a New Drug: Patent Listing Requirements and Application of 30-month Stays on Approval of Abbreviated New Drug Applications Certifying That a Patent Claiming a Drug Is Invalid or Will Not Be Infringed

Description: The proposed rule would clarify the types of patent information that must and must not be submitted to FDA as part of an NDA or as an amendment or supplement to an NDA. The proposal would also require persons submitting an NDA or amendment or supplement to such an application to make a detailed patent declaration as part of the application. The proposal would also permit the possibility of only one 30-month stay of each ANDA's or 505(b)(2) application's approval date in the event of patent infringement litigation because the proposal would not require ANDA applicants or 505(b)(2) applicants to provide a notice of certification of invalidity or noninfringement of patent if their applications already contain such a certification.

Description of Respondents: Persons submitting, amending, or submitting a supplement to an NDA, and persons submitting an ANDA or 505(b)(2) application containing a patent certification of invalidity or noninfringement of patent.

We estimate the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section | No. of Respondents | Frequency of Responses | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 314.50(a) through (f), (h), and (k) | 80 | 1.55 | 124 | 1,690 | 209,560 |
| 314.52(a)(3) and 314.95(a)(3) | 37 | 1 | 37 | 16 | 592 |
| Total | | | | | 210,152 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimates are based on the following assumptions.

• According to our earlier information collection estimates for §§ 314.52 and 314.95, there are an estimated 37 respondents who provide a notice of certification of invalidity or noninfringement of patent each year, and each respondent submits an estimated 2 responses, with an estimated 16 burden hours per response. Because the proposed rule would allow only one 30-month stay in the effective date of approval for each 505(b)(2) application or ANDA, this would mean that these 505(b)(2) or ANDA applicants would (if the rule is finalized) file only one notice per year (unless they are filing multiple applications for different drugs and making paragraph IV certifications in more than one case). So, assuming that these applicants submit only one 505(b)(2) application or ANDA per year that contains a paragraph IV certification, the applicants would submit only one notice of certification of invalidity or noninfringement of patent each year. Thus, the information collection burden for §§ 314.52 and 314.95 would decrease to 592 hours (37 respondents x 1 response per respondent x 16 hours per response = 592 hours).

• To estimate the number of enhanced patent declarations that will be submitted annually, we referred to historical data on submissions of NDAs. In 2001 and 2002, we received 94 and 66 NDAs respectively. We therefore estimate that there will be 80 ((94 applications + 66 applications)/2 years = 80 applications/year) annual instances where an NDA applicant or NDA holder would be affected by the proposed patent listing and patent declaration requirements. According to our earlier information collection estimates for § 314.50(h) (the provision under which we covered patent listing and patent declaration matters as described in § 314.53), there are an estimated 1.55 annual responses per respondent. So, using the same 1.55 ratio, this would mean that 80 NDA applicants and NDA holders would submit 124 annual responses (80 respondents x 1.55 responses per respondent = 124 responses). However, proposed § 314.53(b) and (c) would have different impacts on the hours per response. On the one hand, proposed § 314.53(b) might decrease the reporting burden because it would specify certain patents that must not be filed in the Orange Book and thus discourage NDA applicants and NDA holders from submitting information on those patents. On the other hand, proposed § 314.53(b) would also require NDA applicants and NDA holders to submit patent information on different forms of the drug substance, and this could result in more patent information being submitted. We cannot determine whether the potential net effect will increase, decrease, or not change the overall burden associated with submitting patent information, so we

have not assigned any change in the total reporting burden for the proposed change in patent information alone. In contrast, proposed § 314.53(c) would make the patent declaration more detailed. The change in the declaration would increase the burden hours per response in § 314.50(h) (the provision under which we covered patent declarations described in § 314.53(c)) because respondents would be required to be more precise in their declarations. Based on other rules that require respondents to compile and submit information in their possession, we estimated that the revised patent declaration will result in an additional information collection burden of 24 hours. However, the previous burden hour estimate of 1,666 hours for § 314.50 covered paragraphs (a) through (f), in addition to paragraphs (h) and (k). We are unable to determine how many of the 1,666 hours were devoted to patent declarations, so, in this table, we simply add 24 hours to the 1,666 hour estimate for § 314.50(a) through (f), (h), and (k), resulting in a burden hour estimate of 1,690 hours (1,666 hours + 24 hours) to account for a respondent's need for more time to make and verify the patent declaration. Thus, the information collection burden for § 314.50(a) through (f), (h), and (k) would increase to 209,560 hours (124 annual responses x 1,690 hours per response = 209,560 hours). We invite comment as to whether we need to adjust our estimate of 24 burden hours per response.

We have submitted the information collection requirements of this rule to OMB for review. Interested persons are requested to send comments regarding information collection to the Office of Information and Regulatory Affairs, OMB (see **ADDRESSES**).

## VIII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, and the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity). Unless the agency certifies that the rule is not expected to have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act, as amended by SBREFA, requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. Section 202 of UMRA requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation). We have conducted analyses of the proposed rule, and have determined that the proposed rule is consistent with the principles set forth in the Executive order and in these statutes.

The proposed rule is an economically significant regulatory action as defined by the Executive order. With respect to the Regulatory Flexibility Act, the agency certifies that this proposed rule is not expected to have a significant impact on a substantial number of small entities. The proposed rule is also a major rule under the Congressional Review Act. The discussion of costs and benefits is consistent with the requirements of the Unfunded Mandates Reform Act.

### *A. Objectives of the Proposed Regulation*

The proposed rule has multiple objectives. We are clarifying the types of patents that must and must not be listed and revising the declaration that NDA applicants must provide regarding their patents. In addition, through this proposal, we are adopting a different interpretation of the act that will limit the number of 30-month stays to one per ANDA or 505(b)(2) application. This clarification, revision, and reinterpretation will help ensure that NDA applicants list appropriate patents in the Orange Book while preventing the NDA holders from thwarting generic entry through the use of multiple 30-month stays. Through these actions, we are preserving the balance struck in the Hatch-Waxman Amendments between encouraging innovation and encouraging the availability of generic drugs. The estimated 10-year total costs of this proposed rule are approximately $51.5 billion and the annualized cost is $4.9 billion. The estimated 10-year total benefits of this proposed rule are approximately $53.9 billion and the annualized benefit is $5.1 billion. These 10-year total benefits include consumer savings of approximately $34.8 billion from earlier access to less expensive prescription pharmaceuticals. The 10-year benefits exceed the costs by approximately $2.4 billion and the annualized benefits exceed the annualized costs by approximately $230 million.

#### 1. The 30-Month Stay

The Hatch-Waxman Amendments benefit consumers by bringing lower priced generic versions of previously approved drugs to market, while simultaneously promoting new drug innovation through the restoration of patent life lost during regulatory proceedings. A firm wishing to market a generic version of a previously approved innovator drug can submit an ANDA. An ANDA refers to a previously approved NDA (the ''listed drug'') and relies upon our finding of safety and effectiveness for the listed drug.

Persons submitting an ANDA or a 505(b)(2) application must make certifications regarding the listed patents claiming the drug they wish to duplicate. The applicant must certify one of the following for each patent: (1) That no patent information on the drug product that is the subject of the ANDA has been submitted to us; (2) that such patent has expired; (3) the date on which such patent expires; or (4) that such patent is invalid or will not be infringed by the manufacture, use, or sale of the drug product for which the ANDA is submitted. These certifications are known as ''paragraph I,'' ''paragraph II,'' ''paragraph III,'' and ''paragraph IV'' certifications, respectively.

A paragraph IV certification begins a process in which the question of whether the listed patent is valid or will be infringed by the proposed generic product may be answered by the courts prior to the expiration of the patent. The ANDA or 505(b)(2) application applicant who files a paragraph IV certification to a listed patent must notify the patent owner and the NDA holder for the listed drug that it has filed an application containing a paragraph IV certification. The notice must include a detailed statement of the factual and legal basis for the applicant's opinion that the patent is not valid or will not be infringed. If the NDA holder or patent owner files a patent infringement suit against the ANDA or 505(b)(2) application applicant within 45 days of the receipt of notice, we may not give final approval to the ANDA or 505(b)(2) application for at least 30 months from the date of the notice. This 30-month stay per ANDA or 505(b)(2) application will apply unless the court reaches a decision earlier in the patent infringement case or otherwise orders a longer or shorter period for the stay.

We recognize that, in recent years, NDA holders have been able to use multiple 30-month stays to delay

generic competition. Under current regulations, the patent certification process allows for one or more 30-month stays of an ANDA or 505(b)(2) application's approval. NDA holders can prevent FDA approval of ANDAs or 505(b)(2) applications beyond the initial 30-month stay by listing an additional patent in the Orange Book after the applicant has filed its ANDA or 505(b)(2) application. These applicants would be required to re-certify to the newly-listed patent. The NDA holder would then be given 45 days to file suit for patent infringement, and our approval of the initial ANDA or 505(b)(2) application would be delayed for an additional 30-month period from the notice date or until a court decision in the newly instituted patent litigation.

According to the FTC Report, from 1992 to 2000, NDA holders have listed patents in the Orange Book after an ANDA has been filed for a drug product on eight occasions. Six of these eight occasions have occurred since 1998. In all eight of these instances, the subsequent patent resulted in a delay to generic access to markets beyond the initial 30-month stay. We are not aware of any case in which a court has decided that the ANDA infringed upon the subsequent listed patent. According to the FTC Report, in the four instances of multiple stays in which a court has decided on the validity or infringement of a later-listed patent, the patent has been found either invalid or not infringed by the ANDA.[2]

2. The Economic Impact of Generic Competition

The generic drug industry plays an important role in the economics of the healthcare industry. According to Caves, Whinston, and Hurwitz (1991), generic drug prices can be as little as 20 percent of the brand-name price for the same product.[3] Laws encouraging doctors to prescribe generic drugs when available are a part of the current effort to hold down the cost of healthcare.[4] A report from the Congressional Budget Office (CBO) report estimated that in 1994 (when the generic drug market was smaller than its current size) consumers saved between $8 and $10 billion by substituting generic for brand-name drugs in pharmacy sales.[5] While the first 30-month stay enhances the incentive to innovate, subsequent stays generated by later-listed patents do not seem to give rise to the same incentives in most cases. By using multiple 30-month stays, NDA holders are able to delay competition from generic drugs. Delaying generic competition harms consumers by slowing the introduction of lower priced products to the market and thwarts the intent of the Hatch-Waxman Amendments.

The agency considered potential impacts on innovation and believes any negative effect to be minimal. While the initial 30-month stay is part of the balance struck in the Hatch-Waxman amendments to reward innovation, the subsequent stays are not part of this balance. The patents that form the basis for these subsequent stays do not appear to warrant automatic protection from generic competition.

According to the FTC report, every court ruling involving a subsequent 30-month stay has found the underlying patent to be either invalid or not infringed. Also according to the FTC report, extending patents through multiple stays is a strategy that has become popular in the last few years and is not a longstanding universally-recognized source of research funding. Subsequent stays could actually hinder innovation through the replacement effect, in that they provide a disincentive for an NDA holder to improve upon its own product. Moreover, to the extent that subsequent 30-month stays might be associated with increases in spending on research, these increases do not necessarily improve social welfare.[6]

*B. Costs of the Regulation*

This section develops estimates of the cost to NDA holders from the proposed rule. As previously stated, this proposed rule clarifies those types of patents that must or must not be listed and eliminates the use of multiple 30-month stays per ANDA to delay generic competition. The innovator drug industry, as NDA holders, would be expected to bear the costs of the proposed rule. Generic drug companies and consumers would be expected to benefit. The impact on these entities that benefit is addressed in section III.C of this preamble. We do not estimate a specific impact involving those submitting 505(b)(2) applications. We recognize these applicants, like those submitting ANDAs, must make certifications and would be affected by this proposed rule. We believe any benefits would be difficult to quantify with any precision and would be quite small, relative to the benefits to generic drug companies.

This proposed rule will be costly to NDA holders because earlier generic competition will erode innovator market share. This loss of market share to generics will result in reduced revenues to the innovator. These reduced revenues would be mitigated somewhat by a reduction in the administrative, marketing, and sales expenses.

To estimate the impact of earlier generic competition, we estimate the revenues to NDA holders and generics under a base case scenario under which multiple 30-month stays per ANDA are not allowed and a scenario in which generic entry may be delayed subject to an additional stay. The impact of the proposed rule would be the difference between the two scenarios.

1. Delaying Generic Competition

To estimate the impact of delays to generic competition, we use a modified version of the economic model from our report to Congress on the pediatric exclusivity provision to the Food and Drug Administration Modernization Act.[7] Generic entry erodes the listed drug's market share, typically over a period of several years. At the same time, the price of the typical generic drug is also falling. By tracking the decline of listed drug's market share and the fall in the price of the generic competition, the model calculates changes in sales over time for innovator and generic sectors.

In the model, we assume the reference listed drug's market share falls from 100 percent to 60 percent in the first year of generic marketing, and then to 45 and 30 percent in years two and three. The price of the average generic drug falls with time, and this is also captured by the model. The model assumes for each 6-month interval over the first 3 years of competition, the generic price as a fraction of innovator price falls from 100 percent at introduction, to 80 percent after 6 months, and finally 33.5 percent after 3 years.[8] Several studies have

[2] FTC Report, p. iv.

[3] Caves, Richard, M. D. Whinston, and M. A. Hurwitz, 1991. ''Patent Expiration, Entry, and Competition in the U.S. Pharmaceutical Industry,'' Brookings Papers in Economic Activity: Microeconomics, p. 36.

[4] Hellerstein, Judith K. 1994. ''The Importance of the Physician in the Generic Versus Trade-Name Prescription Decision,'' *RAND Journal of Economics*: 29:1:108–136.

[5] Congressional Budget Office, *How Increased Competition From Generic Drugs Has Affected Prices and Returns in the Pharmaceutical Industry* (July 1998). Note that the sale of drugs through pharmacies is a subset of all drug sales so total savings to consumers would be expected to be higher than the given figure.

[6] A more detailed discussion of the replacement effect and of the relationship between research and social welfare can be found in Jean Tirole, *The Theory of Industrial Organization* (Cambridge: MIT Press, 1988), pp. 392, 399–400.

[7] U.S. Food and Drug Administration, *The Pediatric Exclusivity Provision: Status Report to Congress*, January 2001, p. 43

[8] The decline over 3 years at 6-month intervals is as follows: 100 percent at introduction (0 months);

shown generic competition to have only very small effect on innovators' prices.[9] Innovator prices do frequently rise after generic entry, but we lack the data to confidently incorporate an estimate of this into this model. If innovator price increases were incorporated into this model, the magnitudes of the estimated impacts would be expected to be larger. We request comment providing data on price behavior after generic entry into the market.

The model calculates the impact on innovator and generic sectors each month for a 10-year period. Using immediate generic entry as a base case, the model calculates the relative impact of delaying entry for a certain number of months. These monthly impacts on each sector are converted to present value using a 7 percent discount rate.

According to appendix H of the FTC report, there have been 8 multiple 30-month stays, but the frequency of these stays has been increasing. Four drugs experienced multiple stays during 2000 and 2001. Based on this information, we assume that, absent this proposed rule, there would be 2 (4 drugs/2 years) situations with multiple 30-month stays each year. Thus, in calculating the annual impact of this proposed rule, we multiply the peak annual sales of the average affected drug by 2 to account for the frequency of the event. While we believe this to be a reasonable estimate, we recognize, as mentioned in the FTC Report, that a substantial sales volume of brand-name drug products will be coming off patent in the next few years. If there are more drugs affected by this rule than we estimate, this would increase both the benefits and costs of this rule.

To develop a profile of the typical drug for which there were multiple 30-month delays, we started with the instances in Appendix H and table 4–3 of the FTC Report. As two instances from the FTC report concern different dosage forms of the same drug, gabapentin, we count it only once in our analysis. Generic competition for one of the drugs, Cisplatin, was delayed because of a single 30-month stay and an alleged double patent. As we do not believe this situation is addressed by this proposed rule, we eliminated it from the analysis. The information on the six remaining drugs is contained in table 2.

TABLE 2.—DRUGS USED IN ANALYSIS

| Active Ingredient | FTC Stay Period (Months) | Estimated Additional Stay Period (Months) | Estimated Peak Sales (000) |
|---|---|---|---|
| Buspirone | 30[1] | 4 | $700 |
| Terazosin | 70[2] | 46 | $580 |
| Gabapentin | 37 | 24 | $1,710 |
| Paroxetine | 65 | 34 | $3,780 |
| Paclitaxel | 60[1] | 3 | $1,020 |
| Diltiazem | 60[1] | 28 | $380 |
| Average | 50 (+20) | +23 | $1,360 |

[1] Potentially, but actually shorter because of a court decision.
[2] Periods not overlapping.
Sales Data Sources: Buspirone 2000 data, BMS Web site; Terazosin 1999 data, Pharmacy Times Web site; Gabapentin 2001 data, Drug Topics Web site; Paroxetine 2001 data, Scrip 2737, p. 15; Paclitaxel 2000 data, BMS Web site; Ditiazem 2001 data, Forest Form 10K. For data prior to 2001, sales were escalated to the 2001 level using CPI-U. For drugs that have not yet reached peak sales, the peak was estimated with a linear projection.

Table 2 includes the inflation adjusted peak sales and subsequent delay for each of the six drugs. As a reference, we include delay information from the FTC report. Based on the delay and sales information for the six drugs, we find the typical delayed drug to have peak annual sales of $1,360 million and subject to a 23-month delay. As we do not possess current sales figures for all the drugs involved, we invite comment on the accuracy of these estimates.

2. Impact of Delay on the Innovator Sector

The model results obtained from comparing the no delay and delay scenarios are provided in table 3. To account for the frequency of occurrence, we multiply the peak sales estimate by 2. To the extent that this proposed rule would eliminate multiple 30-month stays per ANDA after the first, the estimated impact on innovators would be an annual revenue decrease of $3,159.50 million (approximately $3.2 billion).

TABLE 3.—RESULTS OF DELAY ANALYSES

| Scenario | Sales (000) | Delay (Months) | Impact (In Millions) | | |
|---|---|---|---|---|---|
| | | | Innovator | Generic | Consumer |
| Base Case | $2,720[1] | 23 | ($3,160) | $1,120 | $2,040 |

[1] Includes 2.0 frequency factor.

80 percent (6 months); 60 percent (12 months); 52.5 percent (18 months); 45 percent (24 months); 37.5 percent (30 months); 33.5 percent (36 months). The ultimate price ratio of 33.5 percent is consistent with a market with 10 generic entrants, per Caves, Whinston, and Hurwitz (1991), p. 36, table 9.

[9] See Box 4 in Congressional Budget Office (1998), p. 30.

The cost impact on innovators is driven by the fact that a delay in generic entry extends the time the innovator collects peak sales and shortens the time the innovator collects 30 percent of peak sales. Absent discounting, the impact on innovators would be the length of the delay times 70 percent of the peak innovator drug revenues.

This impact on innovators may be mitigated to a small degree by potential decreases in the administrative, marketing, and sales costs associated with the product. A recent study of top pharmaceutical companies found that marketing, administrative, and advertising expenses averaged 27 percent of revenues.[10] Part of this figure includes certain fixed costs that would not change with a decline in revenues. Moreover, to the extent that some of these support costs are discretionary, they would most likely be focused on periods of intense marketing, such as product roll-outs. Nevertheless, with the erosion of market share, the rewards to marketing would decline and the need for administrative support would be expected to decrease.

Assuming half the 27 percent figure to be discretionary support costs, and the discretionary support costs for the product in question to be one-third of the average, then discretionary support costs would be 4.5 percent of revenues (27 percent/6). The relevant annual cost reduction would be $142.2 million ($3.160 billion x 4.5 percent). As we lack precise data on the relationship between revenues and support costs, we invite comment on the accuracy of this estimate.

3. Other Issues Related to Burdens to Innovators

The proposed rule would require NDA holders to submit a more detailed patent declaration. To estimate the number of enhanced patent declarations that will be submitted annually, we referred to historical data on submission of NDAs, excluding those for orphan drugs. In 2000 and 2002, there were 94 and 66 NDAs respectively. We therefore estimate that there will be 80 ((94 + 66) / 2) annual instances where an NDA holder or NDA applicant will face this additional declaration burden. Based on earlier information collection estimates, we assume there to be an estimated 1.55 annual responses per respondent. Using this same 1.55 ratio, this would mean that the 80 NDA applicants and NDA holders would submit 124 annual responses (80 respondents x 1.55 responses per respondent).

We believe that, while the NDA holder or NDA applicant possesses the additional patent information, there will be a burden in completing the more detailed declaration. Based on other rules that require respondents to compile and submit information in their possession, we estimate the burden to be 24 hours per event. A regulatory affairs specialist could perform the tasks associated with this process. Based on the total average hourly compensation (including a 40 percent load factor for benefits) of $55.72, the cost would be $1,337 ($55.72 per hour x 24 hours) per event.[11] The burden on individual firms would depend on the number of declarations they submit. The estimated annual burden to all declarants is $165,778 ($1,337 per event x 124 annual events).

We also considered a potential impact due to the numbers of patents listed. The proposed rule would require the submission of patent information for patents that claim different forms of the drug substance, and this would appear to increase the number of patent filings. At the same time, the proposed rule would clarify the types of patents that must not be submitted, and this would appear to reduce the number of patent filings. These two countervailing effects are of uncertain magnitude. We cannot quantify an impact, if any, from a change in the number of patents listed, but we invite comment.

4. Enforcement Costs

The proposed rule, if finalized, can be enforced using existing resources.

5. Total Costs of the Regulation

The annual cost of the proposed rule includes the lost revenues to innovator firms from the erosion of market share, mitigated by the decrease in support costs, and the additional cost of completing the more detailed patent declaration. The estimated 1-year loss in revenues from erosion of market share is $3,159.50 million, the reduction in support costs would reduce this loss by $142.20 million, and the estimated annual additional cost of completing the revised declarations is approximately $166,000. Thus, the estimated 1-year cost to innovator firms is $3,017.47 million (approximately $3.0 billion).

According to projections produced by the Office of the Actuary at the Centers for Medicare and Medicaid Services, expenditures on prescription pharmaceuticals are expected to increase dramatically in the near future. This $3.0 billion 1-year estimate does not take these increases into consideration and must be adjusted to account for them. Prescription drug expenditures for 2003, for example, are expected to be 12.8 percent greater than for 2002.[12] After using the average annual percent changes in prescription drug expenditures to adjust the annual cost, the total reduction in revenues to the innovator sector over the 10-year period 2002 through 2011 is estimated to be $51,507.55 million, or approximately $51.5 billion. Annualizing this impact over that 10-year period at a 7 percent discount rate yields an annualized cost of $4,863.76 million, or approximately $4.8 billion.

*C. Benefits of the Regulation*

This section develops estimates of the benefits from the proposed rule. Eliminating multiple 30-month stays per ANDA will prevent delays in generic drug competition. The 70 percent of the market lost by innovators is a gain to both generic drug companies and consumers. Generic drug companies gain through additional sales, and, to the extent that generic prices are lower than innovator prices, consumers benefit from the ''price gap.''

1. Gains to the Generic Drug Industry

We estimated the increase in sales to generic drug companies using the same model used to estimate losses in sales to innovators. Assuming typical drug peak sales to be $2.72 billion (including 2.0 frequency factor) and a typical delay of 23 months, the estimated increase in 1-year revenues to generic firms is $1,119 million (approximately $1.1 billion). After accounting for the baseline increases in pharmaceutical expenditures, the total increase in generic industry revenues for the period 2002 to 2011 is estimated to be $19,117.47 million or approximately $19.1 billion. The annualized cost, using a 7 percent discount rate is $1,805.23 million or approximately $1.81 billion.

While we recognize that the generic drug industry is doing more marketing than it used to do, the effort is still substantially smaller than what is done by innovator firms, and we do not make adjustments for reductions associated support costs.

[10] Families USA, *Profiting From Pain: Where Prescription Dollars Go*, July 2002, p. 3.

[11] Hourly rate for ''lawyer'' from the Bureau of Labor Statistics 2000 National Compensation Survey is $38.70, adjusted for inflation at 2.85 percent (unadjusted CPI–U) and 40 percent for benefits.

[12] The annual percent increases in prescription drug expenditures for each year, 2003 through 2011, are assumed to be 12.8 (2003), 12.3 (2004), 11.7 (2005), 11.0 (2006), 10.7 (2007), 10.5 (2008), 10.3 (2009), 10.2 (2010), and 10.1 (2011). See National Health Care Expenditures Projections: 2001–2011, Centers for Medicare & Medicaid Services, Office of the Actuary, table 11.

2. Gains to Consumers

The model assumes that after generic entry, the market will eventually stabilize where the price of a generic drug will be 33.5 percent of the equivalent innovator drug. The gain to consumers would be the difference between the generic and innovator price. This price gap is equal to 66.5 percent of the innovator price. Under our assumptions, the estimated consumer impact of the proposed rule is a 1-year gain of $2,040 million (approximately $2 billion). This gain would be from the elimination of multiple 30-month stays per ANDA that delay the availability of less expensive drugs.

After increasing this 1-year estimate to account for the annual expected increases in baseline pharmaceutical expenditures, the total expected benefit to consumers for the period 2002 to 2011 is $34,822.35 or approximately $34.8 billion. The annualized benefit to consumers, using a 7 percent discount rate, would be $3,288.21 or approximately $3.3 billion.

It is difficult to determine which subgroups of consumers will benefit most from access to generic drugs. The previously cited report on Pediatric Exclusivity noted that about 21 percent of pharmaceutical spending came from public sources (Federal, State & Local, Medicare and Medicaid) and that this figure was expected to rise. The report also noted that cheaper drugs would disproportionately benefit lower income consumers in that these consumers would be less likely to have insurance.

3. Other Issues Related to Benefits

In the past, some studies have allocated a portion of the gains to generic drugs to the distribution sector (e.g., retail drug stores). These studies typically based this approach on the belief that generic drugs carried a substantially larger retail markup, in absolute dollar terms, than did innovator drugs.

This belief appears to be based on literature using limited data from the mid–1980s, a period when the generic drug industry was substantially different from its current state. For this analysis, we referred to more recent information, such as that found in the CBO report, and found no evidence of substantially larger absolute retail markup for generic drugs. While we believe recent data supports our belief that the absolute markups are approximately the same, we invite comment on this issue.

4. Total Benefits of the Regulation

The 1-year benefits of the regulation will include the increase in revenues to generic firms and the savings to consumers from the earlier availability of less expensive pharmaceuticals. The estimated total 1-year benefit is $3,159 million (approximately $3.2 billion). Adjusting this benefit to account for the expected increase in baseline pharmaceutical expenditures, the total benefit for the years 2002 through 2011 is expected to be $53,931.97 million or approximately $53.9 billion. Annualizing this stream of benefits over that 10-year period at a 7 percent discount rate yields an annualized cost of $5,093 million or approximately $5.1 billion.

TABLE 4.—BENEFITS OF THE PROPOSED RULE TO GENERICS AND CONSUMERS

| Issue | One-Year Impact (Millions) |
|---|---|
| Generic Earlier Access to Market | $1,119.96 |
| Consumer Drug Savings | $2,039.54 |
| Total Benefits | $3,159.50 |

*D. Comparison of Costs and Benefits*

The estimated 10-year total costs of this proposed rule are $51,508 million. These costs would be borne by innovator firms in the form of reduced revenues, mitigated by a reduction in support costs, and an increased cost of completing the revised patent declaration. The estimated annualized cost is $4,864 million.

The estimated 10-year benefits of this proposed rule are $53,932 million. These benefits would accrue to the generic drug firms and consumers in the form of increased revenues and increased income from access to cheaper drugs, respectively. The estimated annualized benefit is $5,093 million. Absent the additional cost of completing the declaration and the reduction in support costs, the costs equal the benefits because the economic impact of this proposed rule is a transfer, as consumers shift consumption from the products of the innovator drug firms to those of generic drug firms. The total 10-year quantified benefits exceed the costs by $2,424 million and the annualized benefits exceed the annualized costs by $229 million. While the quantified benefits do exceed the quantified costs, this proposed rule has the additional important benefit of preserving the balance struck in the Hatch-Waxman amendments.

*E. Regulatory Alternatives*

In creating this proposed rule, we considered several regulatory alternatives, including not regulating. We rejected the alternative of not regulating because under the current situation, NDA holders are able to use multiple 30-month stays to delay generic entry and thwart the intent of the Hatch-Waxman amendments. We also considered using the current system of patent declarations. This alternative was also rejected because the current declaration may be insufficient to prevent NDA holders and NDA applicants from listing patents that should not be listed under the law. This is particularly important in light of the fact that we lack the resources, expertise, and authority to evaluate patents to determine whether they should be listed in the Orange Book.

*F. Impact on Small Entities*

Unless the agency certifies that the rule is not expected to have a significant impact on a substantial number of small entities, the Regulatory Flexibility Act, as amended by SBREFA requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. According to standards established by the Small Business Administration, a small pharmaceutical manufacturer employs fewer than 750 employees. We do not know the precise number of innovator companies expected to use multiple 30-month stays to delay generic entry. Nevertheless, we do not believe any of these innovator companies to be small. Moreover, none of the innovator companies identified in the FTC report as having used multiple 30-month stays would qualify as a small entity. Therefore, the agency certifies that this proposed rule is not expected

to have a significant impact on a substantial number of small entities.

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 314**

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 314 be amended as follows:

## PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

1. The authority citation for 21 CFR part 314 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 355, 355a, 356, 356a, 356b, 356c, 371, 374, 379e.

2. Section 314.52 is amended by redesignating paragraph (a)(3) as paragraph (a)(4) and by adding new paragraph (a)(3) to read as follows:

### § 314.52 Notice of certification of invalidity or noninfringement of a patent.

(a) * * *

(3) This paragraph does not apply to a use patent that claims no uses for which the applicant is seeking approval. This paragraph also does not apply if the applicant amends its application to add a certification under § 314.50(i)(1)(i)(A)(*4*) when the application already contained a certification under § 314.50(i)(1)(i)(A)(*4*) to another patent.

* * * * *

3. Section 314.53 is amended by revising paragraphs (b) and (c)(1) through (c)(2) to read as follows:

### § 314.53 Submission of patent information.

* * * * *

(b) *Patents for which information must be submitted.* An applicant described in paragraph (a) of this section shall submit information on each patent that claims the drug or a method of using the drug that is the subject of the new drug application or amendment or supplement to it and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product. For purposes of this part, such patents consist of patents that claim the drug substance (ingredient), patents that claim the drug product (formulation and composition), product by process patents, and patents that claim a method of use. Process patents, patents claiming packaging, patents claiming metabolites, and patents claiming intermediates are not covered by this section, and information on these patents may not be submitted to FDA. For patents that claim the drug substance, the applicant shall submit information only on those patents that claim the form of the drug substance that is the subject of the pending or approved application or that claim a drug substance that is the ''same'' as the active ingredient that is the subject of the approved or pending application within the meaning of section 505(j)(2)(A)(ii) of the act. For patents that claim a drug product, the applicant shall submit information only on those patents that claim a drug product that is the subject of a pending or approved application. For patents that claim a method of use, the applicant shall submit information only on those patents that claim indications or other conditions of use that are the subject of a pending or approved application. For approved applications, the applicant shall identify the indication or other condition of use in the approved labeling that corresponds to the listed patent and claim identified.

(c) * * * (1) *General requirements.* An applicant described in paragraph (a) of this section shall submit the declaration described in paragraph (c)(2) of this section for each claim of the patent that meets the requirements described in paragraph (b) of this section.

(2) *Patent declaration.* (i) For each patent that claims a drug substance (active ingredient), drug product (formulation and composition), and/or method of use, the applicant shall submit the following declaration:

This is a submission of patent information for an NDA submitted under section 505 of the Federal Food, Drug, and Cosmetic Act (the Act).

Time sensitive patent information pursuant to 21 CFR 314.53 for NDA #_____

The following is provided in accordance with section 505(b) of the Act:

Trade Name: _____

Active Ingredient(s): _____

Strength(s): _____

Dosage Form(s): _____

Approval Date (if the submission is a supplement to an approved NDA): _____

Please provide the following information for each patent submitted, and identify the relevant claim(s) by number.

A. 1. United States patent number: _____

2. Expiration date: _____

3. Name of the Patent Owner: _____

4. Agent (if patent owner or applicant does not reside or have a place of business in the United States) _____

B. For each patent identified in A, please provide the following information:

1. The type of patent claims that apply to the drug substance or drug product that is the subject of the application:

2. Drug Substance (Active Ingredient)

___ Yes ___ No

a. Claim number(s): _____

3. Drug Product (Composition/Formulation):

___ Yes ___ No

a. Claim number(s): _____

4. Method of Use:

___ Yes ___ No

a. Claim number(s): _____

C. For each drug substance claim identified, please provide the following information:

1. Is the claim one that claims the drug substance that is the active ingredient in the approved or pending NDA, an amendment to the NDA, or a supplement to the NDA?

___ Yes ___ No

If ''yes,'' please identify the claim(s) by number.

2. Is the claim one that claims a drug substance that is the ''same'' active ingredient as the active ingredient in the pending or approved NDA, amendment to the NDA, or a supplement to the NDA?

___ Yes ___ No

If ''yes,'' please identify the claim(s) by number.

3. If the answer to question C.1 or C.2 is ''yes,'' do you acknowledge that an ANDA or 505(b)(2) application containing the same active ingredient that is claimed by the patent is the ''same'' for ANDA or 505(b)(2) approval purposes?

___ Yes ___ No

[*If the answers to questions C.1, and C.2, or C.3 is ''no,'' stop here. The patent may not be listed in the Orange Book as a patent that claims the drug substance.*]

D. For each drug product claim identified, please provide the following information:

1. Is the claim one that claims the approved formulation or composition and/or the formulation or composition for which approval is being sought?

___ Yes ___ No

If ''yes,'' please identify the claim(s) by number.

[*If the answer to question D.1 is ''no'' in every instance, stop here. The patent may not be listed in the Orange Book as a patent that claims the drug product.*]

E. For each method of use claim identified, please provide the following information:

1. Is the claim one that claims:

(a) an approved method of use of the approved drug product? If ''yes,'' please identify the use with reference to the approved labeling for the drug product and identify the relevant patent claim number(s);

___ Yes ___ No

(b) a method of use of the approved drug product for which use approval is being sought; or

___ Yes ___ No

(c) a method of use of the drug product for which approval is being sought?

___ Yes ___ No

If the answer to questions E.1(b) or (c) is ''yes,'' please identify the use with reference to the proposed labeling for the drug product and identify relevant patent claim number(s). [*If the answers to questions E.1(a) through (c) are ''no,'' stop here. The patent may not be listed in the Orange Book as a patent that claims a method of use.*]

(ii) Amendment of patent information upon approval. Within 30 days after the date of approval of its application, if the application contained a declaration required under paragraph (c)(2)(i) of this section, the applicant shall, by letter, amend the declaration to identify the patent claims that claim the drug substance, drug product, or method of use that has been approved.

* * * * *

4. Section 314.95 is amended by revising paragraph (a)(3) to read as follows:

**§ 314.95 Notice of certification of invalidity or noninfringement of a patent.**

(a) * * *

(3) This paragraph does not apply to a use patent that claims no uses for which the applicant is seeking approval. This paragraph also does not apply if the applicant amends its application to add a certification under § 314.94(a)(12)(i)(A)(*4*) when the application already contained a certification under § 314.94(a)(12)(i)(A)(*4*) to another patent.

* * * * *

Dated: September 19, 2002.

**Lester M. Crawford,**

*Deputy Commissioner.*

**Tommy G. Thompson,**

*Secretary of Health and Human Services.*

[FR Doc. 02–27082 Filed 10–14–02; 11:57 am]

BILLING CODE 4160–01–S

Federal Register

Thursday,
October 24, 2002

# Part IV

# Department of Defense

# General Services Administration

# National Aeronautics and Space Administration

**48 CFR Part 31**

**Federal Acquisition Regulation; Reimbursement of Relocation Costs on a Lump-Sum Basis; Proposed Rule**

**DEPARTMENT OF DEFENSE**
**GENERAL SERVICES ADMINISTRATION**
**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 31**

## Federal Acquisition Regulation; Reimbursement of Relocation Costs on a Lump-Sum Basis

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are considering revising the relocation cost principle to expand the use of reimbursement of costs on a lump-sum basis. The Councils are requesting comments regarding this potential change. The Councils will consider the comments received in their decision whether to develop a proposed rule. Should the Councils decide to draft a proposed rule, an additional 60-day public comment period will be provided.

**DATES:** Interested parties should submit comments in writing on or before December 23, 2002 to be considered in the formulation of a proposed rule.

**ADDRESSES:** Submit written comments to: General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405. Submit electronic comments via the Internet to: *farnotice.relocationcosts@gsa.gov.*

Please submit comments only and cite FAR Notice on Reimbursement of Relocation Costs on a Lump-Sum Basis in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501–3221. Please cite FAR Notice on Reimbursement of Relocation Costs on a Lump-Sum Basis.

**SUPPLEMENTARY INFORMATION:** The relocation cost principle at FAR 31.205–35 permits the Government to reimburse contractors for relocation costs (with the exception of miscellaneous costs) up to the employee's actual expenses. For miscellaneous costs that are addressed at FAR 31.205–35(a)(5), the Government may reimburse the contractor a flat or lump-sum amount up to $5,000, in lieu of actual costs. The Councils are considering revising FAR 31.205–35, Relocation costs, to permit contractors the option of claiming employee relocation costs based on actual costs, an appropriate lump-sum basis, or a combination of the two approaches.

While individual receipts are not required with a lump-sum approach, contractors would still have to demonstrate that amounts paid are reasonable and appropriate for the circumstances of each relocating employee. The Councils anticipate that this change may achieve overall benefits by reducing administrative costs for contractors and by improving employee morale. However, there is concern that permitting lump-sum payments in lieu of actual costs may result in an increase in costs to the Government.Therefore, the Councils invite interested parties to provided the following information to help assess the potential costs and benefits of the lump-sum reimbursement approach. Note that public comments provided in response to this notice will be available in their entirety to any requester, including any requester under the Freedom of Information Act (5 U.S.C. 552). Under no circumstances should respondents provide any information unless they do so with a clear understanding that their comments will be made available to the public.

1. *Commercial practice.* What has been your company's experience in using a lump-sum approach instead of an actual cost method for reimbursement of employee relocation expenses? If used, is the practice to use the lump-sum approach for total costs of relocating employees, or only certain types of costs? If so, which types?

2. *Reasonableness.* How would your company ensure that relocation costs charged to the Government using a lump-sum approach are reasonable?

3. *Limits.* Does your company now use commercially available data, such as that developed by the Employee Relocation Council, in order to establish reimbursement limits on relocation costs? If so, what sources of commercially available data do you use, and how do you use the data? If not, what other criteria or standards could be (or are being) used to assess reasonableness?

4. *Benefits.* What are the types and amounts of savings or other benefits that you anticipate would result if reimbursement on a lump-sum basis were permitted?

5. *Costs.* What are the types and amounts of costs or other disadvantages that you anticipate would result if reimbursement on a lump-sum basis were permitted?

Dated: October 18, 2002.

**Al Matera,**

*Director, Acquisition Policy Division.*

[FR Doc. 02–27083 Filed 10–23–02; 8:45 am]

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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 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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