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

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

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2606

RIN 3209–AA18

Privacy Act; Implementation

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule.

SUMMARY: The Office of Government Ethics is adopting as final, with two minor changes, a proposed rule establishing procedures relating to access, maintenance, disclosure, and amendment of records which are in OGE systems of records under the Privacy Act of 1974. This rule also establishes rules of conduct for OGE personnel who have responsibilities under that Act.

EFFECTIVE DATE: May 22, 2003.

FOR FURTHER INFORMATION CONTACT: Elaine Newton, Attorney Advisor, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917; telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: In this rulemaking document, OGE is adopting final rules under the Privacy Act, 5 U.S.C. 552a. On January 22, 2003, at 68 FR 2923–2929, OGE published a proposed rule that would establish procedures relating to OGE systems of records under the Privacy Act, for codification at 5 CFR part 2606. The proposed rule invited comments from the public, to be received by OGE on or before March 24, 2003. No comments were received. After consultation with the Office of Management and Budget during the course of Executive Order 12866 review of this final rule, OGE has determined that only two minor changes are needed to the proposed rule in adopting it as final. The first change is that OGE is dropping the proposed reference in § 2606.203(c) to any possible fee for certified copies of records when such are provided. Instead, the section simply provides that OGE and concerned agencies generally will not furnish certified copies of records. The second change is that OGE is clarifying in § 2606.206(a)(2)(ii)(B) that only a previous failure to timely pay a *Privacy Act* fee can serve as an alternate basis for the possible requirement of an advance payment for additional copies of records being provided under the Privacy Act.

In addition, OGE published in the **Federal Register** on January 22, 2003 (in a separate part II), at 68 FR 3097–3109, a notice of proposed new and revised systems of records under the Privacy Act. Public comments were invited, to be received by OGE by March 24, 2003. Likewise, OGE did not receive any comments on the notice. Pursuant to that notice, the new and revised records systems will become effective on May 22, 2003 without change (except for the correction of some minor errors, *see* 68 FR 24744 (May 8, 2003)). Therefore, OGE is making this final rule effective on the same date, May 22, 2003.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(d), as Director of the Office of Government Ethics, I find good cause exists for waiving the 30-day delay in effectiveness as to this final rule. The delayed effective date provision is being waived in part because this final OGE Privacy Act rule makes only two minor changes to the previously published proposed rule (as explained above). Furthermore, it is in the public interest that this OGE Privacy Act regulation become effective on the same date, May 22, 2003, as OGE's new and revised Privacy Act systems of records.

Executive Order 12866

In promulgating this final rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation has also been approved by the Office of Management and Budget under the Executive order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities, because it will primarily affect current and former executive branch Federal employees.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subpart II), this regulation would not significantly or uniquely affect small governments and would not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this regulation because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

Congressional Review Act

The Office of Government Ethics has determined that this regulation involves a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will submit a report thereon to the U.S. Senate, House of Representatives and General Accounting Office in accordance with that law at the same time this rulemaking document is sent to the Office of the Federal Register for publication in the **Federal Register**.

List of Subjects in 5 CFR Part 2606

Administrative practice and procedure, Archives and records, Conflict of interests, Government employees, Privacy Act.

Approved: May 16, 2003.

Amy L. Comstock,

Director, Office of Government Ethics.

■ Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending subchapter A of chapter XVI of title 5 of

the Code of Federal Regulations by adding part 2606 to read as follows:

PART 2606—PRIVACY ACT RULES

Subpart A—General Provisions

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2606.101 Purpose.
2606.102 Definitions.
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Subpart B—Access to Records and Accounting of Disclosures

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Subpart C—Amendment of Records

2606.301 Requests to amend records.
2606.302 OGE or other agency action on requests.
2606.303 Request for review of an initial refusal to amend a record.
2606.304 Response to a request for review of an initial refusal to amend; disagreement statements.

Authority: 5 U.S.C. 552a, 5 U.S.C. App. (Ethics in Government Act of 1978).

Subpart A—General Provisions

§ 2606.101 Purpose.

This part sets forth the regulations of the Office of Government Ethics (OGE) implementing the Privacy Act of 1974, as amended (5 U.S.C. 552a). It governs access, maintenance, disclosure, and amendment of records contained in OGE's executive branch Governmentwide and internal systems of records, and establishes rules of conduct for OGE employees who have responsibilities under the Act.

§ 2606.102 Definitions.

For the purpose of this part, the terms listed below are defined as follows:

Access means providing a copy of a record to, or allowing review of the original record by, the data subject or the requester's authorized representative, parent or legal guardian;

Act means the Privacy Act of 1974, as amended, 5 U.S.C. 552a;

Amendment means the correction, addition, deletion, or destruction of a record or specific portions of a record;

Data subject means the individual to whom the information pertains and by whose name or other individual identifier the information is maintained or retrieved;

He, his, and *him* include she, hers and her.

Office or *OGE* means the U.S. Office of Government Ethics;

System manager means the Office or other agency official who has the authority to decide Privacy Act matters relative to a system of records;

System of records means a group of any records containing personal information controlled and managed by OGE from which information is retrieved by the name of an individual or by some personal identifier assigned to that individual;

Working day as used in calculating the date when a response is due means calendar days, excepting Saturdays, Sundays, and legal public holidays.

§ 2606.103 Systems of records.

(a) *Governmentwide systems of records.* The Office of Government Ethics maintains two executive branch Governmentwide systems of records: the OGE/GOVT–1 system of records, comprised of Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records; and the OGE/GOVT–2 system of records, comprised of Executive Branch Confidential Financial Disclosure Reports. These Governmentwide systems of records are maintained by OGE, and through Office delegations of authority, by Federal executive branch departments and agencies with regard to their own employees, applicants for employment, individuals nominated to a position requiring Senate confirmation, candidates for a position, and former employees.

(b) *OGE Internal systems of records.* The Office of Government Ethics internal systems of records are under OGE's physical custody and control and are established and maintained by the Office on current and former OGE employees regarding matters relating to the internal management of the Office. These systems of records consist of the OGE/INTERNAL–1 system, comprised of Pay, Leave and Travel Records; the OGE/INTERNAL–2 system, comprised of Telephone Call Detail Records; the OGE/INTERNAL–3 system, comprised of Grievance Records; the OGE/INTERNAL–4 system, comprised of Computer Systems Activity and Access Records; and the OGE/INTERNAL–5 system, comprised of Employee Locator and Emergency Notification Records.

§ 2606.104 OGE and agency responsibilities.

(a) The procedures in this part apply to:

(1) All initial Privacy Act access and amendment requests regarding records contained in an OGE system of records.

(2) Administrative appeals from an Office or agency denial of an initial request for access to, or to amend, records contained in an OGE system of records.

(b) For records contained in an OGE Governmentwide system of records, each agency is responsible (unless specifically excepted by the Office) for responding to initial requests for access or amendment of records in its custody and administrative appeals of denials thereof.

(c) For records and material of another agency that are in the custody of OGE, but not under its control or ownership, OGE may refer a request for the records to that other agency, consult with the other agency prior to responding, or notify the requester that the other agency is the proper agency to contact.

§ 2606.105 Rules for individuals seeking to ascertain if they are the subject of a record.

An individual seeking to ascertain if any OGE system of records contains a record pertaining to him must follow the access procedures set forth at § 2606.201(a) and (b).

§ 2606.106 OGE employee Privacy Act rules of conduct and responsibilities.

Each OGE employee involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record covered by the Privacy Act, shall comply with the pertinent provisions of the Act relating to the treatment of such information. Particular attention is directed to the following provisions of the Privacy Act:

(a) *5 U.S.C. 552a(e)(7).* The requirement to maintain in a system of records no record describing how any individual exercises rights guaranteed by the First Amendment of the Constitution of the United States unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.

(b) *5 U.S.C. 552a(b).* The requirement that no agency shall disclose any record which is contained in a system of records by any means of communication to any person or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, except under certain limited conditions specified in subsections (b)(1) through (b)(12) of the Privacy Act.

(c) *5 U.S.C. 552a(e)(1).* The requirement for an agency to maintain in its systems of records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by Executive order.

(d) *5 U.S.C. 552a(e)(2).* The requirement to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs.

(e) *5 U.S.C. 552a(e)(3).* The requirement to inform each individual asked to supply information to be maintained in a system of records the authority which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary; the principal purpose or purposes for which the information is intended to be used; the routine uses which may be made of the information; and the effects on the individual, if any, of not providing all or any part of the requested information.

(f) *5 U.S.C. 552a(b) and (e)(10).* The requirement to comply with established safeguards and procedures to ensure the security and confidentiality of records and to protect personal data from any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual on whom information is maintained in a system of records.

(g) *5 U.S.C. 552a(c)(1), (c)(2) and (c)(3).* The requirement to maintain an accounting of specified disclosures of personal information from systems of records in accordance with established Office procedures.

(h) *5 U.S.C. 552a(e)(5) and (e)(6).* The requirements to maintain all records in a system of records which are used by the agency in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination; and to make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes, prior to disseminating any record about an individual to any person other than an agency (unless the dissemination is required by the Freedom of Information Act, 5 U.S.C. 552).

(i) *5 U.S.C. 552a(d)(1), (d)(2) and (d)(3).* The requirement to permit individuals to have access to records pertaining to themselves in accordance with established Office procedures and to have an opportunity to request that such records be amended.

(j) *5 U.S.C. 552a(c)(4) and (d)(4).* The requirement to inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of the Act of any record that has been disclosed to the person or agency if an accounting of the disclosure was made; and, in any disclosure of information about which an individual has filed a statement of disagreement, to note clearly any portion of the record which is disputed and to provide copies of the statement (and if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested) to persons or other agencies to whom the disputed record has been disclosed.

(k) *5 U.S.C. 552a(n).* The requirement for an agency not to sell or rent an individual's name or address, unless such action is specifically authorized by law.

(l) *5 U.S.C. 552a(i).* The criminal penalties to which an employee may be subject for failing to comply with certain provisions of the Privacy Act.

Subpart B—Access to Records and Accounting of Disclosures

§ 2606.201 Requests for access.

(a) *Records in an OGE Governmentwide system of records.* An individual requesting access to records pertaining to him in an OGE Governmentwide system of records should submit a written request, which includes the words ''Privacy Act Request'' on both the envelope and at the top of the request letter, to the appropriate system manager as follows:

(1) *Records filed directly with OGE by non-OGE employees:* The Deputy Director, Office of Agency Programs, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917;

(2) *Records filed with a Designated Agency Ethics Official (DAEO) or the head of a department or agency:* The DAEO at the department or agency concerned; or

(3) *Records filed with the Federal Election Commission by candidates for President or Vice President:* The General Counsel, Office of General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(b) *Records in an OGE Internal System of Records.* An individual requesting access to records pertaining to him in an OGE internal system of records should submit a written request, which includes the words ''Privacy Act Request'' on both the envelope and at the top of the request letter, to the Deputy Director, Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

(c) *Content of request.* (1) A request should contain a specific reference to the OGE system of records from which access to the records is sought. Notices of OGE systems of records subject to the Privacy Act are published in the **Federal Register**, and copies of the notices are available on OGE's Web site at *http://www.usoge.gov,* or upon request from OGE's Office of General Counsel and Legal Policy. A biennial compilation of such notices also is made available online and published by the Office of Federal Register at the GPO Access Web site *(http://www.access.gpo.gov/su_docs/aces/PrivacyAct.shtml)* in accordance with 5 U.S.C. 552a(f) of the Act.

(2) If the written inquiry does not refer to a specific system of records, it should include other information that will assist in the identification of the records for which access is being requested. Such information may include, for example, the individual's full name (including her maiden name, if pertinent), dates of employment, social security number (if any records in the system include this identifier), current or last place and date of Federal employment. If the request for access follows a prior request to determine if an individual is the subject of a record, the same identifying information need not be included in the request for access if a reference is made to that prior correspondence, or a copy of the response to that request is attached.

(3) The request should state whether the requester wants a copy of the record, or wants to examine the record in person.

§ 2606.202 OGE or other agency action on requests.

A response to a request for access should include the following:

(a) A statement that there is a record or records as requested or a statement that there is not a record in the system of records;

(b) The method of access (if a copy of all the records requested is not provided with the response);

(c) The amount of any fees to be charged for copies of records under § 2606.206 of this part or other agencies' Privacy Act regulations as referenced in that section;

(d) The name, title, and telephone number of the official having operational control over the record; and

(e) If the request is denied in whole or in part, or no record is found in the system, a statement of the reasons for the denial, or a statement that no record has been found, and notice of the procedures for appealing the denial or no record finding.

§ 2606.203 Granting access.

(a) The methods for allowing access to records, when such access has been granted by OGE or the other agency concerned are:

(1) Examination in person in a designated office during the hours specified by OGE or the other agency;

(2) Providing photocopies of the records; or

(3) Transfer of records at the option of OGE or the other agency to another more convenient Federal facility.

(b) When a requester has not indicated whether he wants a copy of the record, or wants to examine the record in person, the appropriate system manager may choose the means of granting access. However, the means chosen should not unduly impede the data subject's right of access. A data subject may elect to receive a copy of the records after having examined them.

(c) Generally, OGE or the other agency concerned will not furnish certified copies of records. When copies are to be furnished, they may be provided as determined by OGE or the other agency concerned.

(d) When the data subject seeks to obtain original documentation, the Office and the other agencies concerned reserve the right to limit the request to copies of the original records. Original records should be made available for review only in the presence of the appropriate system manager or his designee.

Note to paragraph (d) of § 2606.203: Section 2071(a) of title 18 of the United States Code makes it a crime to conceal, remove, mutilate, obliterate, or destroy any record filed in a public office, or to attempt to do so.

(e) *Identification requirements*—(1) *Access granted in person*—(i) *Current or former employees.* Current or former employees requesting access to records pertaining to them in a system of records may, in addition to the other requirements of this section, and at the sole discretion of the official having operational control over the record, have their identity verified by visual observation. If the current or former employee cannot be so identified by the official having operational control over the records, adequate identification documentation will be required, *e.g.*, an employee identification card, driver's license, passport, or other officially issued document with a picture of the person requesting access.

(ii) *Other than current or former employees.* Individuals other than current or former employees requesting access to records pertaining to them in a system of records must produce adequate identification documentation prior to being granted access. The extent of the identification documentation required will depend on the type of records to be accessed. In most cases, identification verification will be accomplished by the presentation of two forms of identification with a picture of the person requesting access (such as a driver's license and passport). Any additional requirements are specified in the system notices published pursuant to subsection (e)(4) of the Act.

(2) *Access granted by mail.* For records to be accessed by mail, the appropriate system manager shall, to the extent possible, establish identity by a comparison of signatures in situations where the data in the record is not so sensitive that unauthorized access could cause harm or embarrassment to the individual to whom they pertain. No identification documentation will be required for the disclosure to the data subject of information required to be made available to the public by 5 U.S.C. 552, the Freedom of Information Act. When, in the opinion of the system manager, the granting of access through the mail could reasonably be expected to result in harm or embarrassment if disclosed to a person other than the individual to whom the record pertains, a notarized statement of identity or some similar assurance of identity may be required.

(3) *Unavailability of identification documentation.* If an individual is unable to produce adequate identification documentation, the individual will be required to sign a statement asserting identity and acknowledging that knowingly or willfully seeking or obtaining access to records about another person under false pretenses may result in a criminal fine of up to $5,000 under subsection (i)(3) of the Act. In addition, depending upon the sensitivity of the records sought to be accessed, the appropriate system manager or official having operational control over the records may require such further reasonable assurances as may be considered appropriate, *e.g.*, statements of other individuals who can attest to the identity of the data subject. No verification of identity will be required of data subjects seeking access to records which are otherwise available to any person under 5 U.S.C. 552.

(4) *Inadequate identification.* If the official having operational control over the records in a system of records determines that an individual seeking access has not provided sufficient identification documentation to permit access, the official shall consult with the appropriate system manager prior to denying the individual access. Whenever the system manager determines, in accordance with the procedures herein, that access will not be granted, the response will also include a statement of the procedures to obtain a review of the decision to deny access in accordance with § 2606.205.

(f) *Access by the parent of a minor, or legal guardian.* A parent of a minor, upon presenting suitable personal identification as otherwise provided under this section, may access on behalf of the minor any record pertaining to the minor in a system of records. A legal guardian, upon presentation of documentation establishing guardianship and suitable personal identification as otherwise provided under this section, may similarly act on behalf of a data subject declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction. Minors are not precluded from exercising on their own behalf rights given to them by the Privacy Act.

(g) *Accompanying individual.* A data subject requesting access to his records in a system of records may be accompanied by another individual of the data subject's choice during the course of the examination of the record. The official having operational control of the record may require the data subject making the request to submit a signed statement authorizing the accompanying individual's access to the record.

(h) *Access to medical records.* When a request for access involves medical or psychological records that the appropriate system manager believes requires special handling, the data subject should be advised that the material will be provided only to a physician designated by the data subject. Upon receipt of the designation and upon verification of the physician's identity as otherwise provided under this section, the records will be made available to the physician, who will disclose those records to the data subject.

(i) *Exclusion.* Nothing in these regulations permits a data subject's access to any information compiled in reasonable anticipation of a civil action

or proceeding (*see* subsection (d)(5) of the Act).

(j) *Maximum access.* This regulation is not intended to preclude access by a data subject to records that are available to that individual under other processes, such as the Freedom of Information Act (5 U.S.C. 552) or the rules of civil or criminal procedure, provided that the appropriate procedures for requesting access thereunder are followed.

§ 2606.204 Request for review of an initial denial of access.

(a)(1) A data subject may submit a written appeal of the decision by OGE or the other agency to deny an initial request for access to records or a no record response.

(i) For records filed directly with OGE, the appeal must be submitted to the Director, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

(ii) For records in OGE's executive branch Governmentwide systems of records that are filed directly with an agency (including the Federal Election Commission) other than OGE, the appeal must be submitted to the Privacy Act access appeals official as specified in the agency's own Privacy Act regulations or the respective head of the agency concerned if it does not have any Privacy Act regulations.

(2) The words ''Privacy Act Appeal'' should be included on the envelope and at the top of the letter of appeal.

(b) The appeal should contain a brief description of the records involved or copies of the correspondence from OGE or the agency in which the initial request for access was denied. The appeal should attempt to refute the reasons given by OGE or the other agency concerned in its decision to deny the initial request for access or the no record finding.

§ 2606.205 Response to a request for review of an initial denial of access.

(a) If the OGE Director or agency reviewing official determines that access to the records should be granted, the response will state how access will be provided if the records are not included with the response.

(b) Any decision that either partially or fully affirms the initial decision to deny access shall inform the requester of the right to seek judicial review of the decision in accordance with 5 U.S.C. 552a(g) of the Privacy Act.

§ 2606.206 Fees.

(a) *Fees for records filed with OGE*—(1) *Services for which fees will not be charged:*

(i) The search and review time expended by OGE to produce a record;

(ii) The first copy of the records provided; or

(iii) The Office of Government Ethics making the records available to be personally reviewed by the data subject.

(2) *Additional copies of records.* When additional copies of records are requested, an individual may be charged $.15 per page.

(i) *Notice of anticipated fees in excess of $25.00.* If the charge for these additional copies amounts to more than $25.00, the requester will be notified and payment of fees may be required before the additional copies are provided, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated.

(ii) *Advance payments.* An advance payment before additional copies of the records are made will be required if:

(A) The Office estimates or determines that the total fee to be assessed under this section is likely to exceed $250.00. When a determination is made that the allowable charges are likely to exceed $250.00, the requester will be notified of the likely cost and will be required to provide satisfactory assurance of full payment where the requester has a history of prompt payment of Privacy Act fees, or will be required to submit an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(B) The requester has previously failed to pay a Privacy Act fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing). In such cases, the requester may be required to pay the full amount owed plus any applicable interest as provided by paragraph (a)(2)(iii) of this section, and to make an advance payment of the full amount of the estimated fee before the Office begins to process a new request.

(iii) *Interest charges.* Interest charges on an unpaid bill may be assessed starting on the 31st day following the day on which the billing was sent. Interest shall be at the rate prescribed in 31 U.S.C. 3717 and shall accrue from the date of billing. To collect unpaid bills, the Office will follow the provisions of the Debt Collection Act of 1982, as amended (96 Stat. 1749 *et seq.*) and the Debt Collection Improvement Act of 1996 (110 Stat. 1321–358 *et seq.*), including the use of consumer reporting agencies, collection agencies, and offset.

(iv) *Remittance.* Remittance should be made by either a personal check, bank draft or a money order that is payable to the Department of the Treasury of the United States.

(b) *Fees for records filed with agencies other than OGE.* An agency shall apply its own Privacy Act fee schedule for records in OGE's executive branch Governmentwide systems that are filed directly with the agency. An agency that does not have a Privacy Act fee schedule may apply the fee schedule in this section.

§ 2606.207 Accounting of disclosures.

(a) The Office of Government Ethics or the other agency concerned will maintain an accounting of disclosures in cases where records about the data subject are disclosed from OGE's system of records except—

(1) When the disclosure is made pursuant to the Freedom of Information Act, as amended (5 U.S.C. 552); or

(2) When the disclosure is made to those officers and employees of OGE or the other agency which maintains the records who have a need for the records in the performance of their duties.

(b) This accounting of disclosures will be retained for at least five years or for the life of the record, whichever is longer, and will contain the following information:

(1) A brief description of the record disclosed;

(2) The date, nature, and purpose for the disclosure; and

(3) The name and address of the individual, agency, or other entity to whom the disclosure is made.

(c) Under sections 102 and 105 of the Ethics in Government Act, 18 U.S.C. 208(d) and 5 CFR parts 2634 and 2640 of OGE's executive branch regulations, a requester other than the data subject must submit a signed, written application on the OGE Form 201 or agency equivalent form to inspect or receive copies of certain records, such as SF 278 Public Financial Disclosure Reports, Certificates of Divestiture, 18 U.S.C. 208(b)(1) and (b)(3) waivers, and OGE certified qualified blind and diversified trust instruments and other publicly available qualified trust materials. The written application requests the name, occupation and address of the requester as well as lists the prohibitions on obtaining or using the records. These applications are used as the accounting of disclosures for these records.

(d) Except for the accounting of a disclosure made under subsection (b)(7) of the Privacy Act for a civil or criminal law enforcement activity that is authorized by law, the accounting of disclosures will be made available to the data subject upon request in accordance with the access procedures of this part.

Subpart C—Amendment of Records

§ 2606.301 Requests to amend records.

(a) *Amendment request.* A data subject seeking to amend a record or records that pertain to him in a system of records must submit his request in writing in accordance with the following procedures, unless this requirement is waived by the appropriate system manager. Records not subject to the Privacy Act will not be amended in accordance with these provisions.

(b) *Addresses*—(1) *Records in an OGE Governmentwide system of records.* A request to amend a record in an OGE Governmentwide system of records should be sent to the appropriate system manager as follows:

(i) *Records filed directly with OGE by non-OGE employees:* The Deputy Director, Office of Agency Programs, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917;

(ii) *Records filed with a Designated Agency Ethics Official (DAEO) or the head of a department or agency:* The DAEO at the department or agency concerned; or

(iii) *Records filed with the Federal Election Commission by candidates for President or Vice President:* The General Counsel, Office of General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(2) *Records in an OGE internal system of records.* A request to amend a record in an OGE internal system of records should include the words ''Privacy Act Amendment Request'' on both the envelope and at the top of the request letter, and should be sent to the Deputy Director, Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

(c) *Contents of request.* (1) A request to amend a record in an OGE Governmentwide system of records or an OGE internal system of records should include the words ''Privacy Act Amendment Request'' on both the envelope and at the top of the request letter.

(2) The name of the system of records and a brief description of the record(s) proposed for amendment must be included in any request for amendment. In the event the request to amend the record(s) is the result of the data subject's having gained access to the record(s) in accordance with the provisions concerning access to records as set in subpart B of this part, copies of previous correspondence between the requester and OGE or the agency will serve in lieu of a separate description of the record.

(3) The exact portion of the record(s) the data subject seeks to have amended should be indicated clearly. If possible, proposed alternative language should be set forth, or, at a minimum, the reasons why the data subject believes his record is not accurate, relevant, timely, or complete should be set forth with enough particularity to permit OGE or the other agency concerned not only to understand the data subject's basis for the request, but also to make an appropriate amendment to the record.

(d) *Burden of proof.* The data subject has the burden of proof when seeking the amendment of a record. The data subject must furnish sufficient facts to persuade the appropriate system manager of the inaccuracy, irrelevance, untimeliness, or incompleteness of the record.

(e) *Identification requirement.* When the data subject's identity has been previously verified pursuant to § 2606.203, further verification of identity is not required as long as the communication does not suggest a need for verification. If the data subject's identity has not been previously verified, the appropriate system manager may require identification validation as described in § 2606.203.

§ 2606.302 OGE or other agency action on requests.

(a) *Time limit for acknowledging a request for amendment.* To the extent possible, OGE or the other agency concerned will acknowledge receipt of a request to amend a record or records within 10 working days.

(b) *Initial determination on an amendment request.* The decision of OGE or the other agency in response to a request for amendment of a record in a system of records may grant in whole, or deny any part of the request to amend the record(s).

(1) If OGE or the other agency concerned grants the request, the appropriate system manager will amend the record(s) and provide a copy of the amended record(s) to the data subject. Where an accounting of disclosure has been maintained, the system manager shall advise all previous recipients of the record that an amendment has been made and give the substance of the amendment. Where practicable, the system manager shall send a copy of the amended record to previous recipients.

(2) If OGE or the other agency concerned denies the request in whole or in part, the reasons for the denial will be stated in the response letter. In addition, the response letter will state:

(i) The name and address of the official with whom an appeal of the denial may be lodged; and

(ii) A description of any other procedures which may be required of the data subject in order to process the appeal.

§ 2606.303 Request for review of an initial refusal to amend a record.

(a)(1) A data subject may submit a written appeal of the initial decision by OGE or an agency denying a request to amend a record in an OGE system of records.

(i) For records which are filed directly with OGE, the appeal must be submitted to the Director, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

(ii) For records which are filed directly with an agency (including the Federal Election Commission) other than OGE, the appeal must be submitted to the Privacy Act amendments appeals official as specified in the agency's own Privacy Act regulations, or to the respective head of the agency concerned if it does not have Privacy Act regulations.

(2) The words ''Privacy Act Appeal'' should be included on the envelope and at the top of the letter of the appeal.

(b) The request for review should contain a brief description of the record(s) involved or copies of the correspondence from OGE or the agency in which the request to amend was denied, and the reasons why the data subject believes that the disputed information should be amended.

§ 2606.304 Response to a request for review of an initial refusal to amend; disagreement statements.

(a) The OGE Director or agency reviewing official should make a final determination in writing not later than 30 days from the date the appeal was received. The 30-day period may be extended for good cause. Notice of the extension and the reasons therefor will be sent to the data subject within the 30-day period.

(b) If the OGE Director or agency reviewing official determines that the record(s) should be amended in accordance with the data subject's request, the OGE Director or agency reviewing official will take the necessary steps to advise the data subject, and to direct the appropriate system manager:

(1) To amend the record(s), and

(2) To notify previous recipients of the record(s) for which there is an accounting of disclosure that the record(s) have been amended.

(c) If the appeal decision does not grant in full the request for amendment, the decision letter will notify the data subject that he may:

(1) Obtain judicial review of the decision in accordance with the terms of the Privacy Act at 5 U.S.C. 552a(g); and

(2) File a statement setting forth his reasons for disagreeing with the decision.

(d)(1) A data subject's disagreement statement must be concise. The appropriate system manager has the authority to determine the ''conciseness'' of the statement, taking into account the scope of the disagreement and the complexity of the issues.

(2) In any disclosure of information about which an individual has filed a statement of disagreement, the appropriate system manager will clearly note any disputed portion(s) of the record(s) and will provide a copy of the statement to persons or other agencies to whom the disputed record or records has been disclosed and for whom an accounting of disclosure has been maintained. A concise statement of the reasons for not making the amendments requested may also be provided.

[FR Doc. 03–12856 Filed 5–21–03; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[CN–02–006]

RIN 0581–AC17

Revision of User Fees for 2003 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is maintaining user fees for cotton producers for 2003 crop cotton classification services under the Cotton Statistics and Estimates Act at the same level as in 2002. This is in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987. The 2002 user fee for this classification service was $1.45 per bale. This final rule would maintain the fee for the 2003 crop at $1.45 per bale. The fee and the existing reserve are sufficient to cover the costs of providing classification services, including costs for administration and supervision.

EFFECTIVE DATES: July 1, 2003.

FOR FURTHER INFORMATION CONTACT: Norma McDill, Deputy Administrator, Cotton Program, AMS, USDA, Room 2641–S, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Telephone (202) 720–2145, facsimile (202) 690–1718, or e-mail *norma.mcdill@usda.gov.*

SUPPLEMENTARY INFORMATION: A proposed rule detailing the revisions was published in the **Federal Register** on March 31, 2003. (68 FR 15385). A 15-day comment period was provided for interested persons to respond to the proposed rule. No comments were received and no changes have been made in the provisions of the final rule.

Executive Order 12866

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

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are an estimated 35,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR 121.601). Continuing the user fee at the 2002 crop level as stated will not significantly affect small businesses as defined in the RFA because:

(1) The fee represents a very small portion of the cost-per-unit currently borne by those entities utilizing the services. (The 2002 user fee for classification services was $1.45 per bale; the fee for the 2003 crop will be maintained at $1.45 per bale; the 2003 crop is estimated at 17,200,000 bales).

(2) The fee for services will not affect competition in the marketplace; and

(3) The use of classification services is voluntary. For the 2002 crop, 17,145,000 bales were produced; and, virtually all of these bales were voluntarily submitted by growers for the classification service.

(4) Based on the average price paid to growers for cotton from the 2001 crop of 29.8 cents per pound, 500 pound bales of cotton are worth an average of $149 each. The user fee for classification services, $1.45 per bale, is less than one percent of the value of an average bale of cotton.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the provisions to be amended by this proposed rule have been previously approved by OMB and were assigned OMB control number 0581–0009 under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.45 per bale during the 2002 harvest season as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The fees cover salaries, costs of equipment and supplies, and other overhead costs, including costs for administration, and supervision. These changes will be made effective July 1, 2003, as provided by the Cotton Statistics and Estimates Act.

This final rule establishes the user fee charged to producers for HVI classification at $1.45 per bale during the 2003 harvest season.

Public Law 102–237 amended the formula in the Uniform Cotton Classing Fees Act of 1987 for establishing the producer's classification fee so that the producer's fee is based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of cotton classification requested by producers in 2002. Therefore, the 2003 producer's user fee for classification service is based on the 2002 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform

Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The 2002 base fee for HVI classification exclusive of adjustments, as provided by the Act, was $2.28 per bale. An increase of .84 percent, or 2 cents per bale, increase due to the implicit price deflator of the gross domestic product added to the $2.28 would result in a 2003 base fee of $2.30 per bale. The formula in the Act provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, gross *national* product has been replaced by gross *domestic* product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 2003 crop is estimated at 16,793,610 bales. The 2003 base fee was decreased 15 percent based on the estimated number of bales to be classed (1 percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 35 cents per bale reduction and was subtracted from the 2003 base fee of $2.30 per bale, resulting in a fee of $1.95 per bale.

With a fee of $1.95 per bale, the projected operating reserve would be 51.09 percent. The Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of $1.95 must be reduced by 50 cents per bale, to $1.45 per bale, to provide an ending accumulated operating reserve for the fiscal year of 25 percent of the projected cost of operating the program. This would establish the 2003 season fee at $1.45 per bale.

Accordingly, § 28.909, paragraph (b) would be revised to reflect the continuation of the HVI classification fee at $1.45 per bale.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a 5 cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909 (c).

Growers or their designated agents receiving classification data would continue to incur no additional fees if only one method of receiving classification data was requested. The fee for each additional method of receiving classification data in § 28.910 would remain at 5 cents per bale.

Growers or their designated agents receiving classification data would continue to incur no additional fees if only one method of receiving classification data was requested. The fee in § 28.910 (b) for an owner receiving classification data from the central database would remain at 5 cents per bale, and the minimum charge of $5.00 for services provided per monthly billing period would remain the same. The provisions of § 28.910 (c) concerning the fee for new classification memoranda issued from the central database for the business convenience of an owner without reclassification of the cotton will remain the same.

The fee for review classification in § 28.911 would be maintained at $1.45 per bale.

The fee for returning samples after classification in § 28.911 would remain at 40 cents per sample.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and record keeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR Part 28 is amended as follows:

PART 28—[AMENDED]

■ 1. The authority citation for 7 CFR Part 28, Subpart D, continues to read as follows:

Authority: 7 U.S.C. 471–476.

■ 2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $1.45 per bale.

* * * * *

■ 3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) *** The fee for review classification is $1.45 per bale.

* * * * *

Dated: May 16, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–12806 Filed 5–21–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[Doc. # CN–03–002]

Cotton Board Rules and Regulations: Adjusting Supplemental Assessment on Imports, (2003 Amendments)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the Cotton Board Rules and Regulations by lowering the value assigned to imported cotton for the purpose of calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. An adjustment is required on an annual basis to ensure that the assessments collected on imported cotton and the cotton content of imported products remain similar to those paid on domestically produced cotton.

EFFECTIVE DATE: June 23, 2003.

FOR FURTHER INFORMATION CONTACT: Whitney Rick, Chief, Research and Promotion Staff, Cotton Program, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Washington, DC 20250–0224, telephone (202) 720–2259, facsimile (202) 690–1718, or email at *whitney.rick@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

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

The Cotton Research and Promotion Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 12 of the Act, any person subject to an order may file with the Secretary a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing

on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

There are an estimated 10,000 importers who are presently subject to rules and regulations issued pursuant to the Cotton Research and Promotion Order. This rule would affect importers of cotton and cotton-containing products. The majority of these importers are small businesses under the criteria established by the Small Business Administration. This rule would lower the assessments paid by the importers under the Cotton Research and Promotion Order. Even though the assessment would be lowered, the decrease is small and will not significantly affect small businesses. The current assessment on imported cotton is $0.00862 per kilogram of imported cotton. The new assessment is $0.008267, a decrease of $0.000353 or a 4.1 percent decrease. From January through December 2002 approximately $24 million was collected. Should the volume of cotton products imported into the U.S. remain at the same level in 2003, one could expect the decreased assessment to generate approximately $23 million or a 4.1 percent decrease from 2002.

Paperwork Reduction

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581–0093.

Background

The Cotton Research and Promotion Act Amendments of 1990 enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation and Trade Act of 1990 on November 28, 1990, contained two provisions that authorized changes in the funding procedures for the Cotton Research and Promotion Program.

These provisions are: (1) The assessment of imported cotton and cotton products; and (2) termination of the right of cotton producers to demand a refund of assessments.

An amended Cotton Research and Promotion Order was approved by producers and importers voting in a referendum held July 17–26, 1991, and the amended Order was published in the **Federal Register** on December 10, 1991, (56 FR 64470). A proposed rule implementing the amended Order was published in the **Federal Register** on December 17, 1991, (56 FR 65450). Implementing rules were published on July 1 and 2, 1992, (57 FR 29181) and (57 FR 29431), respectively.

This rule will decrease the value assigned to imported cotton in the Cotton Board Rules and Regulations (7 CFR 1205.510(b)(2)). This value is used to calculate supplemental assessments on imported cotton and the cotton content of imported products. Supplemental assessments are the second part of a two-part assessment. The first part of the assessment is levied on the weight of cotton produced or imported at a rate of $1 per bale of cotton which is equivalent to 500 pounds or $1 per 226.8 kilograms of cotton.

Supplemental assessments are levied at a rate of five-tenths of one percent of the value of domestically produced cotton, imported cotton, and the cotton content of imported products. The agency has adopted the practice of assigning the calendar year weighted average price received by U.S. farmers for Upland cotton to represent the value of imported cotton. This is done so that the assessment on domestically produced cotton and the assessment on imported cotton and the cotton content of imported products remain similar. The source for the average price statistic is ''Agricultural Prices,'' a publication of the National Agricultural Statistics Service (NASS) of the Department of Agriculture. Use of the weighted average price figure in the calculation of supplemental assessments on imported cotton and the cotton content of imported products yields an assessment that approximates assessments paid on domestically produced cotton in the prior calendar year.

The current value of imported cotton as published in the **Federal Register** (67 FR 36793) on May 28, 2002, for the purpose of calculating supplemental assessments on imported cotton is $.8422 per kilogram. This number was calculated using the annual weighted average price received by farmers for Upland cotton during the calendar year 2001 which was $0.382 per pound and multiplying by the conversion factor 2.2046. Using the Average Weighted Price Received by U.S. farmers for Upland cotton for the calendar year 2002, which is $0.35 per pound, the new value of imported cotton is $0.7716 per kilogram. The amended value is $.0706 per kilogram less than the previous value.

An example of the complete assessment formula and how the various figures are obtained is as follows:

One bale is equal to 500 pounds.

One kilogram equals 2.2046 pounds.

One pound equals 0.453597 kilograms.

One Dollar per Bale Assessment Converted to Kilograms

A 500 pound bale equals 226.8 kg. (500 × .453597).

$1 per bale assessment equals $0.002000 per pound (1/500) or $0.004409 per kg. (1/226.8).

Supplemental Assessment of 5/10 of One Percent of the Value of the Cotton Converted to Kilograms

The 2002 calendar year weighted average price received by producers for Upland cotton is $0.35 per pound or $0.7716 per kg. (0.35 × 2.2046).

Five tenths of one percent of the average price in kg. equals $0.003858 per kg. (0.7716 × .005).

Total Assessment

The total assessment per kilogram of raw cotton is obtained by adding the $1 per bale equivalent assessment of $0.004409 per kg. and the supplemental assessment $0.003858 per kg. which equals $0.008267 per kg.

The current assessment on imported cotton is $0.008620 per kilogram of imported cotton. The amended assessment is $0.008267, a decrease of $0.000353 per kilogram. This decrease reflects the decrease in the Average Weighted Price of Upland Cotton Received by U.S. Farmers during the period January through December 2002.

Since the value of cotton is the basis of the supplemental assessment calculation and the figures shown in the right hand column of the Import Assessment Table 1205.510(b)(3) are a result of such a calculation, the figures in this table have been revised. These figures indicate the total assessment per kilogram due for each Harmonized Tariff Schedule (HTS) number subject to assessment.

A proposed rule with request for comments was published in the **Federal Register** (68 FR 12310) on March 14,

2003. No comments were received during the period (March 14 through April 14, 2003).

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR Part 1205 is amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

■ 1. The authority citation for Part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

■ 2. In § 1205.510, paragraph (b)(2) and the table in paragraph (b)(3)(ii) are revised to read as follows:

§ 1205.510 Levy of assessments.

* * * * *

(b) * * *

(2) The 12-month average of monthly weighted average prices received by U.S. farmers will be calculated annually. Such weighted average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment is $0.8267 per kilogram.

(3) * * *

(ii) * * *

IMPORT ASSESSMENT TABLE

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5201000500	0	0.8267
5201001200	0	0.8267
5201001400	0	0.8267
5201001800	0	0.8267
5201002200	0	0.8267
5201002400	0	0.8267
5201002800	0	0.8267
5201003400	0	0.8267
5201003800	0	0.8267
5204110000	1.1111	0.9185
5204200000	1.1111	0.9185
5205111000	1.1111	0.9185
5205112000	1.1111	0.9185
5205121000	1.1111	0.9185
5205122000	1.1111	0.9185
5205131000	1.1111	0.9185
5205132000	1.1111	0.9185
5205141000	1.1111	0.9185
5205210020	1.1111	0.9185
5205210090	1.1111	0.9185
5205220020	1.1111	0.9185
5205220090	1.1111	0.9185
5205230020	1.1111	0.9185
5205230090	1.1111	0.9185
5205240020	1.1111	0.9185
5205240090	1.1111	0.9185

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5205310000	1.1111	0.9185
5205320000	1.1111	0.9185
5205330000	1.1111	0.9185
5205340000	1.1111	0.9185
5205410020	1.1111	0.9185
5205410090	1.1111	0.9185
5205420020	1.1111	0.9185
5205420090	1.1111	0.9185
5205440020	1.1111	0.9185
5205440090	1.1111	0.9185
5206120000	0.5556	0.4593
5206130000	0.5556	0.4593
5206140000	0.5556	0.4593
5206220000	0.5556	0.4593
5206230000	0.5556	0.4593
5206240000	0.5556	0.4593
5206310000	0.5556	0.4593
5207100000	1.1111	0.9185
5207900000	0.5556	0.4593
5208112020	1.1455	0.9470
5208112040	1.1455	0.9470
5208112090	1.1455	0.9470
5208114020	1.1455	0.9470
5208114060	1.1455	0.9470
5208114090	1.1455	0.9470
5208118090	1.1455	0.9470
5208124020	1.1455	0.9470
5208124040	1.1455	0.9470
5208124090	1.1455	0.9470
5208126020	1.1455	0.9470
5208126040	1.1455	0.9470
5208126060	1.1455	0.9470
5208126090	1.1455	0.9470
5208128020	1.1455	0.9470
5208128090	1.1455	0.9470
5208130000	1.1455	0.9470
5208192020	1.1455	0.9470
5208192090	1.1455	0.9470
5208194020	1.1455	0.9470
5208194090	1.1455	0.9470
5208196020	1.1455	0.9470
5208196090	1.1455	0.9470
5208224040	1.1455	0.9470
5208224090	1.1455	0.9470
5208226020	1.1455	0.9470
5208226060	1.1455	0.9470
5208228020	1.1455	0.9470
5208230000	1.1455	0.9470
5208292020	1.1455	0.9470
5208292090	1.1455	0.9470
5208294090	1.1455	0.9470
5208296090	1.1455	0.9470
5208298020	1.1455	0.9470
5208312000	1.1455	0.9470
5208321000	1.1455	0.9470
5208323020	1.1455	0.9470
5208323040	1.1455	0.9470
5208323090	1.1455	0.9470
5208324020	1.1455	0.9470
5208324040	1.1455	0.9470
5208325020	1.1455	0.9470
5208330000	1.1455	0.9470
5208392020	1.1455	0.9470
5208392090	1.1455	0.9470
5208394090	1.1455	0.9470
5208396090	1.1455	0.9470
5208398020	1.1455	0.9470
5208412000	1.1455	0.9470
5208416000	1.1455	0.9470

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5208418000	1.1455	0.9470
5208421000	1.1455	0.9470
5208423000	1.1455	0.9470
5208424000	1.1455	0.9470
5208425000	1.1455	0.9470
5208430000	1.1455	0.9470
5208492000	1.1455	0.9470
5208494020	1.1455	0.9470
5208494090	1.1455	0.9470
5208496010	1.1455	0.9470
5208496090	1.1455	0.9470
5208498090	1.1455	0.9470
5208512000	1.1455	0.9470
5208516060	1.1455	0.9470
5208518090	1.1455	0.9470
5208523020	1.1455	0.9470
5208523045	1.1455	0.9470
5208523090	1.1455	0.9470
5208524020	1.1455	0.9470
5208524045	1.1455	0.9470
5208524065	1.1455	0.9470
5208525020	1.1455	0.9470
5208530000	1.1455	0.9470
5208592025	1.1455	0.9470
5208592095	1.1455	0.9470
5208594090	1.1455	0.9470
5208596090	1.1455	0.9470
5209110020	1.1455	0.9470
5209110035	1.1455	0.9470
5209110090	1.1455	0.9470
5209120020	1.1455	0.9470
5209120040	1.1455	0.9470
5209190020	1.1455	0.9470
5209190040	1.1455	0.9470
5209190060	1.1455	0.9470
5209190090	1.1455	0.9470
5209210090	1.1455	0.9470
5209220020	1.1455	0.9470
5209220040	1.1455	0.9470
5209290040	1.1455	0.9470
5209290090	1.1455	0.9470
5209313000	1.1455	0.9470
5209316020	1.1455	0.9470
5209316035	1.1455	0.9470
5209316050	1.1455	0.9470
5209316090	1.1455	0.9470
5209320020	1.1455	0.9470
5209320040	1.1455	0.9470
5209390020	1.1455	0.9470
5209390040	1.1455	0.9470
5209390060	1.1455	0.9470
5209390080	1.1455	0.9470
5209390090	1.1455	0.9470
5209413000	1.1455	0.9470
5209416020	1.1455	0.9470
5209416040	1.1455	0.9470
5209420020	1.0309	0.8522
5209420040	1.0309	0.8522
5209430030	1.1455	0.9470
5209430050	1.1455	0.9470
5209490020	1.1455	0.9470
5209490090	1.1455	0.9470
5209516035	1.1455	0.9470
5209516050	1.1455	0.9470
5209520020	1.1455	0.9470
5209590025	1.1455	0.9470
5209590040	1.1455	0.9470
5209590090	1.1455	0.9470
5210114020	0.6873	0.5682

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5210114040	0.6873	0.5682
5210116020	0.6873	0.5682
5210116040	0.6873	0.5682
5210116060	0.6873	0.5682
5210118020	0.6873	0.5682
5210120000	0.6873	0.5682
5210192090	0.6873	0.5682
5210214040	0.6873	0.5682
5210216020	0.6873	0.5682
5210216060	0.6873	0.5682
5210218020	0.6873	0.5682
5210314020	0.6873	0.5682
5210314040	0.6873	0.5682
5210316020	0.6873	0.5682
5210318020	0.6873	0.5682
5210414000	0.6873	0.5682
5210416000	0.6873	0.5682
5210418000	0.6873	0.5682
5210498090	0.6873	0.5682
5210514040	0.6873	0.5682
5210516020	0.6873	0.5682
5210516040	0.6873	0.5682
5210516060	0.6873	0.5682
5211110090	0.6873	0.5682
5211120020	0.6873	0.5682
5211190020	0.6873	0.5682
5211190060	0.6873	0.5682
5211210025	0.6873	0.5682
5211210035	0.4165	0.3443
5211210050	0.6873	0.5682
5211290090	0.6873	0.5682
5211320020	0.6873	0.5682
5211390040	0.6873	0.5682
5211390060	0.6873	0.5682
5211490020	0.6873	0.5682
5211490090	0.6873	0.5682
5211590025	0.6873	0.5682
5212146090	0.9164	0.7576
5212156020	0.9164	0.7576
5212216090	0.9164	0.7576
5509530030	0.5556	0.4593
5509530060	0.5556	0.4593
5513110020	0.4009	0.3314
5513110040	0.4009	0.3314
5513110060	0.4009	0.3314
5513110090	0.4009	0.3314
5513120000	0.4009	0.3314
5513130020	0.4009	0.3314
5513210020	0.4009	0.3314
5513310000	0.4009	0.3314
5514120020	0.4009	0.3314
5516420060	0.4009	0.3314
5516910060	0.4009	0.3314
5516930090	0.4009	0.3314
5601210010	1.1455	0.9470
5601210090	1.1455	0.9470
5601300000	1.1455	0.9470
5602109090	0.5727	0.4735
5602290000	1.1455	0.9470
5602906000	0.526	0.4348
5604900000	0.5556	0.4593
5607909000	0.8889	0.7349
5608901000	1.1111	0.9185
5608902300	1.1111	0.9185
5609001000	1.1111	0.9185
5609004000	0.5556	0.4593
5701104000	0.0556	0.0460
5701109000	0.1111	0.0918
5701901010	1.0444	0.8634

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5702109020	1.1	0.9094
5702312000	0.0778	0.0643
5702411000	0.0722	0.0597
5702412000	0.0778	0.0643
5702421000	0.0778	0.0643
5702913000	0.0889	0.0735
5702991010	1.1111	0.9185
5702991090	1.1111	0.9185
5703900000	0.4489	0.3711
5801210000	1.1455	0.9470
5801230000	1.1455	0.9470
5801250010	1.1455	0.9470
5801250020	1.1455	0.9470
5801260020	1.1455	0.9470
5802190000	1.1455	0.9470
5802300030	0.5727	0.4735
5804291000	1.1455	0.9470
5806200010	0.3534	0.2922
5806200090	0.3534	0.2922
5806310000	1.1455	0.9470
5806400000	0.4296	0.3552
5808107000	0.5727	0.4735
5808900010	0.5727	0.4735
5811002000	1.1455	0.9470
6001106000	1.1455	0.9470
6001210000	0.8591	0.7102
6001220000	0.2864	0.2368
6001910010	0.8591	0.7102
6001910020	0.8591	0.7102
6001920020	0.2864	0.2368
6001920030	0.2864	0.2368
6001920040	0.2864	0.2368
6003203000	0.8681	0.7177
6003306000	0.2894	0.2392
6003406000	0.2894	0.2392
6005210000	0.8681	0.7177
6005220000	0.8681	0.7177
6005230000	0.8681	0.7177
6005240000	0.8681	0.7177
6005310010	0.2894	0.2392
6005320010	0.2894	0.2392
6005330010	0.2894	0.2392
6005340010	0.2894	0.2392
6005410010	0.2894	0.2392
6005420010	0.2894	0.2392
6005430010	0.2894	0.2392
6005440010	0.2894	0.2392
6005310080	0.2894	0.2392
6005320080	0.2894	0.2392
6005330080	0.2894	0.2392
6005340080	0.2894	0.2392
6005410080	0.2894	0.2392
6005420080	0.2894	0.2392
6005430080	0.2894	0.2392
6005440080	0.2894	0.2392
6006211000	1.1574	0.9568
6006221000	1.1574	0.9568
6006231000	1.1574	0.9568
6006241000	1.1574	0.9568
6006310040	0.1157	0.0956
6006320040	0.1157	0.0956
6006330040	0.1157	0.0956
6006340040	0.1157	0.0956
6006310080	0.1157	0.0956
6006320080	0.1157	0.0956
6006330080	0.1157	0.0956
6006340080	0.1157	0.0956
6006410085	0.1157	0.0956
6006420085	0.1157	0.0956

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6006430085	0.1157	0.0956
6006440085	0.1157	0.0956
6101200010	1.0094	0.8345
6101200020	1.0094	0.8345
6102200010	1.0094	0.8345
6102200020	1.0094	0.8345
6103421020	0.8806	0.7280
6103421040	0.8806	0.7280
6103421050	0.8806	0.7280
6103421070	0.8806	0.7280
6103431520	0.2516	0.2080
6103431540	0.2516	0.2080
6103431550	0.2516	0.2080
6103431570	0.2516	0.2080
6104220040	0.9002	0.7442
6104220060	0.9002	0.7442
6104320000	0.9207	0.7611
6104420010	0.9002	0.7442
6104420020	0.9002	0.7442
6104520010	0.9312	0.7698
6104520020	0.9312	0.7698
6104622006	0.8806	0.7280
6104622011	0.8806	0.7280
6104622016	0.8806	0.7280
6104622021	0.8806	0.7280
6104622026	0.8806	0.7280
6104622028	0.8806	0.7280
6104622030	0.8806	0.7280
6104622060	0.8806	0.7280
6104632006	0.3774	0.3120
6104632011	0.3774	0.3120
6104632026	0.3774	0.3120
6104632028	0.3774	0.3120
6104632030	0.3774	0.3120
6104632060	0.3774	0.3120
6104692030	0.3858	0.3189
6105100010	0.985	0.8143
6105100020	0.985	0.8143
6105100030	0.985	0.8143
6105202010	0.3078	0.2545
6105202030	0.3078	0.2545
6106100010	0.985	0.8143
6106100020	0.985	0.8143
6106100030	0.985	0.8143
6106202010	0.3078	0.2545
6106202030	0.3078	0.2545
6107110010	1.1322	0.9360
6107110020	1.1322	0.9360
6107120010	0.5032	0.4160
6107210010	0.8806	0.7280
6107220015	0.3774	0.3120
6107220025	0.3774	0.3120
6107910040	1.2581	1.0401
6108210010	1.2445	1.0288
6108210020	1.2445	1.0288
6108310010	1.1201	0.9260
6108310020	1.1201	0.9260
6108320010	0.2489	0.2058
6108320015	0.2489	0.2058
6108320025	0.2489	0.2058
6108910005	1.2445	1.0288
6108910015	1.2445	1.0288
6108910025	1.2445	1.0288
6108910030	1.2445	1.0288
6108920030	0.2489	0.2058
6109100005	0.9956	0.8231
6109100007	0.9956	0.8231
6109100009	0.9956	0.8231
6109100012	0.9956	0.8231

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6109100014	0.9956	0.8231
6109100018	0.9956	0.8231
6109100023	0.9956	0.8231
6109100027	0.9956	0.8231
6109100037	0.9956	0.8231
6109100040	0.9956	0.8231
6109100045	0.9956	0.8231
6109100060	0.9956	0.8231
6109100065	0.9956	0.8231
6109100070	0.9956	0.8231
6109901007	0.3111	0.2572
6109901009	0.3111	0.2572
6109901049	0.3111	0.2572
6109901050	0.3111	0.2572
6109901060	0.3111	0.2572
6109901065	0.3111	0.2572
6109901090	0.3111	0.2572
6110202005	1.1837	0.9786
6110202010	1.1837	0.9786
6110202015	1.1837	0.9786
6110202020	1.1837	0.9786
6110202025	1.1837	0.9786
6110202030	1.1837	0.9786
6110202035	1.1837	0.9786
6110202040	1.1574	0.9568
6110202045	1.1574	0.9568
6110202065	1.1574	0.9568
6110202075	1.1574	0.9568
6110909022	0.263	0.2174
6110909024	0.263	0.2174
6110909030	0.3946	0.3262
6110909040	0.263	0.2174
6110909042	0.263	0.2174
6111201000	1.2581	1.0401
6111202000	1.2581	1.0401
6111203000	1.0064	0.8320
6111205000	1.0064	0.8320
6111206010	1.0064	0.8320
6111206020	1.0064	0.8320
6111206030	1.0064	0.8320
6111206040	1.0064	0.8320
6111305020	0.2516	0.2080
6111305040	0.2516	0.2080
6112110050	0.7548	0.6240
6112120010	0.2516	0.2080
6112120030	0.2516	0.2080
6112120040	0.2516	0.2080
6112120050	0.2516	0.2080
6112120060	0.2516	0.2080
6112390010	1.1322	0.9360
6112490010	0.9435	0.7800
6114200005	0.9002	0.7442
6114200010	0.9002	0.7442
6114200015	0.9002	0.7442
6114200020	1.286	1.0631
6114200040	0.9002	0.7442
6114200046	0.9002	0.7442
6114200052	0.9002	0.7442
6114200060	0.9002	0.7442
6114301010	0.2572	0.2126
6114301020	0.2572	0.2126
6114303030	0.2572	0.2126
6115198010	1.0417	0.8612
6115929000	1.0417	0.8612
6115936020	0.2315	0.1914
6116101300	0.3655	0.3022
6116101720	0.8528	0.7050
6116926420	1.0965	0.9065
6116926430	1.2183	1.0072

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6116926440	1.0965	0.9065
6116928800	1.0965	0.9065
6117809510	0.9747	0.8058
6117809540	0.3655	0.3022
6201121000	0.948	0.7837
6201122010	0.8953	0.7401
6201122050	0.6847	0.5660
6201122060	0.6847	0.5660
6201134030	0.2633	0.2177
6201921000	0.9267	0.7661
6201921500	1.1583	0.9576
6201922010	1.0296	0.8512
6201922021	1.2871	1.0640
6201922031	1.2871	1.0640
6201922041	1.2871	1.0640
6201922051	1.0296	0.8512
6201922061	1.0296	0.8512
6201931000	0.3089	0.2554
6201933511	0.2574	0.2128
6201933521	0.2574	0.2128
6201999060	0.2574	0.2128
6202121000	0.9372	0.7748
6202122010	1.1064	0.9147
6202122025	1.3017	1.0761
6202122050	0.8461	0.6995
6202122060	0.8461	0.6995
6202134005	0.2664	0.2202
6202134020	0.333	0.2753
6202921000	1.0413	0.8608
6202921500	1.0413	0.8608
6202922026	1.3017	1.0761
6202922061	1.0413	0.8608
6202922071	1.0413	0.8608
6202931000	0.3124	0.2583
6202935011	0.2603	0.2152
6202935021	0.2603	0.2152
6203122010	0.1302	0.1076
6203221000	1.3017	1.0761
6203322010	1.2366	1.0223
6203322040	1.2366	1.0223
6203332010	0.1302	0.1076
6203392010	1.1715	0.9685
6203399060	0.2603	0.2152
6203422010	0.9961	0.8235
6203422025	0.9961	0.8235
6203422050	0.9961	0.8235
6203422090	0.9961	0.8235
6203424005	1.2451	1.0293
6203424010	1.2451	1.0293
6203424015	0.9961	0.8235
6203424020	1.2451	1.0293
6203424025	1.2451	1.0293
6203424030	1.2451	1.0293
6203424035	1.2451	1.0293
6203424040	0.9961	0.8235
6203424045	0.9961	0.8235
6203424050	0.9238	0.7637
6203424055	0.9238	0.7637
6203424060	0.9238	0.7637
6203431500	0.1245	0.1029
6203434010	0.1232	0.1018
6203434020	0.1232	0.1018
6203434030	0.1232	0.1018
6203434040	0.1232	0.1018
6203498045	0.249	0.2058
6204132010	0.1302	0.1076
6204192000	0.1302	0.1076
6204198090	0.2603	0.2152
6204221000	1.3017	1.0761

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6204223030	1.0413	0.8608
6204223040	1.0413	0.8608
6204223050	1.0413	0.8608
6204223060	1.0413	0.8608
6204223065	1.0413	0.8608
6204292040	0.3254	0.2690
6204322010	1.2366	1.0223
6204322030	1.0413	0.8608
6204322040	1.0413	0.8608
6204423010	1.2728	1.0522
6204423030	0.9546	0.7892
6204423040	0.9546	0.7892
6204423050	0.9546	0.7892
6204423060	0.9546	0.7892
6204522010	1.2654	1.0461
6204522030	1.2654	1.0461
6204522040	1.2654	1.0461
6204522070	1.0656	0.8809
6204522080	1.0656	0.8809
6204533010	0.2664	0.2202
6204594060	0.2664	0.2202
6204622010	0.9961	0.8235
6204622025	0.9961	0.8235
6204622050	0.9961	0.8235
6204624005	1.2451	1.0293
6204624010	1.2451	1.0293
6204624020	0.9961	0.8235
6204624025	1.2451	1.0293
6204624030	1.2451	1.0293
6204624035	1.2451	1.0293
6204624040	1.2451	1.0293
6204624045	0.9961	0.8235
6204624050	0.9961	0.8235
6204624055	0.9854	0.8146
6204624060	0.9854	0.8146
6204624065	0.9854	0.8146
6204633510	0.2546	0.2105
6204633530	0.2546	0.2105
6204633532	0.2437	0.2015
6204633540	0.2437	0.2015
6204692510	0.249	0.2058
6204692540	0.2437	0.2015
6204699044	0.249	0.2058
6204699046	0.249	0.2058
6204699050	0.249	0.2058
6205202015	0.9961	0.8235
6205202020	0.9961	0.8235
6205202025	0.9961	0.8235
6205202030	0.9961	0.8235
6205202035	1.1206	0.9264
6205202046	0.9961	0.8235
6205202050	0.9961	0.8235
6205202060	0.9961	0.8235
6205202065	0.9961	0.8235
6205202070	0.9961	0.8235
6205202075	0.9961	0.8235
6205302010	0.3113	0.2574
6205302030	0.3113	0.2574
6205302040	0.3113	0.2574
6205302050	0.3113	0.2574
6505302070	0.3113	0.2574
6205302080	0.3113	0.2574
6206100040	0.1245	0.1029
6206303010	0.9961	0.8235
6206303020	0.9961	0.8235
6206303030	0.9961	0.8235
6206303040	0.9961	0.8235
6206303050	0.9961	0.8235
6206303060	0.9961	0.8235

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6206403010	0.3113	0.2574
6206403030	0.3113	0.2574
6206900040	0.249	0.2058
6207110000	1.0852	0.8971
6207199010	0.3617	0.2990
6207210030	1.1085	0.9164
6207220000	0.3695	0.3055
6207911000	1.1455	0.9470
6207913010	1.1455	0.9470
6207913020	1.1455	0.9470
6208210010	1.0583	0.8749
6208210020	1.0583	0.8749
6208220000	0.1245	0.1029
6208911010	1.1455	0.9470
6208911020	1.1455	0.9470
6208913010	1.1455	0.9470
6209201000	1.1577	0.9571
6209203000	0.9749	0.8059
6209205030	0.9749	0.8059
6209205035	0.9749	0.8059
6209205040	1.2186	1.0074
6209205045	0.9749	0.8059
6209205050	0.9749	0.8059
6209303020	0.2463	0.2036
6209303040	0.2463	0.2036
6210109010	0.2291	0.1894
6210403000	0.0391	0.0323
6210405020	0.4556	0.3766
6211111010	0.1273	0.1052
6211111020	0.1273	0.1052
6211118010	1.1455	0.9470
6211118020	1.1455	0.9470
6211320007	0.8461	0.6995
6211320010	1.0413	0.8608
6211320015	1.0413	0.8608
6211320030	0.9763	0.8071
6211320060	0.9763	0.8071
6211320070	0.9763	0.8071
6211330010	0.3254	0.2690
6211330030	0.3905	0.3228
6211330035	0.3905	0.3228
6211330040	0.3905	0.3228
6211420010	1.0413	0.8608
6211420020	1.0413	0.8608
6211420025	1.1715	0.9685
6211420060	1.0413	0.8608
6211420070	1.1715	0.9685
6211430010	0.2603	0.2152
6211430030	0.2603	0.2152
6211430040	0.2603	0.2152
6211430050	0.2603	0.2152
6211430060	0.2603	0.2152
6211430066	0.2603	0.2152
6212105020	0.2412	0.1994
6212109010	0.9646	0.7974
6212109020	0.2412	0.1994
6212200020	0.3014	0.2492
6212900030	0.1929	0.1595
6213201000	1.1809	0.9763
6213202000	1.0628	0.8786
6213901000	0.4724	0.3905
6214900010	0.9043	0.7476
6216000800	0.2351	0.1944
6216001720	0.6752	0.5582
6216003800	1.2058	0.9968
6216004100	1.2058	0.9968
6217109510	1.0182	0.8417
6217109530	0.2546	0.2105
6301300010	0.8766	0.7247

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6301300020	0.8766	0.7247
6302100005	1.1689	0.9663
6302100008	1.1689	0.9663
6302100015	1.1689	0.9663
6302215010	0.8182	0.6764
6302215020	0.8182	0.6764
6302217010	1.1689	0.9663
6302217020	1.1689	0.9663
6302217050	1.1689	0.9663
6302219010	0.8182	0.6764
6302219020	0.8182	0.6764
6302219050	0.8182	0.6764
6302222010	0.4091	0.3382
6302222020	0.4091	0.3382
6302313010	0.8182	0.6764
6302313050	1.1689	0.9663
6302315050	0.8182	0.6764
6302317010	1.1689	0.9663
6302317020	1.1689	0.9663
6302317040	1.1689	0.9663
6302317050	1.1689	0.9663
6302319010	0.8182	0.6764
6302319040	0.8182	0.6764
6302319050	0.8182	0.6764
6302322020	0.4091	0.3382
6302322040	0.4091	0.3382
6302402010	0.9935	0.8213
6302511000	0.5844	0.4831
6302512000	0.8766	0.7247
6302513000	0.5844	0.4831
6302514000	0.8182	0.6764
6302600010	1.1689	0.9663
6302600020	1.052	0.8697
6302600030	1.052	0.8697
6302910005	1.052	0.8697
6302910015	1.1689	0.9663
6302910025	1.052	0.8697
6302910035	1.052	0.8697
6302910045	1.052	0.8697
6302910050	1.052	0.8697
6302910060	1.052	0.8697
6303110000	0.9448	0.7811
6303910010	0.6429	0.5315
6303910020	0.6429	0.5315
6304111000	1.0629	0.8787
6304190500	1.052	0.8697
6304191000	1.1689	0.9663
6304191500	0.4091	0.3382
6304192000	0.4091	0.3382
6304910020	0.9351	0.7730
6304920000	0.9351	0.7730
6505901540	0.181	0.1496
6505902060	0.9935	0.8213
6505902545	0.5844	0.4831

* * * * *

Dated: May 16, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03–12802 Filed 5–21–03; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

RIN 3150–AH07

Radiation Exposure Reports: Labeling Personal Information, Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: Confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of June 9, 2003, for the direct final rule that was published in the **Federal Register** on March 25, 2003 (68 FR 14307). This direct final rule amended the NRC's regulations on written event reports submitted to the NRC that contain personal information.

DATES: The effective date of June 9, 2003, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, Room O–1F23, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking Web site (*http://ruleforum.llnl.gov*). For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher at (301) 415–5905; e-mail *CAG@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–8126 (e-mail: *mlh1@nrc.gov.*).

SUPPLEMENTARY INFORMATION: On March 25, 2003 (68 FR 14307), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR part 20 requiring licensees to clearly label any section of the written event report containing personal information ''Privacy Act Information: Not for Public Disclosure.'' In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on June 9, 2003. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 16th day of May, 2003.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 03–12847 Filed 5–21–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. 02F–0327]

Food Additive Permitted in Feed and Drinking Water of Animals; Feed-Grade Biuret

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for food additives to provide for the safe use of feed-grade biuret in lactating dairy cattle feed. This action is in response to a food additive petition filed by ADM Alliance Nutrition, Inc.

DATES: This rule is effective May 22, 2003; written objections and request for hearing should be submitted by July 23, 2003.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sharon Benz, Center for Veterinary Medicine (HFV–228), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6656.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of August 28, 2002 (67 FR 55269), FDA announced that a food additive petition (FAP 2248) had been filed by ADM Alliance Nutrition, Inc., 1000 North 30th St., P.O. Box C1., Quincy, IL 62305–7100. The petition proposed to amend the food additive regulations in Part 573 *Food Additives Permitted in Feed and Drinking Water of Animals* (21 CFR part 573) to provide for the use of feed grade biuret in the diets of lactating dairy cows. The notice of filing provided for a 75-day comment period on the petitioner's environmental information. No substantive comments have been received.

II. Conclusion

FDA has evaluated data submitted by the sponsor of the petition and concludes that the data establish the safety and functionality of feed-grade biuret for use as proposed.

III. Public Disclosure

In accordance with § 571.1(h) (21 CFR 571.1(h)), 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 Veterinary Medicine by appointment with the information contact person listed above. As provided in § 571.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Objections and Hearing Requests

Any person who will be adversely affected by this regulation may at any time on or before July 23, 2003, file with the Dockets Management Branch (address above) written objections thereto. 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.

List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 573 is amended as follows:

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

■ 1. The authority citation for 21 CFR part 573 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

§ 573.220 Feed-grade biuret.

■ 2. Section 573.220 *Feed-grade biuret* is amended by removing paragraph (c)(1)(iii).

Dated: May 14, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–12785 Filed 5–21–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 207

RIN 0790–AH02

Implementation of Section 740 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century as Amended by Section 1051 of the National Defense Authorization Act for Fiscal Year 2003

AGENCY: Department of Defense.

ACTION: Interim final rule.

SUMMARY: This rule prescribes regulations to implement Section 740 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century as amended by Section 1051 of the National Defense Authorization Act for Fiscal Year 2003. The regulations will establish procedures for the sale of excess Department of Defense aircraft to persons or entities that provide oil spill response services (including the application of oil dispersants by air) pursuant to an oil spill response plan that has been approved by the Secretary of the Department in which the Coast Guard is operating.

DATES: Effective May 22, 2003 until September 30, 2006. Comments are requested by July 21, 2003.

ADDRESSES: Forward comments to the Assistant Deputy Under Secretary of Defense (Supply Chain Integration),

3500 Defense Pentagon, Room 3B730, Washington, DC 20301–3500.

FOR FURTHER INFORMATION CONTACT: Debra Bennett (703) 692–6031.

SUPPLEMENTARY INFORMATION:

I. Background

Section 740 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Public Law 016–181, 114 Stat. 173) states that, notwithstanding section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483) and subject to subsections (b) and (c), the Secretary of Defense may sell, during the period beginning on the date of enactment of this Act and ending September 30, 2002, certain aircraft and aircraft parts to a person or entity that provides oil spill response services (including the application of oil dispersants by air) pursuant to an oil spill response plan that has been approved by the Secretary of the Department in which the Coast Guard is operating. Section 740 states that, as soon as practicable after the date of enactment of the Act, the Secretary of Defense, in consultation with the Secretary of Transportation and the Administrator of General Services, shall prescribe regulations relating to the sale of aircraft and aircraft parts under this section. Section 1051 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107–314, 116 Stat. 2648) provides for a four-year extension to this authority. This interim final rule prescribes such regulations.

II. Administrative Requirements

A. Executive Order 12866

It has been determined that 32 CFR 207 is not a significant regulatory action. The rule does not (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 the recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President priorities, or the principles set forth in this Executive Order.

B. Unfunded Mandates Reform Act

It has been certified that 32 CFR part 207 does not contain a Federal Mandate that my result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

C. Regulatory Flexibility Act

It has been determined that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule applies only to the sale of certain aircraft and aircraft parts to those entities that provide oil spill response services. The U.S. Department of Transportation provides the list of eligible entities that may bid on aircraft and aircraft parts.

D. Paperwork Reduction Act

It has been certified that 32 CFR part 207 does not impose any reporting or record-keeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 44).

E. Executive Order 13132

It has been certified that 32 CFR part 207 does not have federalism implications, as set forth in Executive Order 13132.

List of Subjects in 32 CFR Part 207

Aircraft, Oil spill, Oil dispersant.

■ Accordingly, 32 CFR Part 207 is added to read as follows:

PART 207—IMPLEMENTATION OF SECTION 740 OF THE WENDELL H. FORD AVIATION INVESTMENT AND REFORM ACT FOR THE 21ST CENTURY AS AMENDED BY SECTION 1051 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2003

Sec.

207.1 Background and purpose.
207.2 Applicability.
207.3 Restrictions.
207.4 Qualifications.
207.5 Sale procedures.
207.6 Reutilization and transfer procedures.
207.7 Reporting requirements.
207.8 Expiration.

Authority: Section 740 of Public Law 106–181, 114 STAT. 173 as amended by Section 1051 of Public Law 107–314, 116 STAT. 2648.

§ 207.1 Background and purpose.

Section 740 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, as amended, allows the Department of Defense (DoD), during the period 4 April 2000 through 30 September 2006, to sell aircraft and aircraft parts to a person or entity that provides oil spill response services (including the application of oil dispersants by air). This part implements that section.

§ 207.2 Applicability.

The sections in this part apply to the sale of aircraft and aircraft parts determined to be DoD excess under the definition of the Federal Property Management Regulations (FPMR) or the Federal Management Regulation (FMR), and listed in Attachment 1 of Chapter 4 of DoD 4160.21–M (August 1997) [1] as Category A aircraft authorized for commercial use, to contractors providing oil spill response services.

§ 207.3 Restrictions.

(a) Aircraft and aircraft parts sold under the Act shall be used primarily for oil spill spotting, observation, and dispersant delivery, and may not have a secondary purpose that interferes with oil spill response efforts under an oil spill response plan. Use for a secondary purpose requires the prior written approval of the Secretary of Defense and the Secretary of Transportation, and a certificate from the Federal Aviation Administration, to be obtained in advance, for the proposed secondary use.

(b) Aircraft may not be flown outside of or removed from the U.S. except for the purpose of fulfilling an international agreement to assist in oil spill dispersing efforts, for immediate response efforts for an oil spill outside United States waters that has the potential to threaten United States waters, or for purposes that are jointly approved by the Secretary of Defense and the Secretary of Transportation.

(c) The DoD sale of aircraft and aircraft parts sold under the Act shall not extend past the time limits of the Act.

§ 207.4 Qualifications.

The Secretary of Transportation must certify in writing to the Secretary of Defense prior to sale that the person or entity is capable of meeting the terms and conditions of a contract to perform oil spill response services by air, and that the overall system to be employed by the person or entity for the delivery and application of oil spill dispersants has been sufficiently tested to ensure that the person or entity is capable of participating in an oil spill response plan that has been approved by the Secretary of the Department in which the Coast Guard is operating.

(a) Prior to sales offerings of aircraft or aircraft parts, the U.S. Department of Transportation (DoT) must provide to

[1] Copies may be obtained via Internet at *http://www.dla.mil/dlaps/dod/41602lm/guide.asp.*

the Defense Reutilization and Marketing Service (DRMS), in writing, a list or persons or entities eligible to bid under this Act, including expiration date of each DOT contract, and locations covered by the DOT contract.

(b) This requirement may not be delegated to the U.S. Coast Guard (USCG).

§ 207.5 Sale procedures.

Sale of aircraft and aircraft parts must be in accordance with the provisions of Chapter 4 of DoD 4160.21–M (August 1997), paragraph B 2, and with other pertinent parts of this manual, with the following changes and additions:

(a) Sales shall be limited to the aircraft types listed in Attachment 1 of Chapter 4 of DoD 4160.21–M (August 1997), and parts thereto.

(b) Sales shall be made at fair market value (FMV), as determined by the Secretary of Defense and, to the extent practicable, on a competitive basis.

(1) DRMS must conduct sales utilizing FMVs that are either provided by the Military Services on the Disposal Turn-In Documents (DTIDs) or based on DRMS's professional expertise and knowledge of the market. Advice regarding FMV shall be provided to DRMS by DOT, as appropriate.

(2) If the high bid for a sale item does not equal or exceed the FMV, DRMS is vested with the discretion to reject all bids and reoffer the item:

(i) As excess property on another oil spill sale, if there is indication that reoffer may be successful; or,

(ii) As surplus property if, after reporting the aircraft to the General Services Administration (GSA) for utilization and donation screening, there are no Federal or State Agency requirements as determined by GSA.

(3) Disposition of proceeds from sale of aircraft under the Act, net of DRMS's expenses, will be to the general fund of the United States Treasury as miscellaneous receipts.

(c) Purchasers shall certify that aircraft and aircraft parts will be used only in accordance with conditions stated in § 207.3.

(1) Sales solicitations will require bidders to submit end-use certificates with their bids, stating the intended use and proposed areas of operation.

(2) The completed end-use certificates shall be used in the bid evaluation process.

(d) Sales contracts shall include terms and conditions for verifying and enforcing the use of the aircraft and aircraft parts in accordance with provisions of the guidance.

(1) The DRMS Sales Contracting Officer (SCO) is responsible for verifying and enforcing the use of aircraft and aircraft parts in accordance with the terms and conditions of the sales contract.

(i) Sales contracts include provisions for on-site visits to the purchaser's place(s) of business and/or worksite(s).

(ii) Sales contracts require the purchaser to make available to the SCO, upon his or her request, all records concerning the use of aircraft and aircraft parts.

(2) DOT shall nominate in writing, and the SCO shall appoint, qualified Government employees (not contract employees) to serve as Contracting Officer's Representatives (CORs) for the purpose of conducting on-site verification and enforcement of the use of aircraft and aircraft parts for those purposes permitted by the sales contract.

(i) COR appointments must be in writing and must state the COR's duties, the limitations of the appointment, and the reporting requirements.

(ii) DOT bears all COR costs.

(iii) The SCO may reject any COR nominee for cause, or terminate any COR appointment for cause.

(3) Sales contracts require purchasers to comply with the Federal Aviation Agency (FAA) requirements in Chapter 4 of DoD 4160.21–M (August 1997), paragraphs B 2 b (4) (d) *2* through B 2 b (4) (d) *5*.

(4) Sales contracts require purchasers to comply with the Flight Safety Critical Aircraft Parts regime in Chapter 4 of DoD 4160.21–M (August 1997), paragraph B 26 c and d, and in Attachment 3 to Chapter 4 of DoD 4160.21–M (August 1997).

(5) Sales contracts require purchasers to obtain the prior written consent of the SCO for resale of aircraft or aircraft parts purchased from DRMS under this Act. Resales are only permitted to other entities that, at time of resale, meet the qualifications required of initial purchasers. The SCO must seek, and DOT must provide, written assurance as to the acceptability of a prospective repurchaser before approving resale. Resales will normally be approved for oil spill response contractors that have completed their contracts, or that have had their contracts terminated, or that can provide other valid reasons for seeking resale that are acceptable to the SCO.

(i) If it is determined by the SCO that there is no interest in the aircraft or aircraft parts being offered for resale among entities deemed qualified repurchasers by DOT, the SCO may permit resale to entities outside the oil spill response industry.

(ii) When an aircraft or aircraft parts are determined to be uneconomically repairable and suitable only for cannibalization and/or scrapping, the purchaser shall advise the SCO in writing and provide evidence in the form of a technical inspection document from a qualified FAA airframe and powerplant mechanic, or equivalent.

(iii) The policy outlined in paragraph (d)(5) of this section also applies to resales by repurchasers, and to all other manner of proposed title transfer (including, but not limited to, exchanges and barters).

(iv) Sales of aircraft and aircraft parts under the Act are intended for principals only. Sales offerings will caution prospective purchasers not to buy with the expectation of acting as brokers, dealers, agents, or middlemen for other interested parties.

(6) The failure of a purchaser to comply with the sales contract terms and conditions may be cause for suspension and/or debarment, in addition to other administrative, contractual, civil, and criminal (including, but not limited to, 18 U.S.C. 1001) remedies which may be available to the Department of Defense.

(7) Aircraft parts will be made available as follows:

(i) DRMS may, based on availability and demand, offer for sale under the Act whole unflyable aircraft, aircraft carcasses for cannibalization, or aircraft parts, utilizing substantially the same provisions outlined in paragraphs (a) through (d)(6) of this section for flyable aircraft.

(ii) Sales contracts for unflyable aircraft shall contain a restriction in perpetuity against use for flight. DRMS will not issue a bill of sale for these aircraft. When unflyable aircraft or aircraft residue is to be sold for parts use, the data plates must be removed and destroyed by the owning military service prior to releasing the aircraft to the contractor.

(iii) If DOT requests that DRMS set aside parts for sale under Act, DOT must provide listings of parts required, by National Stock Number and Condition Code.

(iv) Only qualified oil spill response operators who fly the end-item aircraft will be allowed to purchase unflyable aircraft, aircraft carcasses, or aircraft parts applicable to that end-item.

(v) FMVs are not required for aircraft parts. DRMS will utilize historic prices received for similar parts in making sale determinations.

§ 207.6 Reutilization and transfer procedures.

Prior to any sales effort, the Secretary of Defense shall, to the maximum extent practicable, consult with the Administrator of GSA, and with the heads of other Federal departments and agencies as appropriate, regarding reutilization and transfer requirements for aircraft and aircraft parts under this Act (see Chapter 4 of DoD 4160.21–M (August 1997), paragraphs B 2 b (1) through B 2 b (3)).

(a) DOT shall notify Army, Navy, and/or Air Force, in writing, of their aircraft requirements as they arise, by aircraft type listed in Attachment 1 of Chapter 4 of DoD 4160.21–M (August 1997).

(b) When aircraft become excess, the owning Military Service will screen for reutilization requirements within the Department of Defense, and those requirements shall take precedence over DOT requirements under this Act.

(c) *Federal agency transfer:* (1) The Military Service shall report aircraft that survive reutilization screening to GSA Region 9 on a Standard Form 120. The Military Service must advise GSA Region 9 if DOT has lodged a written requirement for the aircraft for use in oil spill response. GSA will screen for Federal agency transfer requirements in accordance with the FMR.

(2) If a Federal agency requirement exists, GSA shall advise the owning Military Service, in writing, of its intent to issue the aircraft to satisfy the Federal agency requirement. The Military Service will notify DOT of the competing Federal requirement for the aircraft. If DOT disputes the priority given to the Federal requirement, it shall end a written notice of dispute to the owning Military Service and to the Deputy Under Secretary of Defense (Logistics and Materiel Readiness (DUSD (L&MR)) within thirty (30) days of receipt of notice from the Military Service. DUSD (L&MR) shall then resolve the dispute, in writing. The aircraft cannot be issued until notification is given and any dispute is resolved.

(d) The Military Services shall: (1) Respond to the DOT, in writing, when excess aircraft that can meet DOT's stated requirements have survived reutilization and transfer screening.

(2) Report excess aircraft that survive reutilization and transfer screening and are available for sale to Headquarters, Defense Reutilization and Marketing Service, ATTN: DRMS–LMI, Federal Center, 74 Washington Avenue North, Battle Creek, Michigan 49017–3092. The Military Services must use a DD Form 1348–1A, DTID, for this purpose.

(3) Transfer excess aircraft that survive reutilization and transfer screening to the Aerospace Maintenance and Regeneration Center (AMARC), Davis-Monthan AFB, AZ, and place the aircraft in an ''excess'' storage category while aircraft are undergoing oil spill response sale. Aircraft shall not be made available or offered to oil spill response operators from the Military Service's airfield. The Military Service shall be responsible for the AMARC aircraft induction charges. The aircraft purchaser will be liable for all AMARC withdrawal charges, to include any aircraft preparation required from AMARC. Sale of parts required for aircraft preparation is limited to those not required for the operational mission forces, and only if authorized by specific authority of the respective Military Service's weapon system program manager.

§ 207.7 Reporting requirements.

Not later than 31 March 2003, the Secretary of Defense must submit to the Committees on Armed Services and Commerce, Science, and Transportation of the Senate and the Committees on National Security and Transportation and Infrastructure of the House of Representatives a report setting forth the following:

(a) The number and type of aircraft sold under this authority, and the terms and conditions under which the aircraft were sold.

(b) The persons or entities to which the aircraft were sold.

(c) An accounting of the current use of the aircraft sold.

(d) DOT must submit to Headquarters, Defense Reutilization and Marketing Service, ATTN: DRMS–LMI, Federal Center, 74 Washington Avenue North, Battle Creek, Michigan, 49017–3092, not later than 1 February 2006, a report setting forth an accounting of the current disposition of all aircraft sold under the authority of the Act.

(e) DRMS must compile the report, based on sales contract files and (for the third report element) input from the DOT. The report must be provided to Headquarters Defense Logistics Agency not later than 1 March 2006. Headquarters Defense Logistics Agency shall forward the report to Deputy Under Secretary of Defense (Logistics & Materiel Readiness) not later than 15 March 2006.

§ 207.8 Expiration.

This part expires on 30 September 2006.

Dated: May 12, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–12552 Filed 5–21–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 160

[USCG–2002–11865]

RIN 1625–AA41

Notification of Arrival in U.S. Ports

AGENCY: Coast Guard, DHS.

ACTION: Final rule; partial suspension of regulation.

SUMMARY: The Coast Guard is suspending the Notification of Arrival requirement to electronically submit cargo manifest information, (Customs Form 1302) to Customs and Border Protection. This requirement was published on Feb 28, 2003 and was to be implemented by July 1, 2003. The Coast Guard is suspending this submission requirement pending new Customs and Border Protection regulations.

DATES: This suspension is effective May 22, 2003.

ADDRESSES: Material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2002–11865 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call LTJG Kimberly B Andersen, U.S. Coast Guard (G–MPP), at 202–267–2562. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On February 28, 2003, the Coast Guard published its ''Notification of Arrival in U.S. Ports'' in the **Federal Register** (68 FR 9537). This final rule, which became effective on April 1,

2003, permanently replaced the Coast Guard's temporary requirements for Notification of Arrival in U.S. Ports published on October 4, 2001, in the **Federal Register** (66 FR 50565) and was in addition to the Customs October 31, 2002 rule requiring cargo information 24 hours prior to lading (67 FR 66318).

This final rule requires electronic submission of cargo manifest (Customs form 1302) to Customs and Border Protection via the Automated Manifest System (AMS). Implementation of the requirement for electronic submission of cargo manifest is not required until July 1, 2003.

The cargo manifest submission requirement was established to capture electronically the information on cargo manifest from vessels that were not filing the information electronically with the Customs and Border Protection. While July 1, 2003, is the date for implementing the requirement to electronically transmit data through AMS that is set forth in the Final Rule published on February 28, 2003, the Coast Guard, in consultation with Customs and Border Protection, has decided to suspend the July 1, 2003 implementation date. The date is suspended pending further Custom and Border Protection regulatory action under recent legislation, including the Trade Act of 2002, which should eliminate the need for this requirement in Coast Guard regulations. In that event, the Coast Guard would remove the suspended provisions from its regulation.

List of Subjects in 33 CFR Part 160

Administrative practice and procedure; Harbors; Hazardous materials transportation; Marine safety; Navigation (water); Reporting and recordkeeping requirements; Vessels; Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 160 as follows:

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

Subpart C—Notifications of Arrival, Departures, Hazardous Conditions, and Certain Dangerous Cargoes

■ 1. The authority citation for Part 160 is revised to read as follows:

Authority: 33 U.S.C. 1223, 1226, 1231; Department of Homeland Security Delegation No. 0170.

§ 160.203 [Amended]

■ 2. In § 160.203, paragraphs (d) and (e) are suspended.

§ 160.206 [Amended]

■ 3. In § 160.206, item (8) in table 160.206, is suspended.

§ 160.210 [Amended]

■ 4. In § 160.210, in paragraph (b), the last sentence in the paragraph is suspended; in paragraph (c), the last sentence in the paragraph is suspended; and paragraph (d) is suspended.

§ 160.212 [Amended]

■ 5. In § 160.212, paragraph (c) is suspended.

Dated: May 5, 2003.

Paul J. Pluta,

Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–12887 Filed 5–21–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT–001–0010; MT–001–0028; FRL–7489–5]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Billings/Laurel Sulfur Dioxide State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving some, and limitedly approving and limitedly disapproving other, revisions to the Billings/Laurel sulfur dioxide (SO2) State Implementation Plan (SIP) submitted by the State of Montana on July 29, 1998 and May 4, 2000. The May 4, 2000 SIP revision was submitted to satisfy earlier commitments made by the Governor. The intended effect of this action is to make federally enforceable those provisions that EPA is partially and limitedly approving, and to limitedly disapprove those provisions that are not fully approvable. EPA is taking this action under sections 110 and 179 of the Clean Air Act (Act).

DATES: This final rule is effective June 23, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202 and copies of the Incorporation by Reference material may be inspected at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108 (Mail Code 6102T), 1301 Constitution Ave., NW., Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Montana Department of Environmental Quality, Air and Waste Management Bureau, 1520 E. 6th Avenue, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, EPA, Region 8, (303) 312–6437.

SUPPLEMENTARY INFORMATION:

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II. Background
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Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The initials *CO* mean or refer to carbon monoxide.

(iii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iv) The initials *SIP* mean or refer to State Implementation Plan.

(v) The initials *SO2* mean or refer to sulfur dioxide.

(vi) The words *State* or *Montana* mean the State of Montana, unless the context indicates otherwise.

(vii) The initials *SWS* mean or refer to sour water stripper.

(viii) The initials *YELP* mean or refer to the Yellowstone Energy Limited Partnership.

I. Summary of EPA's Final Action on Portions of the State of Montana's July 29, 1998 Submittal and All of the May 4, 2000 Submittal

We are approving the following provisions:

- YELP's emission limits in sections 3(A)(1) through (3) and reporting requirements in section 7(C)(1)(b) of YELP's exhibit A submitted on May 4, 2000.
- Provisions related to the burning of SWS overheads in the F–1 Crude Furnace (and exhausted through the F–2 Crude/Vacuum Heater stack) at ExxonMobil in sections 3(E)(4) and 4(E) (excluding ''or in the flare'' and ''or the flare'' in both sections), 3(A)(2), and 3(B)(3) of ExxonMobil's exhibit A, submitted on July 29, 1998 and method #6A–1 of attachment #2 of

ExxonMobil's exhibit A, submitted on May 4, 2000.

• Minor changes in sections 3, 3(A) and 3(B) (only the introductory paragraphs); and sections 3(E)(3), 6(B)(7), 7(B)(1)(d), 7(B)(1)(j), 7(C)(1)(b), 7(C)(1)(d), 7(C)(1)(f), and 7(C)(1)(l) of ExxonMobil's exhibit A, submitted on May 4, 2000.

We are limitedly approving and limitedly disapproving the following provisions:

• Provisions related to the fuel gas combustion emission limitations at ExxonMobil in sections 3(B)(2), 4(B), and 6(B)(3) of ExxonMobil's exhibit A, submitted on July 29, 1998 and section 3(A)(1) of ExxonMobil's exhibit A, submitted on May 4, 2000.

• Provisions related to ExxonMobil's coker CO-boiler emission limitation in sections 2(A)(11)(d), 3(B)(1) and 4(C) of ExxonMobil's exhibit A, submitted on May 4, 2000.

• Provisions related to the burning of SWS overheads at Cenex in sections 3(B)(2) and 4(D) (excluding ''or in the flare'' and ''or the flare'' in both sections), 3(A)(1)(d), and 4(B) of Cenex's exhibit A, submitted on July 29, 1998, and method #6A–1 of attachment #2 of Cenex's exhibit A, submitted on May 4, 2000.

We caution that if sources are subject to more stringent requirements under other provisions of the Act (*e.g.*, section 111 new source performance standards; Title I, Part C, (prevention of significant deterioration); or SIP-approved permit programs under Title I, Part A), our approval and limited approval of the SIP (including emission limitations and other requirements), would not excuse sources from meeting these other more stringent requirements. Also, our action on this SIP is not meant to imply any sort of applicability determination under other provisions of the Act (*e.g.*, section 111; Title I, Part C; or SIP-approved permit programs under Title I, Part A).

II. Background

On May 2, 2002, 67 FR 22242, we proposed action on portions of the State of Montana's July 29, 1998 submittal and all of the May 4, 2000 submittal. No comments were received on our proposed action. We are finalizing our action as proposed. For further information regarding the basis for this action, the reader should refer to our proposed action.

Once we approve a SIP, or parts of a SIP, the portions approved are legally enforceable by us and citizens under the Act. Once we limitedly approve/disapprove a SIP, or parts of a SIP, the portions limitedly approved/disapproved are also legally enforceable by us and citizens under the Act. Under a limited approval/disapproval action, we approve and disapprove the entire rule even though parts of it do and parts do not satisfy requirements under the Act. The rule remains a part of the SIP, however, even though there is a disapproval, because the rule strengthens the SIP. The disapproval only concerns the failure of the rule to meet specific requirements of the Act and does not affect incorporation of the rule as part of the approved, federally enforceable SIP. By disapproving parts of the plan, we are determining that the requirements necessary to demonstrate attainment in the area have not been met and we may develop a plan or parts of a plan to assure that attainment will be achieved.

EPA believes partially and limitedly approving the Billings/Laurel SO2 SIP meets the requirements of section 110(l) of the Act. The provisions of the plan that we are partially and limitedly approving strengthen the Montana SIP by providing specific emission limits for several SO2 sources in Billings/Laurel. This will achieve progress toward attaining the SO2 NAAQS.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

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

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all ''collections of information'' by EPA. The Act defines ''collection of information'' as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *'' 44 U.S.C. 3502(3)(A). Because this rule does not impose an information collection burden, the Paperwork Reduction Act does not apply.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This partial and limited approval rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Moreover, EPA's limited disapproval will not have a significant impact on a substantial number of small entities because the limited disapproval action only affects two industrial sources of air pollution in Billings/Laurel, Montana: Cenex Harvest Cooperatives and ExxonMobil Company, USA. Only a limited number of sources are impacted by this action. Furthermore, as explained in this action, the submission does not meet the requirements of the Clean Air Act and EPA cannot approve the submission. The limited disapproval will not affect any existing State requirements applicable to the entities. Federal disapproval of a State submittal does not affect its State enforceability. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the partial and limited approval and limited disapproval actions do not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal

governments in the aggregate, or to the private sector. This Federal action partially and limitedly approves and limitedly disapproves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 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 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 rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely partially or limitedly approves and limitedly disapproves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

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.'' This final rule does not have tribal implications, as specified in Executive Order 13175. 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. This action does not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health and Safety Risk

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.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

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.

I. National Technology Transfer and Advancement Act

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

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

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

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 21, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 17, 2003.

Robert E. Roberts,

Regional Administrator, Region 8.

■ 40 CFR part 52 is amended to read as follows:

PART 52—[AMENDED]

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

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

Subpart BB—Montana

■ 2. Section 52.1370 is amended by adding paragraph (c)(52) to read as follows:

§ 52.1370 Identification of plan

* * * * *

(c) * * *

(52) The Governor of Montana submitted sulfur dioxide (SO_2) SIP revisions for Billings/Laurel on July 29, 1998 and May 4, 2000. EPA is approving some of the provisions of the July 29, 1998 submittal that it did not approve before. The May 4, 2000 submittal revises some previously approved provisions of the Billings/Laurel SO_2 SIP and adds new provisions.

(i) Incorporation by reference.

(A) Sections 3(B)(2) and 4(D) (excluding ''or the flare'' and ''or the flare'' in both sections), 3(A)(1)(d) and 4(B) of Cenex Harvest States Cooperatives' exhibit A to the stipulation between the Montana Department of Environmental Quality and Cenex Harvest States Cooperatives, adopted June 12, 1998 by Board Order issued by the Montana Board of Environmental Review.

(B) Board Order issued March 17, 2000 by the Montana Board of Environmental Review adopting and incorporating the February 14, 2000 stipulation between the Montana Department of Environmental Quality and Cenex Harvest States Cooperatives. This stipulation revises attachment #2 to Cenex Harvest States Cooperatives' exhibit A to require the use of method #6A–1.

(C) Sections 3(E)(4) and 4(E) (excluding ''or in the flare'' and ''or the flare'' in both sections), 3(A)(2), 3(B)(2), 3(B)(3), 4(B) and 6(B)(3) of Exxon's exhibit A to the stipulation between the Montana Department of Environmental Quality and Exxon, adopted June 12, 1998 by Board Order issued by the Montana Board of Environmental Review.

(D) Board Order issued March 17, 2000, by the Montana Board of Environmental Review adopting and incorporating the February 14, 2000 stipulation between the Montana Department of Environmental Quality and Exxon Mobil Corporation. The stipulation adds the following to Exxon Mobil Corporation's exhibit A: method #6A–1 of attachment #2 and sections 2(A)(11)(d), 4(C), 7(B)(1)(j) and 7(C)(1)(l). The stipulation revises the following sections of Exxon Mobil Corporation's exhibit A: 3 (introductory text only), 3(A) (introductory text only), 3(A)(1), 3(B) (introductory text only), 3(B)(1), 3(E)(3), 6(B)(7), 7(B)(1)(d), 7(C)(1)(b), 7(C)(1)(d), and 7(C)(1)(f).

(E) Board Order issued on March 17, 2000, by the Montana Board of Environmental Review adopting and incorporating the February 14, 2000 stipulation between the Montana Department of Environmental Quality and Yellowstone Energy Limited Partnership (YELP). The stipulation revises the following sections of YELP's exhibit A: sections 3(A)(1) through (3) and 7(C)(1)(b).

■ 3. In § 52.1384, add paragraph (e) to read as follows:

§ 52.1384 Emission control regulations.

* * * * *

(e) In 40 CFR 52.1370(c)(52), we approved portions of the Billings/Laurel Sulfur Dioxide SIP for the limited purpose of strengthening the SIP. Those provisions that we limitedly approved are hereby limitedly disapproved. This limited disapproval does not prevent EPA, citizens, or the State from enforcing the provisions. This paragraph identifies those provisions of the Billings/Laurel SO_2 SIP identified in 40 CFR 52.1370(c)(52) that have been limitedly disapproved.

(1) Sections 3(B)(2) and 4(D) (excluding ''or in the flare'' and ''or the flare'' in both sections, which was previously disapproved in paragraphs (d)(1)(i)(B) and (C) above), 3(A)(1)(d) and 4(B) of Cenex Harvest State Cooperatives' exhibit A to the stipulation between the Montana Department of Environmental Quality and Cenex Harvest State Cooperatives, adopted June 12, 1998 by Board Order issued by the Montana Board of Environmental Review.

(2) Method #6A–1 of attachment #2 of Cenex Harvest State Cooperatives' exhibit A, as revised pursuant to the stipulation between the Montana Department of Environmental Quality and Cenex Harvest State Cooperatives, adopted by Board Order issued on March 17, 2000, by the Montana Board of Environmental Review.

(3) Sections 3(B)(2), 4(B), and 6(B)(3) of Exxon's exhibit A to the stipulation between the Montana Department of Environmental Quality and Exxon, adopted on June 12, 1998 by Board Order issued by the Montana Board of Environmental Review.

(4) Sections 2(A)(11)(d), 3(A)(1), 3(B)(1) and 4(C) of Exxon Mobil Corporation's exhibit A, as revised pursuant to the stipulation between the Montana Department of Environmental Quality and Exxon Mobil Corporation, adopted by Board Order issued on March 17, 2000, by the Montana Board of Environmental Review.

[FR Doc. 03–12616 Filed 5–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[VT–1226a; FRL–7502–1]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Vermont; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the sections 111(d) negative declaration submitted by the Vermont Department of Environmental Conservation (DEC) on August 20, 1996. This negative declaration adequately certifies that there are no existing municipal solid waste (MSW) landfills located in the state of Vermont that have accepted waste since November 8, 1987 and that must install collection and control systems according to EPA's emissions guidelines for existing MSW landfills. EPA publishes regulations under sections 111(d) and 129 of the Clean Air Act requiring states to submit control plans to EPA. These state control plans show how states intend to control the emissions of designated pollutants from designated facilities (*e.g.*, landfills). The state of Vermont submitted this negative declaration in lieu of a state control plan.

DATES: This direct final rule is effective on July 21, 2003 without further notice unless EPA receives significant adverse comment by June 23, 2003. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address your written comments to: Mr. Steven Rapp, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, MA 02114–2023.

Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S.

Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA.

FOR FURTHER INFORMATION CONTACT: John J. Courcier, (617) 918–1659.

SUPPLEMENTARY INFORMATION:

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I. What Action Is EPA Taking Today?

EPA is approving the negative declaration submitted by the state of Vermont on August 20, 1996.

EPA is publishing this negative declaration without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve this negative declaration should relevant adverse comments be filed. If EPA receives no significant adverse comment by June 23, 2003, this action will be effective July 21, 2003.

If EPA receives significant adverse comments by the above date, we will withdraw this action before the effective date by publishing a subsequent document in the **Federal Register**. EPA will address all public comments received in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If EPA receives no comments, this action will be effective July 21, 2003.

II. What Is the Origin of the Requirements?

Under section 111(d) of the Clean Air Act, EPA published regulations at 40 CFR part 60, subpart B which require states to submit plans to control emissions of designated pollutants from designated facilities. In the event that a state does not have a particular designated facility located within its boundaries, EPA requires that a negative declaration be submitted in lieu of a control plan.

III. When Did the Requirements First Become Known?

On May 30, 1991 (56 FR 24468), EPA proposed emission guidelines for existing MSW landfills. This action enabled EPA to list existing MSW landfills as designated facilities. EPA specified non-methane organic compounds (NMOC) as a designated pollutant by proposing the emission guidelines for existing MSW landfills. These guidelines were published in final form on March 12, 1996 (61 FR 9905).

IV. When Did Vermont Submit Its Negative Declaration?

On August 20, 1996, the Vermont Department of Environmental Conservation (DEC) submitted a letter certifying that there are no existing MSW landfills subject to 40 CFR part 60, subpart B. Section 111(d) and 40 CFR 62.06 provide that when no such designated facilities exist within a state's boundaries, the affected state may submit a letter of ''negative declaration'' instead of a control plan. EPA is publishing this negative declaration at 40 CFR 62.11485.

V. Regulatory Assessment Requirements

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

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

In reviewing sections 111(d)/129 State Plans, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state plan for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state plan, to use VCS in place of a submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 21, 2003. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment

period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: May 8, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

■ 40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart UU—Vermont

■ 2. Subpart UU is amended by adding a new § 62.11485 and a new undesignated center heading to read as follows:

Emission From Existing Municipal Solid Waste Landfills

§ 62.11485 Identification of Plan—negative declaration.

On August 20, 1996, the Vermont Department of Environmental Conservation submitted a letter certifying that there are no existing municipal solid waste landfills in the state subject to the emission guidelines under part 60, subpart B of this chapter.

[FR Doc. 03–12863 Filed 5–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0086, FRL–7461–3]

RIN 2060–AG93

National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for new and existing semiconductor manufacturing operations located at major sources of emissions of hazardous air pollutants (HAP). The final standards implement section 112(d) of the Clean Air Act (CAA), which requires the Administrator to regulate emissions of HAP listed in section 112(b) of the CAA. The intent of the standards is to protect public health and the environment by requiring new and existing major sources to control emissions to the level attainable by implementing the maximum achievable control technology (MACT). The primary HAP that will be controlled with this action include hydrochloric acid (HCl), hydrogen flouride (HF), methanol, glycol ethers, and xylene. Exposure to these substances has been demonstrated to cause adverse health effects such as irritation of the lung, eye, and mucous membranes; effects on the central nervous system; liver and kidney damage; and, possibly cancer. We do not have the type of current detailed data on each of the facilities and the people living around the facilities covered by today's final rule for this source category that would be necessary to conduct an analysis to determine the actual population exposures to the HAP emitted from these facilities and the potential for resultant health effects. Therefore, we do not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, and today's final rule reduces emissions, subsequent exposures will be reduced.

EFFECTIVE DATE: May 22, 2003.

ADDRESSES: Docket No. A–97–15 and E-Docket No. OAR–2002–0086 contain supporting information used in developing the standards for the semiconductor manufacturing source category. The docket is located at EPA Docket Center (Air Docket), U.S. EPA, 1301 Constitution Avenue, NW., Room B108, Mail Code: 6102T, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. John Schaefer, U.S. EPA, Office of Air Quality Planning and Standards, Emission Standards Division (C504–05), Research Triangle Park, NC 27711, telephone number (919) 541–0296, electronic mail (e-mail) address: *schaefer.john@epa.gov*.

SUPPLEMENTARY INFORMATION: *Docket.* The docket is an organized and complete file of all the information considered by the EPA in the development of the rule. The docket is a dynamic file because material is added throughout the rule development process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rule development process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to the final rule are available for review in the docket or copies may be mailed on request from the Air and Radiation Docket and Information Center by calling (202) 566–1742. A reasonable fee may be charged for copying docket materials.

Electronic Docket Access. You may access the final rule 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 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 in the above paragraph entitled ''Docket.'' Once in the system, select ''search,'' then key in the appropriate docket identification number.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule will also be available on the WWW through the EPA's Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of the final rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Categories and entities potentially regulated by this action include those listed on the following table. This table is not intended to be exhaustive, but is just a guide to entities likely to be regulated by these standards. It lists the types of entities that may be regulated, but you

should examine the applicability criteria in §§ 63.7181 and 63.7182 of the final rule to decide whether your facility is regulated by the standards. If you have any questions about whether your facility is subject to the standards, call the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

CATEGORIES AND ENTITIES POTENTIALLY REGULATED BY THE STANDARDS

Category	NAICS code	SIC code	Examples of regulated entities
Industrial	334413	3674	Semiconductor crystal growing facilities, semiconductor wafer fabrication facilities, semiconductor test and assembly facilities.

Judicial Review. Under section 307(b) of the CAA, judicial review of the final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by July 21, 2003. Under section 307(d)(7)(B) of the CAA, only an objection to the rule which was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by this final action may not be challenged separately in any civil or criminal proceeding we bring to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

I. Background
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F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. On July 16, 1992, major source categories covered by the NESHAP were listed under the Semiconductor Manufacturing industry group (57 FR 31576). Major sources of HAP are those that have the potential to emit considering controls, in the aggregate, 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAP.

B. What Criteria Do We Use in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than the standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best performing 12 percent of existing sources in the category or subcategory (or the best performing five sources for categories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on consideration of the cost of achieving the emission reductions, any health and environmental impacts, and energy requirements.

II. What Changes and Clarifications Have We Made for the Final Standards?

In response to public comments received on the proposed standards, we made several changes in developing the final rule. Some of the changes had a direct effect on the MACT floors and emission limits, while other changes clarified the substantive requirements for the final rule. A more comprehensive summary of comments and responses can be found in Docket No. A–97–15 and E–Docket No. OAR–2002–0086.

A. MACT Floors and Emission Limits

Process vents. When we developed the original MACT floors for process vents, we first determined the control efficiency, expressed as percent emission reduction, for each process vent for which we had inlet and outlet HAP concentration data. We then ranked the process vents based on the control efficiency achieved. Based on the best performing five process vents, we determined that thermal oxidation was used for emission control on four of them. Consequently, we selected thermal oxidation as the MACT floor. For the emission limit, we chose 98 percent control as representative of the level of control typically achieved by thermal oxidizers in practice. We decided not to base the emission limit on the reported performance of the thermal oxidizers because, in all cases, the inlet streams were high volume with low concentration of HAP. Under those conditions, measurements of the actual performance of a thermal oxidizer can be unreliable. As such, we believe

choosing 98 percent control efficiency is more representative of what the thermal oxidizers can consistently achieve in practice.

One commenter objected to this procedure, stating that the CAA directs us to consider only the actual performance of the sources used to establish the MACT floor. The commenter believed that we should revise the MACT floor and emission limits based on the reported performance of the five best performing sources. While we agree that the CAA directs us to base the MACT floors on actual performance, we believe that the test data do not accurately represent actual performance because of the high-volume, low-concentration nature of the emission streams.

In response to this comment, we decided to reevaluate the process vent MACT floor by considering organic and inorganic streams separately, as suggested by another commenter. By doing so, we can more accurately assess the performance of the different control devices used for these two types of emission streams.

Organic emission streams are almost always controlled by some type of thermal oxidation. As discussed above, measurements of thermal oxidizer performance can be unreliable for high-volume, low-concentration streams. Thus, we continue to believe that the test data for organic HAP emission control we obtained for thermal oxidizers controlling semiconductor manufacturing process vents may not accurately portray actual performance. Thus, our original selection of a known achievable emission reduction percentage, as used for MACT in rules such as the Hazardous Organic NESHAP or HON (57 FR 19402), better represents actual performance as directed by the CAA. For the final rule, we retained 98 percent control as the emission limit for organic emission streams from process vents. We also retained the alternative emission limit of 20 parts per million by volume (ppmv) for organic emission streams.

For inorganic emissions from process vents, all the data we obtained showed that scrubbers were used to control those emissions. Unlike thermal oxidizers, scrubbers experience less erratic performance characteristics with high-volume, low-concentration emission streams. Accordingly, we were able to use the actual performance data to establish the MACT floor for the control of inorganic emissions from process vents. Again, using the top five best performing process vents, we established the MACT floor as 95 percent control. Based on the actual outlet emissions of those five process vents, we established the alternative emission limit as 0.42 ppmv.

Storage tanks. We received comments on whether all of the tanks we included in the MACT floor analysis were the type of tank we intended to regulate through the rulemaking. The comments provided additional clarifying information on a number of the tanks we used to develop the MACT floor. Specifically, the comments questioned whether storage tanks for wastewater with very low concentration of HAP, waste storage tanks already covered under the Resource Conservation and Recovery Act (RCRA), and wastewater treatment tanks should have been included in the MACT floor analysis.

With the exception of wastewater treatment tanks, it was our intent to include all of these types of tanks in the affected source. However, based on the additional information provided by the industry, we have concluded that it was not appropriate to develop one MACT floor for all types of tanks due to the wide range of emissions from the each type of tank. Therefore, we developed separate MACT floors for chemical storage tanks (including waste storage tanks regulated under RCRA) and wastewater storage tanks.

We found that the level of control, based on the top five best performing sources in each data set, is the same for each type of tank. The level of control is to reduce emissions through the use of a scrubber and is identical to the level of control used to establish the MACT floor that was the basis of the emission limits in the proposed rule. However, based on other comments we received, we have decided not to use the same MACT floor procedure for the final rule.

Since the semiconductor industry storage tank emission streams will have similar characteristics to those of process vents (*i.e.*, low pollutant concentration), rather than hydrochloric acid production industry storage tanks, we now believe the most representative similar sources for evaluating the MACT floor for storage tanks are the semiconductor industry process vents. Therefore, in response to the comments concerning our use of hydrochloric acid production industry storage tanks as the most representative similar source, we are adopting the process vent inorganic HAP emission limits for all storage tanks required to control emissions in the final rule.

The comments we received clarified that the reported wastewater treatment tanks were not actually storage tanks but flow-through tanks used for certain continuous treatment processes such as pH adjustment. The tank volume merely allows for a buffer so that the treatment can be adequately carried out. All of the flow-through tanks in the data supplied by the industry are controlled by scrubbers. However, the industry also provided information that the purpose of all of these scrubbers was primarily to control ammonia odors. We do not believe that requiring scrubbers on flow-through tanks would result in significant reductions of HAP emissions, nor was it our intent in the proposed rule to regulate such tanks. Therefore, the definition of storage tank that we added to the final rule clarifies that flow-through tanks are not considered storage tanks for the purposes of the final rule.

We made an additional change for the final rule based on our revised storage tank MACT floor analysis. Because we eliminated several tanks from the data set used in the MACT floor analysis, the cutoff for the smallest size tank for which the final rule applies increased from 800 gallons to 1,500 gallons. We also revised our analysis of alternatives more stringent than the MACT floor to reflect the increased tank size. We found that the cost per ton of additional emission reduction (approximately $300,000/ton) is still too great to warrant a more stringent level of control. We have also included a definition for ''storage tank'' to 40 CFR 63.7195 to clarify which tanks we intended to be subject to the final rule.

B. Compliance Options and Procedures

As part of our reevaluation of the MACT floors for process vents as described above, we also considered other compliance options to reflect our position on the performance of control devices. While we believe the performance of scrubbers controlling high-volume, low-concentration emission streams can be measured, we also recognize that control efficiency cannot always be reliably predicted for such streams. Also, facilities may choose to use a control device other than a scrubber which may be more difficult to measure performance. For these situations, we have included a compliance option to the final rule (see 40 CFR 63.7187(i)) that allows a source to perform a design evaluation of the add-on control device. If the inlet concentration of inorganic HAP is less than or equal to 20 ppmv, then the facility may choose to perform a design evaluation of the control device that demonstrates the device is capable of achieving the required control efficiency.

We chose 20 ppmv as the cutoff for allowing a design evaluation because the data we obtained showed erratic

performance measurement values below this level. The test results show control device performance decreasing as the inlet concentration decreases. However, the last entry shows that even at very low inlet concentrations, control device performance can sometimes be high. These data show the difficulty of measuring control device performance with high-volume, low-concentration inlet streams, and why we believe a design evaluation procedure is necessary. In the final rule, we have adopted the design evaluation procedure alternative from the Pharmaceuticals Production NESHAP (40 CFR part 63, subpart GGG).

During our review of the proposed rule, we realized that we inadvertently omitted Method 26A of 40 CFR part 60, appendix A, for analysis of emission streams for inorganic HAP. The final rule includes this test method.

III. Response to Comments on the Proposed NESHAP for Semiconductor Manufacturing

Comment: One commenter requested that EPA consider providing exemptions that would exclude insignificant sources from regulation. The commenter argued that the administrative burdens associated with the proposed rule are unwarranted for such sources. The commenter further argued that if additional add-on control devices would be required, it would result in insignificant HAP reductions. Another commenter suggested that storage tanks are insignificant HAP emission sources and should be excluded from the final rule.

Response: While we understand the commenters' concern with the burden imposed by regulation of sources with low annual emissions, the CAA does not provide a mechanism by which we can exempt such emission sources from the affected source solely on the basis of emissions. Additionally, some facilities in the semiconductor industry are characterized by multiple point sources of emissions, many of which have low annual emissions. If we exempted all such sources, there is a possibility that a large portion of the emissions from the facility could escape regulation. For these reasons, we are not exempting sources with low HAP emissions from the final rule.

Comment: One commenter contended that EPA's exemption of sources during periods of startup, shutdown, and malfunction is a violation of the requirement for continuous compliance. The commenter argued that EPA may only allow unavoidable deviations from emissions standards and must require that sources use best air pollution control practices during those periods.

Response: We disagree with the commenter's interpretation of the proposed rule. The General Provisions at 40 CFR 63.6(e)(1)(i) require that sources must at all times, including periods of startup, shutdown, and malfunction, maintain the affected source in a manner such that emissions are minimized to the level required by the relevant standard. That section further clarifies that this means to ''meet the emission standards or comply with the startup, shutdown, and malfunction plan.'' The purpose of the startup, shutdown, and malfunction plan (SSMP), as described in 40 CFR 63.6(e)(3)(i)(A), is to:

> [e]nsure that, at all times, the owner or operator operate and maintain affected sources, including associated air pollution control and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions to at least the levels required by the relevant standards.

A properly written SSMP does not allow the source to emit at whatever levels they want merely because they comply with what they have written in the SSMP. Under the SSMP, the source must detail the procedures that will be used to maintain emissions within the limits set by the rule during periods of startup, shutdown, and malfunction. In this case, the SSMP is analogous to parameter monitoring for evaluating continuous compliance of add-on control devices. Just as maintaining the temperature of a thermal oxidizer at the proper operating temperature as determined during the initial compliance demonstration is deemed to be compliance with the emission limits, following the SSMP is deemed to be compliance with emission limits during periods of startup, shutdown, and malfunction.

Comment: One commenter was concerned with the burden of compliance as proposed at facilities that are classified as major sources of HAP due to processes other than semiconductor manufacturing and that only conduct minimal production of semiconductors for research and development purposes. The commenter requested that EPA add a *de minimis* threshold for rule applicability.

Response: Through our data gathering efforts, we found that research and development activities are often integrated into the production activities at semiconductor manufacturing facilities. Such research and development activities are often used in actual production because the technology upon which the manufacturing process is based undergoes substantial change every few years. This extremely short technology life cycle results in constant research and development efforts geared toward developing and implementing new manufacturing technologies. The continual research and development efforts result in an ongoing integration of new technologies into mainstream production operations. New manufacturing operations are typically not developed apart from existing manufacturing operations, but rather side-by-side with them. The new operations are gradually integrated into mainstream production. As such, the majority of research and development work is done in a manner nearly indistinguishable from the existing manufacturing process.

Given the manner in which research and development activities are integrated into production, there is no bright line distinction between research and development and production. They are located in the same clean rooms and, more importantly, share the same exhaust plenums and emission control devices. For these reasons, the research and development activities are considered part of the production process and are within the affected source.

We note, however, that the research and development operations have to be located at a semiconductor manufacturing facility to be considered a semiconductor manufacturing process unit. Therefore, research and development activities that are not used to produce semiconductors for commerce, or produce them only for captive use, would not be semiconductor manufacturing process units and would not be subject to the final rule. Nor would research and development operations that are stand alone activities (that is, not integrated into the production process) be subject to the final rule. We modified 40 CFR 63.7182(b) of the final rule to clarify this point.

Comment: One commenter argued that EPA must regulate all major sources and believed the proposed rule fails to do this because it does not apply to sources that installed add-on control devices after the facility was designed and commenced operation. The commenter interpreted the court's ruling in *Alabama Power* (*Alabama Power Co.* v. *U.S. EPA,* 636 F.2d 323 (DC Cir. 1979)) as specifying that controls must be incorporated into the original design of the facility in order to be considered when calculating the facility's potential to emit.

Response: We believe the commenter incorrectly interpreted the court's decision in *Alabama Power.* That case addressed, in part, the interpretation of ''potential to emit'' in the definition of major source in the prevention of significant deterioration (PSD) regulations (also part of the CAA, but unrelated to hazardous air pollutant regulations). The court found that EPA ''must look to the facility's 'design capacity' a concept which not only includes a facility's maximum productive capacity * * * but also takes into account the anticipated functioning of the air pollution control equipment designed into the facility.'' (*Alabama Power,* 636 F.2d at 353). The commenter has interpreted this statement to mean that only controls that were part of the original design of the facility can be taken into account when calculating potential to emit. Nowhere does the court state or even imply such a result in its decision. The commenter failed to take into account that the PSD regulations define a *preconstruction* permitting process. Because the air emission sources under consideration in the PSD process have yet to be constructed, the permitting process must necessarily deal with only designs of future air emission sources. We believe the court's language reflects only this aspect of the PSD review process, not the interpretation given by the commenter.

The NESHAP program, on the other hand, is concerned with air emission sources already in existence, as well as new sources. If we were to apply the wording of *Alabama Power* to the NESHAP program, our interpretation would be that the phrase ''designed into the facility'' means any air emission control equipment in use at the facility at the time a major source determination must be made, not the interpretation given by the commenter. This is reflected in our memorandum [1] on the interim policy on federal enforceability of limitations on potential to emit. In this memorandum, we stated:

> [T]he EPA regulations provide that ''controls'' (*i.e.*, both pollution control equipment and operational restrictions) that limit a source's maximum capacity to emit a pollutant may be considered in determining its potential to emit. Historically, large numbers of new or modified sources that otherwise would be subject to PSD and NSR permitting requirements have limited their PTE in order to obtain ''synthetic minor'' status and thereby avoid major source requirements. With the advent of operating permit programs under Title V and the MACT program under section 112, many sources that otherwise would be subject to these new requirements under the Clean Air Act Amendments of 1990 also have obtained, or plan to obtain, PTE limits to avoid coverage.

The phrase ''have obtained, or plan to obtain'' implies that these sources will be adding controls to limit emissions. Since these controls would be added to an existing facility, they could not have been designed into the facility before it was ever constructed. Thus, the commenter's interpretation is incorrect, and we have made no changes for the final rule in response to this comment.

Comment: One commenter requested that a definition for ''process vent'' be added to the final rule. Additionally, the commenter further argued that if EPA cannot exclude research and development vents from the definition of process vents, then the final rule must provide an exemption for research and development activities consistent with section 112(c)(7) of the CAA.

A second commenter was also concerned with the absence of a definition for process vent. The commenter pointed out that the absence of a definition results in ambiguity regarding compliance obligations. The commenter also suggested that a process vent definition would allow EPA to exclude categories of emission points with negligible emissions potential.

Response: We agree that a definition of ''process vent'' would be beneficial in determining which emission points at a semiconductor manufacturing facility are subject to the emission limitations in 40 CFR 63.7184 of the final rule. Because the affected source is defined in terms of semiconductor manufacturing process units (see 40 CFR 63.7182), the process vents subject to regulation necessarily must originate from these process units. Therefore, we have included the following definition to 40 CFR 63.7195: *Process vent* means the point at which HAP emissions are released to the atmosphere from a semiconductor manufacturing process unit or storage tank by means of a stack, chimney, vent, or other functionally equivalent opening. The HAP emission points originating from wastewater treatment equipment, other than storage tanks, are not considered to be a process vent, unless the wastewater treatment equipment emission points are connected to a common vent or exhaust plenum with other process vents.

We do not believe any of the other process vent exemptions requested by these commenters are appropriate. Research and development operations are considered to be part of the overall semiconductor manufacturing process unless they are stand alone operations. We believe that relief valve discharge points, process analyzers, and conservation vents can be adequately connected to process vent exhaust ducts, if this is not already the case. Emergency electrical generators are not included in the definition of semiconductor manufacturing process unit, so there is no need to exclude them from the definition of process vent.

Comment: One commenter was concerned about the broad definition of ''control device'' in 40 CFR 63.981(a). According to the commenter, this paragraph could be interpreted to mean that certain devices that are part of the process (not an add-on control device) would be subject to the rule.

Response: We agree that there are certain devices used by the semiconductor industry that could be construed as control devices but are in fact an inherent part of the process, and that clarification is necessary in the final rule. In response, we have included the following definition to 40 CFR 63.7195: *Control device* means a combustion device, recovery device, recapture device, or any combination of these devices used for the primary purpose of reducing emissions to comply with this subpart. Devices that are inherent to a process or are integral to the operation of a process are not considered control devices for the purposes of this subpart, even though these devices may have the secondary effect of reducing emissions.

Comment: One commenter objected to the EPA's approach of using area source information to establish the MACT floor as being inconsistent with section 112(d)(3) of the CAA. The commenter believed that area sources are not part of the semiconductor manufacturing category for major sources and should not be relied on for establishing the MACT floor.

Response: Section 112(a)(1) of the CAA defines major source as ''any stationary source or group of stationary sources * * * that emits or has the potential to emit considering controls, in the aggregate, 10 tpy or more of any hazardous air pollutant or 25 tpy or more of any combination of hazardous air pollutants.'' An area source is then defined in section 112(a)(2) as any stationary source that is not a major source. The facilities which we used to establish the MACT floor were ''synthetic minor'' sources, meaning that they reduced their potential to emit below the major source threshold (here, through the use of add-on control devices and material substitution). Without these controls, these facilities

[1] ''Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit'' (January 22, 1996) (available at *http://www.epa.gov/ttn/oarpg/t5/memoranda/pte122.pdf*).

would have the potential to emit at major source levels.

We disagree that the MACT floors must be based solely on major sources of HAP emissions. Section 112(d)(1) of the CAA directs us to promulgate rules for categories of major and area sources of HAP emissions. Then, section 112(d)(2) mandates that these standards ''shall require the maximum degree of reduction in emissions * * * achievable for new or existing sources.'' Section 112(d)(3) specifies how we are to determine the maximum degree of emission reduction and describes it as ''not less stringent than the emission control that is achieved in practice by the best controlled similar source'' for new sources, and for existing sources describes it as ''the average emission limitation achieved by the best performing 12 percent of the existing sources * * *'' Even though Congress saw fit to distinguish between major and area sources in many other places in section 112 of the CAA, they specifically did not require that the floor be based on major sources. Throughout section 112(d), Congress simply used the term ''source.'' We interpret this to mean that Congress left it to our discretion to determine the most appropriate sources on which to base the MACT floors. Accordingly, for the proposed rule we used both major sources and synthetic minor sources as the basis of the MACT floors. We believe our interpretation of section 112(d) of the CAA is correct, and no changes were made for the final rule as a result of these comments.

Comment: One commenter contended that EPA may not set floors for process vents based on the technology of thermal oxidizers, but must identify the best performing process vents, determine their actual performance, and calculate floors based on the average of that performance. Another commenter questioned the validity of establishing a single concentration for total HAP emissions from process vents and requested that different control and concentration limits be set for the organic HAP and inorganic HAP emissions.

Response: After reviewing the procedure we used to establish the MACT floors in light of these comments, we agree that we should first establish a MACT floor for both organic and inorganic HAP emissions from process vents (other than storage tanks) and then evaluate the appropriate emission limits for each. Based on a revised analysis, we calculated the MACT floor for organic process vents to be 98 percent control, or an organic HAP emission limit of 20 ppmv, which were the emission limits in the proposed rule. For inorganic HAP, we calculated the MACT floor to be 95 percent control or an inorganic emission limit of 0.42 ppmv. We have written 40 CFR 63.7184 of the final rule to reflect these revised MACT floors.

Comment: One commenter had several concerns with the approach used to establish the MACT floor for storage tanks. The commenter believed that area source semiconductor manufacturing facilities and HCl production sources are not part of the major source semiconductor manufacturing category and should not have been relied on to set the storage tank MACT floor. Two commenters requested that any storage tank limits should be limited specifically to tanks storing HCl or hydrofluoric acid (HF).

Another commenter argued that EPA improperly based floors for storage tanks over 800 gallons on the performance of scrubbers. The commenter stated that EPA must identify the relevant best performing storage tanks, determine their actual performance, and recalculate floors for storage tanks over 800 gallons based on the average of that performance. The commenter also contended that EPA must conduct beyond-the-floor analysis for storage tanks under 800 gallons to determine the maximum degree of emissions reductions achievable.

One commenter argued that any final rule should exclude hazardous waste storage tanks and vessels storing wastewater. The commenter contended that EPA has not made the required MACT finding for hazardous waste storage tanks and vessels storing wastewater. The commenter further argued that hazardous waste storage vessels and vessels storing wastewater have low HAP concentrations and do not warrant regulation beyond RCRA requirements.

Response: We agree that the procedure outlined by these commenters is the best procedure for determining the MACT floors, assuming that the appropriate data are available. In the case of storage tanks, we had no such data. The only data the industry could provide to us were the size of the tank, contents of the tank, and whether emissions from the tank were controlled. No performance data were available for the tank emission controls used by the semiconductor industry. For these reasons, we used data on the performance of the most representative similar source for which data were available, which were for scrubbers on HCl storage tanks obtained from the HCl manufacturing industry. Based on these comments, we now believe it is more appropriate to develop separate MACT floors for the different types of storage tanks in the semiconductor industry, and that it was inappropriate to use storage tanks from the HCl production industry as the most representative similar source.

It was always our intent to include all storage and wastewater tanks containing HAP in the affected source. However, based on the additional information provided by the industry, we have concluded that it was not appropriate to develop one MACT floor for all types of tanks due to the wide range of emissions from the each type of tank. While we cannot exempt an emission source solely due to the low annual emissions from that source, we thought that the MACT floor level of control could be influenced by the level of emissions from each type of tank and the existing regulations (*i.e.*, RCRA) to which some tanks may be subject. Therefore, we developed separate MACT floors for chemical storage tanks (including waste storage tanks regulated under RCRA), wastewater storage tanks, and wastewater treatment tanks.

We found that the MACT floor level of control for both chemical storage tanks and wastewater storage tanks, based on the top five best performing sources in each data set, is the same for each type of tank. The level of control is to reduce emissions through the use of a scrubber and is identical to the level of control used to establish the emission limits as proposed. However, based on other comments we received, we decided not to use the same procedure to establish the emission limits for the final rule. For wastewater treatment tanks, we determined the MACT floor level of control to be no emissions reduction.

The data set we used to establish the original MACT floor for storage tank emissions included the type of control (*e.g.*, scrubbers), but no information on the performance of the control devices or pollutant concentration in the outlet streams. In order to establish emission limits, we previously relied on the performance of controls used by the HCl production industry on HCl storage tanks. We used these data because the majority of tanks reported by the semiconductor industry contained HCl as well. We considered the HCl production industry data to be the most representative similar source for which we had data.

The comments we received questioned whether these storage tanks were representative, similar sources. In response to these comments, we further investigated the similarities and differences of the semiconductor manufacturing industry storage tanks

and the HCl production industry tanks. We first determined that there is a large size differential between the tanks used by the semiconductor industry and those used by the HCl production industry. The largest reported semiconductor industry storage tank was 16,000 gallons, and most were less than 10,000 gallons. In contrast, most of the storage tanks reported by the HCl production industry ranged from 200,000 gallons to over 2 million gallons. We then determined that the HCl stored by the semiconductor industry was often diluted, while the HCl production industry almost exclusively stored concentrated HCl. Based on the larger tank size and the higher concentration of material stored, the emission streams from the HCl production industry storage tanks will have a considerably higher pollutant concentration than from the semiconductor industry storage tanks. We believe this is a more important consideration when establishing emission limits than simply looking at the similarity of the material stored. Thus, we expect that the emissions streams from the semiconductor manufacturing industry storage tanks will have a very low concentration of pollutants.

Since the semiconductor industry storage tank emission streams will have similar characteristics to those of process vents (*i.e.*, low pollutant concentration), we now believe the most representative similar sources for evaluating the MACT floor for storage tanks are the semiconductor industry process vents. Therefore, in response to the comments concerning our use of HCl production industry storage tanks as the most representative similar source, we are adopting the process vent inorganic HAP emission limits for storage tanks in the final rule.

We also agree that we should have given further consideration to controls more stringent than the MACT floor for storage tanks less than 800 gallons (now 1,500 gallons in the final rule as discussed below) and wastewater treatment tanks. The MACT floor for both of these types of tanks was determined to be no control. However, controls more stringent than the MACT floor (*i.e.*, scrubbers) are technically feasible as demonstrated by the data provided by the industry on tanks greater than 1,500 gallons.

In order to include emission limits more stringent than the MACT floor level of control in the final rule, they must be feasible on both a technical and cost basis. Technical feasibility is assumed based on similar control on larger tanks as reported by the industry. To evaluate cost feasibility, we estimated the HAP emissions from a 1,500 gallon tank containing concentrated HCl, assuming one complete turnover per day. These parameters will result in the maximum amount of HAP emissions from the tank that we would expect for the semiconductor manufacturing industry. We then estimated the cost of a scrubber to control these emissions by 99 percent. Finally, we calculated the cost per ton of additional HAP emission reduction achieved above the MACT floor level of control, which was more than $285,000 per ton. Based on this result, we considered this level of control to be infeasible on a cost basis and did not require emission control more stringent than the MACT floor for storage tanks less than 1,500 gallons or wastewater treatment tanks in the final rule.

We made an additional change for the final rule based on our revised storage tank MACT floor analysis. Because we eliminated several tanks from the data set used in the MACT floor analysis, the cutoff for the smallest size tank for which the final rule applies increased from 800 gallons to 1,500 gallons.

While the storage tanks that were used to establish the MACT floor level of control stored either HCl or HF, we believe this level of control is applicable to any material stored by a semiconductor manufacturing facility. Therefore, we do not believe that the emission limits must necessarily be limited to these two chemicals, as suggested by one of the commenters.

In our final analysis, we determined that the level of control already existing on waste storage tanks regulated under RCRA is equivalent to the storage tank MACT floor level of control. We also determined that the MACT floor for wastewater treatment tanks was no emissions reduction. Accordingly, we excluded both types of tanks from any requirements in the final rule. We added the following definition (based on the definition of ''tank'' in 40 CFR 63.901, (subpart OO—National Emission Standards for Tanks-Level 1) and 40 CFR 63.1101 (subpart YY—National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards)) for ''storage tank'' to 40 CFR 63.7195 that clarifies which tanks we intended to be covered under the final rule: *Storage* tank means a stationary unit that is constructed primarily from nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) which provides structural support and is designed to hold an accumulation of liquids or other materials used in or generated by a semiconductor manufacturing process unit. The following are not storage tanks for the purposes of the final rule:

- Tanks permanently attached to motor vehicles such as trucks, railcars, barges, or ships;
- Flow-through tanks where wastewater undergoes treatment (such as pH adjustment) before discharge, and are not used to accumulate wastewater;
- Bottoms receiver tanks; and
- Surge control tanks.

Comment: One commenter reiterated a previous request for EPA to delist the Semiconductor Manufacturing source category and provided information to support their request. The commenter claimed that this information shows that there will be no stand alone semiconductor manufacturing facilities. Therefore, since EPA listed this category on the MACT source category list at a time when there were stand alone facilities that were major sources, the basis for listing the category no longer exists. The commenter cited the preamble language from the initial source category listing notice (57 FR 31576, July 16, 1992) and the first notice revising the list (61 FR 28200, June 4, 1996) to support their interpretation of when a category should be included on the source category list. The commenter stated that if a stand alone major source did come into existence in the future, EPA could promulgate a MACT standard at that time. Additionally, the commenter pointed out that case-by-case MACT determinations under section 112(g) of the CAA could also be used to control emissions from such a source.

The commenter also pointed to other EPA actions to support their position. The commenter noted that EPA guidance issued after the National Mining Association court case (*National Mining Association* v. *U.S. EPA,* 59 F.3d 1351 (D.C. Cir. 1995)) states that section 112(d) standards should be applied to source categories that contain stand alone major sources or that have sources ''commonly located'' at major source facilities. The commenter also noted that EPA, in promulgating MACT standards for industrial process cooling towers (IPCT), had found that co-location of an IPCT on a major source site is not sufficient to trigger applicability of the rule, rather, the IPCT must be co-located and an integral part of the facility.

The commenter disagreed with EPA's interpretation that a source category delisting can proceed only under section 112(c)(9) of the CAA. The commenter believed that EPA has a non-discretionary duty under section

112(c)(1) to periodically revise the list in response to new information. Under the provisions specified in section 112(c)(1), which the commenter believes are wholly separate from the delisting procedure in section 112(c)(9), EPA has the authority and the latitude to remove a previously listed source category from the MACT standard source category list.

Response: In the preamble to the proposed rule for semiconductor manufacturing, we acknowledged receipt of the pre-proposal request to remove the Semiconductor Manufacturing source category from the list of source categories and indicated we would respond in the final rulemaking (67 FR 30852, May 8, 2002).

Section 112(d)(1) of the CAA directs EPA to promulgate regulations for categories of major sources of HAP emissions. We interpret section 112(a) as requiring consideration of all emissions sources in determining major source status. Thus, if a source emits 10 tons or more per year of any single HAP or 25 tons or more per year of any combination of HAP, it is a major source. Similarly, if a source is co-located with sources in other categories and the aggregate emissions of the combined sources is 10 or more tons per year of a single HAP or 25 tons or more per year of any combination of HAP, that group of co-located sources is a major source. This interpretation is consistent with the legislative history on the definition of ''major source,'' which indicates clearly that all portions of a major source are subject to MACT even if, standing alone, individual portions of that source would not qualify as major. [136 Cong. Rec. S. 16927 (October 27, 1990)].

The definition of major source also includes provisions to assure that stationary sources which would otherwise be subject to the emissions standards are not excluded from control requirements as the result of arbitrary subdivision or description of the source. A stationary source potentially subject to an emissions standard because it emits a listed air pollutant is to be defined to include all emission points and units of such source located within a contiguous area and under common control.

Because the statute instructs EPA to consider co-located sources as major sources, we believe we must list and promulgate standards for source categories that are major sources as a result of co-location. Accordingly, when we published the initial list of source categories, we ''includ[ed] categories of major sources where there was reasonable certainty that at least one stationary source is a major source or where sources in the category [were] commonly located on the premises of major sources.'' (57 FR 31576, July 16,1992). The EPA continues to believe that major source determinations must be based on facility-wide emissions and that a major source can be either a stand alone major source or co-located with other sources that in combination emit or have the potential to emit over the major source threshold.

We disagree with the commenter's reading of the preamble to the IPCT MACT standard. In promulgating the MACT standard, we said that even though no individual source in the IPCT source category is itself a major source, we promulgated a MACT standard in light of IPCT being co-located with other major sources of HAP (59 FR 46339, September 8, 1994). The IPCT MACT provides clear precedent both for promulgating a semiconductor MACT standard and to not remove the Semiconductor Manufacturing source category from the list of source categories.

Accordingly, because section 112(d) requires EPA to promulgate MACT standards for all major sources, and since the Semiconductor Manufacturing source category is a category of major sources, albeit, because existing sources are co-located with other sources that in combination emit or have the potential to emit over the major source thresholds, EPA will not revise the list of source categories to remove the Semiconductor Manufacturing source category.

Finally, we also believe this source category is not static and that changes (either economic or process) may trigger operational changes that could result in increased HAP emissions. Thus, it is not entirely clear whether those sources that are currently ''synthetic area sources'' will continue to be ''synthetic area sources.'' And accordingly, it is not inconceivable that the MACT standards promulgated today will eventually be applicable to more than the one currently co-located facility. In addition, there is always the possibility of new major sources being constructed in the future.

Comment: One commenter requested that EPA reconsider delisting this source category using *de minimis* principles under section 112(c)(1) of the CAA. The commenter proposed exemption of all nonmajor semiconductor process units from regulation in a manner consistent with the approach to applicability in section 112(g) of the CAA.

Response: The commenter's suggested *de minimis* cutoff levels are inconsistent with the CAA's prescribed method for determining the MACT floor. We do not believe that the CAA authorizes exempting an emission source solely due to the low annual emissions from that source. The outlet concentration limits for both inorganic and organic emissions serve as the minimum applicable limits for the affected sources. If the outlet concentration is below the applicable emission limit, no controls are required to demonstrate compliance.

IV. What Are the Final Standards?

A. What Is the Source Category?

The Semiconductor Manufacturing source category includes operations used to manufacture p-type and n-type semiconductors and active solid-state devices from a wafer substrate. Research and development activities located at a site manufacturing p-type and n-type semiconductors and active solid-state devices are integrated into the manufacturing process (that is, they are not stand alone operations), and these are included in the definition of semiconductor manufacturing. Examples of semiconductor or related solid-state devices include semiconductor diodes, semiconductor stacks, rectifiers, integrated circuits, and transistors. The source category includes all manufacturing from crystal growth through wafer fabrication, and test and assembly.

The crystal growing stage is where crystalline wafers of silicon or other specific semiconducting materials are manufactured for use as the substrate in the wafer fabrication process. Crystal growing begins with storage of the raw materials (usually trichlorosilane, which is refined from ordinary sand) and ends with the final polishing of a wafer.

The wafer fabrication process is where a group of integrated circuits are created on the wafer through a series of pattern-forming processes. Wafer fabrication begins at the point where the wafer receives its first protective oxidative layer and ends when a functional integrated circuit or circuits have been created on a wafer.

The test and assembly process is the final step in the integrated circuit manufacturing process and begins when a wafer is cut into individual chips. The chips are then mounted onto a metal frame, connected to the leads, and enclosed in a protective housing. The process endpoint is the last test performed at an assembly facility to verify proper function of a completed integrated circuit housing.

B. What Is the Affected Source?

We define an affected source as a stationary source, group of stationary sources, or part of a stationary source to which specific NESHAP apply. Within a source category, we select the specific emission sources (emission points or groupings of emission points) that will make up the affected source for that category. To select these emission sources, we mainly consider the constituent HAP and quantity emitted from individual or groups of emission points.

For the Semiconductor Manufacturing source category, the affected source includes the collection of all semiconductor manufacturing units used to manufacture p-type and n-type semiconductors and active solid-state devices from a wafer substrate, research and development activities integrated into the manufacturing process at a semiconductor manufacturing site, and storage tanks located at a major source.

A semiconductor manufacturing process unit is the equipment assembled and connected by duct work or hard piping including: Furnaces and associated unit operations; associated wet and dry work benches; associated recovery devices; feed, intermediate, and product storage tanks; product transfer racks and connected ducts and piping; pumps, compressors, agitators, pressure-relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems; and control devices. We have identified three distinct processes used in the manufacture of these semiconductors and devices: Crystal growing, wafer fabrication, and assembly and test. A semiconductor manufacturing unit is typically engaged in one of these processes.

C. What Are the Emission Standards?

Emission limits. We are promulgating standards that regulate HAP emissions from process vents and storage tank vents at semiconductor manufacturing facilities. The standards are the same for existing and new sources. All major sources must reduce process vent organic HAP outlet concentrations by 98 percent from their uncontrolled levels and reduce uncontrolled inorganic HAP outlet concentrations by 95 percent. As an alternative, process vents may be controlled to a level below 20 ppmv organic HAP and 0.42 ppmv inorganic HAP. In addition, all major sources must reduce storage tank vent HAP outlet inorganic HAP concentrations by 95 percent from their uncontrolled levels. As an alternative, storage tank vents may be controlled to a level below 0.42 ppmv inorganic HAP.

General Provisions. The General Provisions (40 CFR part 63, subpart A) also apply to you as outlined in the final rule. The General Provisions codify certain procedures and criteria for all 40 CFR part 63 NESHAP. The General Provisions contain administrative procedures, preconstruction review procedures for new sources, and procedures for conducting compliance-related activities such as notifications, reporting, and recordkeeping, performance testing, and monitoring. The final rule refers to individual sections of the General Provisions to emphasize key sections that you should be aware of. However, unless otherwise specifically excluded in the final rule, all of the relevant General Provisions requirements apply to you.

V. When Must I Comply With the Final Rule?

Existing semiconductor manufacturing affected sources must comply with the final rule no later than 3 years after May 22, 2003. The effective date is May 22, 2003. New or reconstructed affected sources must comply upon start-up or May 22, 2003, whichever is later. Details of the compliance requirements can be found in the General Provisions, as outlined in Table 2 to the subpart.

VI. What Are the Testing and Initial Continuous Compliance Requirements?

In addition to the specific testing and monitoring requirements specified below for the affected source, the final rule adopts the testing requirements specified in 40 CFR 63.7.

We are promulgating testing and initial and continuous compliance requirements that are, where appropriate, based on procedures and methods that we have previously developed and used for sources similar to those for which standards are being promulgated today. For example, we are promulgating compliance determination procedures, performance tests, and test methods to determine what level of control a process vent needs to achieve to demonstrate compliance with the standards. We are promulgating compliance procedures to determine process vent and storage tank vent flow rates and HAP concentrations. The promulgated test methods parallel what we have used for process vents in previous organic HAP emissions standards (*e.g.*, the HON) and inorganic HAP emission standards. For measuring vent stream flow rate, you must use Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A. For measuring total vent stream organic HAP concentration to determine whether it is below a specified level, you must use Method 18 of 40 CFR part 60, appendix A. For measuring the total HAP concentration of emission streams with inorganic HAP to determine if it is below a specified level, you must use Method 320 of 40 CFR part 60, appendix A. For measuring inorganic HAP that are hydrogen halides, such as HCl or HF, you must use Method 26A of 40 CFR part 60, appendix A.

Additionally, we are requiring initial performance tests for all process vent and storage tank vent HAP emission control devices other than flares and certain boilers and process heaters. For vents controlled using flares, we are not requiring performance tests because we have developed design specifications that ensure these devices will achieve 98 percent destruction efficiency. As with the HON, we are not promulgating a requirement to perform an initial performance test for boilers and process heaters larger than 44 megawatts (MW) because they operate at high temperatures and residence times. In general, the higher the temperature and residence time, the greater the level of HAP destruction that is achieved by a control device. Therefore, boilers and process heaters larger than 44 MW easily achieve the required 98 percent destruction efficiency or the alternative requirement to reduce outlet concentrations below 20 ppmv.

For all other types of control devices, the final rule requires you to conduct a performance test to demonstrate that the control device can achieve the required control level and to establish operating parameters to be maintained to demonstrate continuous compliance. The testing requirements for semiconductor manufacturing list the parameters that can be monitored for the common types of combustion devices. For other control devices, we require that you establish site-specific parameter ranges for monitoring purposes through the Notification of Compliance Status report and through the facility's operating permit. Parameters selected are required to be good indicators of continuous control device performance.

VII. What Notification, Recordkeeping, and Reporting Requirements Must I Follow?

We are promulgating notification, recordkeeping, and reporting requirements in accordance with 40 CFR part 63, subpart A and other previously promulgated NESHAP for similar source categories.

We are requiring that owners or operators of semiconductor manufacturing affected sources submit the following four types of reports: An Initial Notification report, a Notification of Compliance Status report, periodic compliance reports, reports of changes and other specified events. Records of reported information and other information necessary to document compliance with the promulgated standards are required to be kept for 5 years. Equipment design records would be required to be kept for the life of the equipment.

For the Initial Notification report, we are requiring that you list the semiconductor manufacturing operations at your facility, and the provisions of the final rule that may apply. The Initial Notification report must also state whether your facility can achieve compliance by the specified compliance date. You must submit this notification by May 21, 2004, for existing sources, and within 180 days before commencement of construction or reconstruction of an affected source.

For the Notification of Compliance Status report, we are requiring that you submit the information necessary to demonstrate that compliance has been achieved, such as the results of performance tests and design analyses. For each test method that you use for a particular kind of emission point (*e.g.*, process vent), you must submit one complete test report. This notification must also include the specific range established for each monitored parameter for each emission point for demonstrating continuous compliance, and the rationale for why this range indicates proper operation of the control device.

We are requiring that you submit semiannual compliance reports. These reports must include a statement that no deviations from the emission limitations occurred during the reporting period, and that no continuous monitoring system (CMS) was inoperative, inactive, malfunctioning, out-of-control, repaired, or adjusted. Additionally, a statement must be included if you had a startup, shutdown, or malfunction during the reporting period, and you took actions consistent with your SSMP. For process and storage tank vents, records of continuously monitored parameters must be kept. Records that such inspections or measurements were performed must be kept, but results are included in your periodic report only if there is a deviation from the operating limit. For each deviation from an emission limit, the semiannual compliance reports must document the time periods of each deviation; its cause; whether it occurred during a period of startup, shutdown, or malfunction; and whether and what time periods the CMS was inoperative or out of control.

We are requiring that you submit an immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction that is not consistent with your SSMP.

Other reporting requirements include reports to notify the regulatory authority before or after a specific event (*e.g.*, if a process change is made, requests for extension of repair period).

VIII. What Are the Environmental, Energy, and Economic Impacts of the Final Rule?

This section presents projected impacts for existing sources only. We did not calculate impacts for new sources because we do not project any new major sources will commence construction in the foreseeable future. We expect that any new sources will have HAP emissions below major source thresholds. The industry trend over the past several years has been that HAP emissions have decreased while semiconductor production has increased. As a result, only one source in the industry is still a major source of HAP, and only because it is collocated at a facility with other HAP-emitting operations. We do not project that any other new semiconductor sources will be built on the site of another major HAP emitting operation. We also project that the types of technologies that have evolved (*e.g.*, producing larger wafers), which are in general emit fewer HAP per chip manufactured, will continue.

A. What Are the Secondary and Energy Impacts?

We do not anticipate any significant increase in national annual energy usage as a result of the final rule. Energy impacts include changes in energy use, typically increases, and secondary air impacts associated with increased energy use. Increases in energy use are associated with the operation of control equipment—in this case, the use of thermal oxidizers and scrubbers—to control process vents. Secondary air impacts associated with increased energy use are the emission of particulates, sulfur oxides (SO_X), and nitrogen oxides (NO_X). These secondary impacts are associated with power plants that would supply the increased energy demand. Since we project the final rule will apply to only one existing major source, no significant new control equipment requirements are expected. Therefore, secondary and energy impacts will be negligible.

B. What Are the Cost Impacts?

Although we estimate there are approximately 127 facilities engaged in semiconductor production, we estimate that the source category contains only one existing major source subject to the regulatory provisions specified under the final rule. The remaining facilities are either area sources or synthetic minor sources, which are sources that have the potential to emit above major source thresholds but have taken enforceable permit conditions limiting their HAP emissions to below these major source thresholds.

We estimate the annualized cost for the one major source affected by this final rule to be $2,300, solely to comply with monitoring, inspecting, reporting and recordkeeping requirements. (**Note:** This source meets the CAA section 112 definition of ''major source'' not because it emits 10 tons or more of any one HAP or 25 tons or more of HAP in aggregate, but because it is collocated at a plant site that is a major source subject to other NESHAP. We estimate this semiconductor manufacturing source emits less than one ton of HAP per year.) We project there will be no capital or operating costs for control equipment. Further, we estimate a one-time total cost of $33,000 for the approximately 126 non-major sources to read the rule. We estimate that there will be no impacts on new sources because we do not project that any new major sources will be built over the next 3 years.

C. What Are the Economic Impacts?

The final rule applies to only one major existing source, and no significant new control equipment requirements are expected. We estimate the MIRR costs for this facility to be only $6,956 over a 3-year period. Therefore, no economic impact on the industry is expected.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive 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 obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2042.01) and a copy may be obtained from Susan Auby by mail at the Collection Strategies Division (2822), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov,* or by calling (202) 566–1672. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.* The information requirements are not *enforceable* until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The annual monitoring, reporting, and recordkeeping burden for this collection, as averaged over the first 3 years after the effective date of the rule, is estimated to be 41 labor hours per year at a total annual cost of $2,319. This estimate includes a one-time plan for demonstrating compliance, annual compliance certification reports, notifications, and recordkeeping. Total labor burden associated with the monitoring requirements over the 3-year period of the ICR are estimated at $6,956.

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.

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 OMB control number for the information collection requirements in this rule will be listed in an amendment to 40 CFR part 9 in a subsequent **Federal Register** document after OMB approves the ICR.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule. The EPA has also determined that this final rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business according to Small Business Administration (SBA) size standards for NAICS code 334413 (*i.e.*, semiconductor crystal growing facilities, semiconductor wafer fabrication facilities, semiconductor test and assembly facilities) whose parent company has 500 or fewer employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. Based on the above definition of small entities, the EPA has determined that there are no small businesses within this source category that would be subject to the final rule.

D. Unfunded Mandates Reform Act

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 rule with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA 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.

The EPA has determined that the final rule does not contain a Federal mandate that may result in expenditures of $100 million or more to State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of the final rule for any year has been estimated to be about $35,800. Thus, the final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the standards contains no regulatory

requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the 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'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The 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, Executive Order 13132 does not apply to the rule. Although section 6 of Executive Order 13132 does not apply to the rule, EPA did consult with State and local officials to enable them to provide timely input in the development of the final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires the 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.'' The final rule does not have tribal implications, as specified in Executive Order 13175. No tribal governments own or operate semiconductor manufacturing facilities. Thus, Executive Order 13175 does not apply to the final rule.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045 (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 EPA 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.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is based on technology performance and not on an assessment of health or safety risks. Furthermore, the final rule has been determined not to be ''economically significant'' as defined under Executive Order 12866.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

The final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. No. 104–113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in their regulatory and procurement 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, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the Office of Management and Budget (OMB), with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rule involves technical standards. The EPA cites the following standards in this rule: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 18, 25, 25A, 26, 26A, and 320. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA method. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G. The search and review results have been documented and are placed in the docket A–97–15 for the final rule.

The voluntary consensus standard ASTM D6420–99, ''Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (GC/MS),'' is appropriate in the cases described below for inclusion in this rule in addition to EPA Method 18 codified at 40 CFR Part 60 Appendix A for the measurement of toluene and total organic HAP.

Similar to EPA's performance-based Method 18, ASTM D6420–99 is also a performance-based method for measurement of gaseous organic compounds. However, ASTM D6420–99 was written to support the specific use of highly portable and automated GC/MS. While offering advantages over the traditional Method 18, the ASTM method does allow some less stringent criteria for accepting GC/MS results than required by Method 18. Therefore, ASTM D6420–99 is a suitable alternative to Method 18 only where: (1) The target compound(s) are those listed in Section 1.1 of ASTM D6420–99, and (2) the target concentration is between 150 ppbv and 100 ppmv.

For target compound(s) not listed in Section 1.1 of ASTM D6420–99, *but potentially detected by mass spectrometry,* the regulation specifies that the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report even if there is no moisture condenser used or the compound is not considered water soluble. For target compound(s) not listed in Section 1.1 of ASTM D6420–99, and not amenable to detection by mass spectrometry, ASTM D6420–99 does not apply.

As a result, EPA will cite ASTM D6420–99 in this rule. The EPA will also cite Method 18 as a gas chromatography (GC) option in addition to ASTM D6420–99. This will allow the continued use of GC configurations other than GC/MS.

In addition to the voluntary consensus standard EPA cites in this rule, the search for emissions measurement procedures identified 14 other voluntary consensus standards. The EPA determined that 11 of these 14 standards identified for measuring emissions of the HAPs or surrogates subject to emission standards in this rule were impractical alternatives to EPA test methods for the purposes of this rule. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for this

determination for the 11 methods are discussed in the docket.

Two of the 14 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of the final rule because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse,'' for EPA Method 2 (and possibly 1); and ASME/BSR MFC 12M, ''Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,'' for EPA Method 2.

The voluntary consensus standard ASTM D6348–98, ''Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy,'' has been reviewed by the EPA as a potential alternative to EPA Method 320. Suggested revisions to ASTM D6348–98 were sent to ASTM by the EPA that would allow the EPA to accept ASTM D6348–98 as an acceptable alternative. The ASTM Subcommittee D22–03 is currently undertaking a revision of ASTM D6348–98. Because of this, we are not citing this standard as a acceptable alternative for EPA Method 320 in the final rule today. However, upon successful ASTM balloting and demonstration of technical equivalency with the EPA FTIR methods, the revised ASTM standard could be incorporated by reference for EPA regulatory applicability. In the interim, facilities have the option to request ASTM D6348–98 as an alternative test method under 40 CFR 63.7(f) and 63.8(f) on a case-by-case basis.

Table 1 to subpart BBBBB lists the EPA testing methods included in the final rule. Under 40 CFR 63.7(f) and 63.8(f) of subpart A, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA, 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. The EPA will submit a report containing the rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). The rule will be effective May 22, 2003.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 28, 2003.

Christine T. Whitman,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

■ 2. Part 63 is amended by adding subpart BBBBB to read as follows:

Subpart BBBBB—National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing

Sec.

What This Subpart Covers

63.7180 What is the purpose of this subpart?
63.7181 Am I subject to this subpart?
63.7182 What parts of my facility does this subpart cover?
63.7183 When do I have to comply with this subpart?

Emission Standards

63.7184 What emission limitations, operating limits, and work practice standards must I meet?

Compliance Requirements

63.7185 What are my general requirements for complying with this subpart?
63.7186 By what date must I conduct performance tests or other initial compliance demonstrations?
63.7187 What performance tests and other compliance procedures must I use?
63.7188 What are my monitoring installation, operation, and maintenance requirements?

Applications, Notifications, Reports, and Records

63.7189 What applications and notifications must I submit and when?
63.7190 What reports must I submit and when?
63.7191 What records must I keep?
63.7192 In what form and how long must I keep my records?

Other Requirements and Information

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What This Subpart Covers

§ 63.7180 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for semiconductor manufacturing facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission standards.

§ 63.7181 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a semiconductor manufacturing process unit that is a major source of hazardous air pollutants (HAP) emissions or that is located at, or is part of, a major source of HAP emissions.

(b) A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, any single HAP at a rate of 10 tons per year (tpy) or more or any combination of HAP at a rate of 25 tpy or more.

§ 63.7182 What parts of my facility does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing affected source that you own or operate that manufactures semiconductors.

(b) An affected source subject to this subpart is the collection of all semiconductor manufacturing process units used to manufacture p-type and n-type semiconductors and active solid-state devices from a wafer substrate, including research and development activities integrated into a semiconductor manufacturing process unit. A semiconductor manufacturing process unit includes the equipment assembled and connected by ductwork or hard-piping including furnaces and associated unit operations; associated wet and dry work benches; associated recovery devices; feed, intermediate, and product storage tanks; product transfer racks and connected ducts and piping; pumps, compressors, agitators, pressure-relief devices, sampling connecting systems, open-ended valves

or lines, valves, connectors, and instrumentation systems; and control devices.

(c) Your affected source is a new affected source if you commence construction of the affected source after May 8, 2002, and you meet the applicability criteria in § 63.7181 at the time you commence construction.

(d) Your affected source is a reconstructed affected source if you meet the criteria for ''reconstruction,'' as defined in § 63.2.

(e) Your source is an existing affected source if it is not a new or reconstructed affected source.

§ 63.7183 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraphs (a)(1) and (2) of this section.

(1) If you start up your affected source before May 22, 2003, then you must comply with the emission standards for new and reconstructed sources in this subpart no later than May 22, 2003.

(2) If you start up your affected source after May 22, 2003, then you must comply with the emission standards for new and reconstructed sources in this subpart upon startup of your affected source.

(b) If you have an existing affected source, you must comply with the emission standards for existing sources no later than 3 years from May 22, 2003.

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP and an affected source subject to this subpart, paragraphs (c)(1) and (2) of this section apply.

(1) Any portion of your existing facility that is a new affected source as specified at § 63.7182(c), or a reconstructed affected source as specified at § 63.7182(d), must be in compliance with this subpart upon startup.

(2) Any portion of your facility that is an existing affected source, as specified at § 63.7182(e), must be in compliance with this subpart by not later than 3 years after it becomes a major source.

(d) You must meet the notification requirements in § 63.7189 and in subpart A of this part. You must submit some of the notifications (*e.g.*, Initial Notification) before the date you are required to comply with the emission limitations in this subpart.

Emission Standards

§ 63.7184 What emission limitations, operating limits, and work practice standards must I meet?

(a) If you have a new, reconstructed, or existing affected source, as defined in § 63.7182(b), you must comply with all applicable emission limitations in this section on and after the compliance dates specified in § 63.7183.

(b) *Process vents—organic HAP emissions.* For each process vent that emits organic HAP, other than process vents from storage tanks, you must limit organic HAP emissions to the level specified in paragraph (b)(1) or (2) of this section. These limitations can be met by venting emissions from your process vent through a closed vent system to any combination of control devices meeting the requirements of § 63.982(a)(2).

(1) Reduce the emissions of organic HAP from the process vent stream by 98 percent by weight.

(2) Reduce or maintain the concentration of emitted organic HAP from the process vent to less than or equal to 20 parts per million by volume (ppmv).

(c) *Process vents—inorganic HAP emissions.* For each process vent that emits inorganic HAP, other than process vents from storage tanks, you must limit inorganic HAP emissions to the level specified in paragraph (c)(1) or (2) of this section. These limitations can be met by venting emissions from your process vent through a closed vent system to a halogen scrubber meeting the requirements of §§ 63.983 (closed vent system requirements) and 63.994 (halogen scrubber requirements); the applicable general monitoring requirements of § 63.996; the applicable performance test requirements; and the monitoring, recordkeeping and reporting requirements referenced therein.

(1) Reduce the emissions of inorganic HAP from the process vent stream by 95 percent by weight.

(2) Reduce or maintain the concentration of emitted inorganic HAP from the process vent to less than or equal to 0.42 ppmv.

(d) *Storage tanks.* For each storage tank, 1,500 gallons or larger, you must limit total HAP emissions to the level specified in paragraph (d)(1) or (2) of this section if the emissions from the storage tank vent contains greater than 0.42 ppmv inorganic HAP. These limitations can be met by venting emissions from your storage tank through a closed vent system to a halogen scrubber meeting the requirements of §§ 63.983 (closed vent system requirements) and 63.994 (halogen scrubber requirements); the applicable general monitoring requirements of § 63.996; the applicable performance test requirements; and the monitoring, recordkeeping and reporting requirements referenced therein.

(1) Reduce the emissions of inorganic HAP from each storage tank by 95 percent by weight.

(2) Reduce or maintain the concentration of emitted inorganic HAP from the process vent to less than or equal to 0.42 ppmv.

(e) You must comply with the applicable work practice standards and operating limits contained in § 63.982(a)(1) and (2). The closed vent system inspection requirements of § 63.983(c), as referenced by § 63.982(a)(1) and (2), do not apply.

Compliance Requirements

§ 63.7185 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the requirements of § 63.7184 at all times, except during periods of startup, shutdown, or malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) You must develop and implement a written startup, shutdown, and malfunction plan (SSMP). Your SSMP must be prepared in accordance with the provisions in § 63.6(e)(3).

(d) You must perform all the items listed in paragraphs (d)(1) through (3) of this section:

(1) Submit the necessary notifications in accordance with § 63.7189.

(2) Submit the necessary reports in accordance with § 63.7190.

(3) Maintain all necessary records you have used to demonstrate compliance with this subpart in accordance with § 63.7191.

§ 63.7186 By what date must I conduct performance tests or other initial compliance demonstrations?

For each process vent or storage tank vent emission limitation in § 63.7184 for which initial compliance is demonstrated by meeting a percent by weight HAP emissions reduction, or a HAP concentration limitation, you must conduct performance tests or an initial compliance demonstration within 180 days after the compliance date that is specified for your source in § 63.7183 and according to the provisions in § 63.7(a)(2).

§ 63.7187 What performance tests and other compliance procedures must I use?

(a) You must conduct each performance test in Table 1 to this subpart that applies to you as specified for process vents in § 63.982(a)(2) and storage tanks in § 63.982(a)(1). Performance tests must be conducted under maximum operating conditions or HAP emissions potential. Section 63.982(a)(1) and (2) only includes methods to measure the total organic regulated material or total organic carbon (TOC) concentration. The EPA Methods 26 and 26A are included in Table 1 to this subpart in addition to the test methods contained within § 63.982(a)(1) and (2). The EPA Method 26 or 26A must be used for testing regulated material containing inorganic HAP. Method 320 of 40 CFR part 63, appendix A, must be used to measure total vapor phase organic and inorganic HAP concentrations.

(b) If, without the use of a control device, your process vent stream has an organic HAP concentration of 20 ppmv or less or an inorganic HAP concentration of 0.42 ppmv or less, or your storage tank vent stream has an inorganic HAP concentration of 0.42 ppmv or less, you may demonstrate that the vent stream is compliant by engineering assessments and calculations or by conducting the applicable performance test requirements specified in Table 1 to this subpart. Your engineering assessments and calculations, as with performance tests (as specified in § 63.982(a)(1) and (2)), must represent your maximum operating conditions or HAP emissions potential and must be approved by the Administrator. You must demonstrate continuous compliance by certifying that your operations will not exceed the maximum operating conditions or HAP emissions potential represented by your engineering assessments, calculations, or performance test.

(c) If you are using a control device to comply with the emission limitations in § 63.7184 and the inlet concentration of HAP to the control device is 20 ppmv or less, then you may demonstrate that the control device meets the percent by weight HAP emission reduction limitation in § 63.7184(c)(1) or (d)(1) by conducting a design evaluation as specified in paragraph (i) of this section. Your design evaluation must represent your maximum operating conditions or HAP emissions potential and must be approved by the Administrator. You must demonstrate continuous compliance by certifying that your operations will not exceed the maximum operating conditions or HAP emissions potential represented by your design evaluation.

(d) During periods of startup, shutdown, and malfunction, you must operate in accordance with your SSMP.

(e) For each monitoring system required in this section, you must develop and submit for approval a site-specific monitoring plan that addresses the criteria specified in paragraphs (e)(1) through (3) of this section.

(1) Installation of the continuous monitoring system (CMS) sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.,* on or downstream of the last control device);

(2) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system; and

(3) Performance evaluation procedures and acceptance criteria (*e.g.*, calibrations).

(f) In your site-specific monitoring plan, you must also address the procedural processes in paragraphs (f)(1) through (3) of this section.

(1) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1), (3), (4)(ii), (7), and (8);

(2) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d); and

(3) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i).

(g) You must conduct a performance evaluation of each CMS in accordance with your site-specific monitoring plan.

(h) You must operate and maintain the CMS in continuous operation according to the site-specific monitoring plan.

(i) *Design evaluation.* To demonstrate that a control device meets the required percent by weight inorganic HAP emission reduction limitation in § 63.7184(c)(1) or (d)(1), a design evaluation must address the composition of the inorganic HAP concentration of the vent stream entering the control device. A design evaluation also must address other vent stream characteristics and control device operating parameters as specified in any one of paragraphs (i)(1) through (5) of this section, depending on the type of control device that is used. If the vent stream is not the only inlet to the control device, the efficiency demonstration must also consider all other vapors, gases, and liquids, other than fuels, received by the control device.

(1) For a condenser, the design evaluation shall consider the vent stream flow rate, relative humidity, and temperature and shall establish the design outlet organic HAP compound concentration level, design average temperature of the condenser exhaust vent stream, and the design average temperatures of the coolant fluid at the condenser inlet and outlet. The temperature of the gas stream exiting the condenser must be measured and used to establish the outlet organic HAP concentration.

(2) For a carbon adsorption system that regenerates the carbon bed directly onsite in the control device such as a fixed-bed adsorber, the design evaluation shall consider the vent stream flow rate, relative humidity, and temperature and shall establish the design exhaust vent stream organic compound concentration level, adsorption cycle time, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total regeneration stream mass or volumetric flow over the period of each complete carbon bed regeneration cycle, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon. For vacuum desorption, the pressure drop shall be included.

(3) For a carbon adsorption system that does not regenerate the carbon bed directly onsite in the control device such as a carbon canister, the design evaluation shall consider the vent stream mass or volumetric flow rate, relative humidity, and temperature and shall establish the design exhaust vent stream organic compound concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

(4) For a scrubber, the design evaluation shall consider the vent stream composition, constituent concentrations, liquid-to-vapor ratio, scrubbing liquid flow rate and concentration, temperature, and the reaction kinetics of the constituents with the scrubbing liquid. The design evaluation shall establish the design exhaust vent stream organic compound concentration level and will include the additional information in paragraphs (i)(5)(i) and (ii) of this section for trays and a packed column scrubber.

(i) Type and total number of theoretical and actual trays;

(ii) Type and total surface area of packing for entire column, and for individual packed sections if column contains more than one packed section.

§ 63.7188 What are my monitoring installation, operation, and maintenance requirements?

If you comply with the emission limitations of § 63.7184 by venting the emissions of your semiconductor process vent through a closed vent system to a control device, you must comply with the requirements of paragraphs (a) and (b) of this section.

(a) You must meet the applicable general monitoring, installation, operation, and maintenance requirements specified in § 63.996.

(b) You must meet the monitoring, installation, operation, and maintenance requirements specified for closed vent systems and applicable control devices in §§ 63.983 through 63.995. If you used the design evaluation procedure in § 63.7187(i) to demonstrate compliance, you must use the information from the design evaluation to establish the operating parameter level for monitoring of the control device.

Applications, Notifications, Reports, and Records

§ 63.7189 What applications and notifications must I submit and when?

(a) You must submit all of the applications and notifications in §§ 63.7(b) and (c); 63.8(e), (f)(4) and (f)(6); and 63.9(b) through (e), (g) and (h) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2), if you start up your affected source before May 22, 2003, you must submit an Initial Notification not later than 120 calendar days after May 22, 2003.

(c) As specified in § 63.9(b)(3), if you start up your new or reconstructed affected source on or after May 22, 2003. you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test or other initial compliance demonstration, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii) and according to paragraphs (e)(1) and (2) of this section.

(1) For each initial compliance demonstration that does not include a performance test, you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration. If you used the design evaluation procedure in § 63.7187(i) to demonstrate compliance, you must include the results of the design evaluation in the Notification of Compliance Status.

(2) For each initial compliance demonstration required that includes a performance test conducted according to the requirements in Table 1 to this subpart, you must submit a notification of the date of the performance evaluation at least 60 days prior to the date the performance evaluation is scheduled to begin as required in § 63.8(e)(2).

§ 63.7190 What reports must I submit and when?

(a) You must submit each of the following reports that apply to you.

(1) *Periodic compliance reports.* You must submit a periodic compliance report that contains the information required under paragraphs (c) through (e) of this section, and any requirements specified to be reported for process vents in § 63.982(a)(2) and storage tanks in § 63.982(a)(1).

(2) *Immediate startup, shutdown, and malfunction report.* You must submit an Immediate Startup, Shutdown, and Malfunction Report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your SSMP. Your report must contain actions taken during the event. You must submit this report by fax or telephone within 2 working days after starting actions inconsistent with you SSMP. You are required to follow up this report with a report specifying the information in § 63.10(d)(5)(ii) by letter within 7 working days after the end of the event unless you have made alternative arrangements with your permitting authority.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date according to paragraphs (b)(1) through (5) of this section.

(1) The first periodic compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.7183 and ending on June 30 or December 31, whichever date is the first date following the end of the first 12 calendar months after the compliance date that is specified for your source in § 63.7183.

(2) The first periodic compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first 12 calendar months after the compliance date that is specified for your affected source in § 63.7183.

(3) Each subsequent periodic compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent periodic compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent periodic compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The periodic compliance report must contain the information specified in paragraphs (c)(1) through (5) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If there are no deviations from any emission limitations that apply to you, a statement that there were no deviations from the emission limitations during the reporting period and that no CMS was inoperative, inactive, malfunctioning, out-of-control, repaired, or adjusted.

(5) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your SSMP, your periodic compliance report must include the information in § 63.10(d)(5) for each startup, shutdown, and malfunction.

(d) For each deviation from an emission limitation that occurs at an affected source where you are not using a CMS to comply with the emission limitations, the periodic compliance report must contain the information in

paragraphs (d)(1) through (2) of this section.

(1) The total operating time of each affected source during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause), if applicable.

(e) For each deviation from an emission limitation occurring at an affected source where you are using a CMS to demonstrate compliance with the emission limitation, you must include the information in paragraphs (e)(1) through (8) of this section.

(1) The date and time that each malfunction started and stopped, and the reason it was inoperative.

(2) The date and time that each CMS was inoperative, except for calibration checks.

(3) The date and time that each CMS was out-of-control, including the information in § 63.8(c)(8).

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period, and the cause of the deviation.

(5) A summary of the total duration of the deviation during the reporting period, and the total duration as a percent of the total source operating time during that reporting period.

(6) A summary of the total duration of CMS downtime during the reporting period, and the total duration of CMS downtime as a percent of the total source operating time during the reporting period.

(7) An identification of each HAP that was monitored at the affected source.

(8) The date of the latest CMS certification or audit.

§ 63.7191 What records must I keep?

(a) You must keep the records listed in paragraphs (a)(1) through (3) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Notification of Compliance Status and periodic report of compliance that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunctions.

(3) Records of performance tests and performance evaluations as required in § 63.10(b)(2)(viii).

(b) For each CMS, you must keep the records listed in paragraphs (b)(1) through (5) of this section.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) All required measurements needed to demonstrate compliance with a relevant standard (*e.g.*, 30-minute averages of CMS data, raw performance testing measurements, raw performance evaluation measurements).

(3) All required CMS measurements (including monitoring data recorded during unavoidable CMS breakdowns and out-of-control periods).

(4) Records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(5) Records for process vents according to the requirements specified in § 63.982(a)(2) and storage tank vents according to the requirements specified in § 63.982(a)(1).

§ 63.7192 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.7193 What parts of the General Provisions apply to me?

Table 2 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.13 apply to you.

§ 63.7194 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. Environmental Protection Agency (EPA), or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the U.S. EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are as listed in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the non-opacity emission limitations in § 63.7184 under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.7195 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in §§ 63.2 and 63.981, the General Provisions of this part (40 CFR part 63, subpart A), and in this section as follows:

Control device means a combustion device, recovery device, recapture device, or any combination of these devices used for the primary purpose of reducing emissions to comply with this subpart. Devices that are inherent to a process or are integral to the operation of a process are not considered control devices for the purposes of this subpart, even though these devices may have the secondary effect of reducing emissions.

Process vent means the point at which HAP emissions are released to the atmosphere from a semiconductor manufacturing process unit or storage tank by means of a stack, chimney, vent, or other functionally equivalent opening. The HAP emission points originating from wastewater treatment equipment, other than storage tanks, are not considered to be a process vent, unless the wastewater treatment equipment emission points are connected to a common vent or exhaust plenum with other process vents.

Semiconductor manufacturing means the collection of semiconductor manufacturing process units used to manufacture p-type and n-type semiconductors or active solid state devices from a wafer substrate, including processing from crystal growth through wafer fabrication, and testing and assembly. Examples of semiconductor or related solid state devices include semiconductor diodes, semiconductor stacks, rectifiers, integrated circuits, and transistors.

Semiconductor manufacturing process unit means the collection of equipment used to carry out a discrete operation in the semiconductor manufacturing process. These

operations include, but are not limited to, crystal growing; solvent stations used to prepare and clean materials for subsequent processing or for parts cleaning; wet chemical stations used for cleaning (other than solvent cleaning); photoresist application, developing, and stripping; etching; gaseous operation stations used for stripping, cleaning, doping, etching, and layering; separation; encapsulation; and testing. Research and development operations associated with semiconductor manufacturing and conducted at a semiconductor manufacturing facility are considered to be semiconductor manufacturing process units.

Storage tank means a stationary unit that is constructed primarily from nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) which provides structural support and is designed to hold an accumulation of liquids or other materials used in or generated by a semiconductor manufacturing process unit. The following are not storage tanks for the purposes of this subpart:

(1) Tanks permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Flow-through tanks where wastewater undergoes treatment (such as pH adjustment) before discharge, and are not used to accumulate wastewater;

(3) Bottoms receiver tanks; and

(4) Surge control tanks.

Tables to Subpart BBBBB of Part 63

As stated in § 63.7187, you must comply with the requirements for performance tests in the following table:

TABLE 1 TO SUBPART BBBBB OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

For . . .	You must . . .	Using . . .	According to the following requirements . . .
1. Process or storage tank vent streams.	a. Select sampling port's location and the number of traverse ports.	Method 1 or 1A of 40 CFR part 60, appendix A.	Sampling sites must be located at the inlet (if emission reduction or destruction efficiency testing is required) and outlet of the control device and prior to any releases to the atmosphere.
	b. Determine velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A.	For HAP reduction efficiency testing only; not necessary for determining compliance with a ppmv concentration limit.
	c. Conduct gas molecular weight analysis.	i. Method 3, 3A, or 3B of 40 CFR part 60, appendix A.	For flow rate determination only.
		ii. ASME PTC 19.10–1981–Part 10.	You may use ASME PTC 19.10–1981–Part 10 (available for purchase from Three Park Avenue, New York, NY 10016–5990) as an alternative to EPA Method 3B.
	d. Measure moisture content of the stack gas.	Method 4 of 40 CFR part 60, appendix A.	For flow rate determination and correction to dry basis, if necessary.
2. Process vent stream	a. Measure organic and inorganic HAP concentration (two method option).	i. Method 18, 25, or 25A of 40 CFR part 60, appendix A, AND ii. Method 26 or 26A of 40 CFR part 60, appendix A.	(1) To determine compliance with the percent by weight emission reduction limit, conduct simultaneous sampling at inlet and outlet of control device and analyze for same organic and inorganic HAP at both inlet and outlet; and (2) If you use Method 25A to determine the TOC concentration for compliance with the 20 ppmv emission limitation, the instrument must be calibrated on methane or the predominant HAP. If you calibrate on the predominant HAP, you must comply with each of the following: —The organic HAP used as the calibration gas must be the single organic HAP representing the largest percent of emissions by volume. —The results are acceptable if the response from the high level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on its most sensitive scale. —The span value of the analyzer must be less than 100 ppmv. To determine compliance with 98 percent reduction limit, conduct simultaneous sampling at inlet and outlet of control device and analyze for same organic and inorganic HAP at both inlet and outlet.
	c. Measure organic and inorganic HAP simultaneously (one method option).	Method 320 of 40 CFR part 63, appendix A.	To determine compliance with the percent by weight emission reduction limit, conduct simultaneous sampling at inlet and outlet of control device and analyze for same organic and inorganic HAP at both inlet and outlet.
3. Storage tank vent stream	Measure inorganic HAP concentration.	Method 26 or 26A of 40 CFR part 60, appendix A, or Method 320 of 40 CFR part 63, appendix A.	To determine compliance with percent by weight emission reduction limit, conduct simultaneous sampling at inlet and outlet of control device and analyze for same inorganic HAP at both inlet and outlet.

As stated in § 63.7193, you must comply with the applicable General Provisions requirements according to the following table:

TABLE 2 TO SUBPART BBBBB OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART BBBBB

Citation	Subject	Applicable to Subpart BBBBB?
§ 63.1	Applicability	Yes.
§ 63.2	Definitions	Yes.
§ 63.3	Units and Abbreviations	Yes.
§ 63.4	Prohibited Activities and Circumvention	Yes.
§ 63.5	Construction and Reconstruction	Yes.
§ 63.6	Compliance with Standards and Maintenance	Yes.
§ 63.7	Performance Testing Requirements	Yes, with the exception of § 63.7(e)(1). The requirements of § 63.7(e)(1) do not apply. Performance testing requirements that apply are specified in this subpart, and in § 63.982(a)(1) and (2).
§ 63.8	Monitoring Requirements	Monitoring requirements are specified in this subpart and in § 63.982(a)(1) and (2). The closed vent system inspection requirements of § 63.983(c), as referenced by § 63.982(a)(1) and (2), do not apply.
§ 63.9	Notification Requirements	Yes.
§ 63.10	Recordkeeping and Reporting Requirements	Yes, with the exception of § 63.10(e). The requirements of § 63.10(e) do not apply. In addition, the recordkeeping and reporting requirements specified in this subpart apply.
§ 63.11	Flares	Yes.
§ 63.12	Delegation	Yes.
§ 63.13	Addresses	Yes.
§ 63.14	Incorporation by Reference	Yes.
§ 63.15	Availability of Information	Yes.

[FR Doc. 03–5519 Filed 5–21–03; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7500–8]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct Final Notice of Deletion of the Rose Park Sludge Pit Superfund Site From the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is publishing a Direct Final Notice of Deletion of the Rose Park Sludge Pit Superfund Site (Site), located in Salt Lake City, Utah, from the National Priorities List (NPL).

The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B to 40 CFR part 300, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Utah, through the Utah Department of Environmental Quality (UDEQ), based on EPA's determination that all appropriate response actions under CERCLA, other than five-year reviews and operation & maintenance, have been completed at the Site and, therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final deletion will be effective June 30, 2003, unless EPA receives adverse comments by June 23, 2003. If EPA receives significant adverse comment(s), EPA will withdraw the Direct Final Notice of Deletion and it will not take effect.

ADDRESSES: Comments should be mailed to: Armando Saenz, Remedial Project Manager (RPM), Mail Code: 8EPR–SR, U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466.

Information Repositories: Comprehensive information is available for viewing and copying at the following information repositories for the Site: (1) U.S. EPA Region 8 Superfund Records Center, 999 18th Street, Fifth Floor, Denver, Colorado 80202–2466, Monday through Friday, 8 a.m.—4:30 p.m.; and, (2) Utah Department of Environmental Quality, Division of Environmental Response & Remediation, 168 North 1950 West, Salt Lake City, Utah 84116.

FOR FURTHER INFORMATION CONTACT: Armando Saenz, 303–312–6559, Remedial Project Manager (RPM), Mail Code: 8EPR–SR, U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region 8 is publishing this Direct Final Notice of the Deletion of the Rose Park Sludge Pit Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action, pursuant to EPA's authority under CERCLA and the NCP.

Because EPA considers this action to be noncontroversial, this action is being taken without prior publication of a notice of intent to delete. This action will be effective June 30, 2003 unless EPA receives adverse comments by June 23, 2003 on this document. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of this Notice and the comments already received. There will be no additional opportunity to comment on this deletion process.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section

IV discusses the Rose Park Sludge Pit Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the State, 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 Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

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

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, EPA policy requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate or order remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) The EPA, lead agency for the Site, consulted with Utah on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) Utah concurred with deletion of the Site from the NPL.

(3) Concurrent with the publication of this Direct Final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete was published today in the ''Proposed Rules'' section of the **Federal Register**, is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this notice, EPA will publish a timely notice of withdrawal of this Direct Final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Location & History

The Site is located in Salt Lake City, Utah at approximately 1300 North Boy Scout Drive (1200 West). The Site is bordered by vacant, undeveloped land to the north and Rose Park to the east, west, and south. Rose Park is maintained by Salt Lake City Corporation and includes tennis courts, baseball and soccer fields, picnic areas, parking lots, and restrooms. Residential neighborhoods are located south of Rose Park.

Utah Oil and Refining Company disposed of acidic waste sludges in an unlined pit on-site from the 1930s until 1957. This waste material was generated from the petroleum refinery located east of the site. Salt Lake City purchased the property in 1957 to prevent further dumping of the waste material. In 1960 Salt Lake City Corporation removed 40 to 100 truck-loads of sludge and covered the remaining waste sludge with a soil cap.

Salt Lake City rediscovered the waste disposal site in 1976 during expansion of the adjacent city park. Due to state and local concerns, EPA and Amoco conducted a number of site investigations between 1979 and 1981. The sludge pit covered an area of approximately 5.5 acres and the waste material was found as deep as 20 feet below ground surface (bgs). The shallow, unconfined aquifer was approximately eight to ten feet bgs and flowed towards the northwest. Because the Site was considered the State of Utah's top priority, it was listed on the NPL on September 8, 1983.

Remedial Actions

Salt Lake City Corporation, Salt Lake City/County Health Department, the Utah State Department of Health, EPA, and Amoco Oil Company signed an Intergovernmental/Corporate Cooperation Agreement (ICCA) on October 29, 1982. The ICCA required Amoco to conduct remedial activities on-site, which included constructing a bentonite slurry wall around the perimeter of the site and capping the waste material. The primary objectives of the containment remedy were to prevent exposure to the acid waste sludge, eliminate potentially unhealthy odors and vapors, and prevent off-site migration of the sludge through surface water and groundwater.

Amoco conducted remedial activities at the Site between 1982 and 1984. First, a two-foot wide and 30-feet deep bentonite slurry wall was constructed around the perimeter of the site. This wall was installed ten feet below the deepest known contamination. Construction of the slurry wall was completed on January 17, 1983. Following installation of the slurry wall, Amoco constructed a cap over the waste material. This protective cover included a sand layer, fabric membrane, compacted clay layer, and 18-inches of soil. Placement of the cap was completed on July 22, 1983. The surface of the cap was then graded to control surface water run-on and run-off. The final seeding of the topsoil was completed in the spring of 1984. Lastly, vehicular barriers and warning signs were placed around the perimeter of the repository in October 1984.

The U.S. Army Corps of Engineers (COE) provided construction oversight for the EPA. The COE indicated in their progress reports that the slurry wall and cap were constructed according to the design and there were no deficiencies. EPA also determined the remedy; as designed and implemented; was

protective of human health and the environment because all exposure pathways had been addressed.

Institutional Controls (ICs) and Operation & Maintenance (O&M)

ICs and O&M requirements for the Site were also included in the ICCA. The ICs prevent excavation activities or the installation of any underground utilities on the Site. BP/Amoco recorded the ICCA in the chain-of-title for the Site at the Salt Lake County Recorders Office in 1985. The recording provides a public record of the ICs and background information in the event of a transfer of ownership.

O&M activities at the Site included groundwater monitoring and sampling, site inspections, and well integrity testing. Salt Lake City Corporation conducted O&M activities from 1984 through 1992. Because the EPA, State of Utah, and BP/Amoco identified several deficiencies regarding O&M activities during this time period, BP/Amoco took over the responsibility of O&M from the Salt Lake City Corporation in 1992. Since taking over this duty in 1992, BP/Amoco has documented the O&M activities from each year in an annual report.

Five-Year Reviews

Three Five-Year Reviews have been conducted at the Site. The reviews were completed on June 1, 1992, August 5, 1997 and September 19, 2002, respectively. These reviews indicated that the remedy was protective of human health and the environment.

The last review, conducted by UDEQ, found that the cap is in good condition thus preventing exposure to the waste material in the repository. A chain-link fence and guardrail around the perimeter of the repository prevent public access to the Site and caution signs on each side of the repository warn park visitors of the Site. Ground-water monitoring data indicate the waste material remains contained within the repository. ICs for the Site prevent excavation activities or the installation of underground utilities on the Site. Three issues that did not immediately impact protectiveness were identified and have subsequently been addressed by BP/Amoco.

Policy reviews are required at the Site every five years because remedial activities were completed prior to the passage of the Superfund Amendments and Reauthorization Act (SARA) of 1986 and waste material was left on-site, which prevents unrestricted exposure and unlimited use of the Site. Therefore, the next Five-Year Review for this Site will be conducted by September 19, 2007.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket, which EPA relied on for recommendation of the deletion from the NPL, are available to the public in the information repositories.

V. Deletion Action

The EPA, with concurrence from the State of Utah through UDEQ, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA, other than five-year reviews and operation & maintenance, are necessary. Therefore, EPA is taking this action to delete the Site from the NPL.

Because EPA considers this action to be noncontroversial, this action is being taken without prior publication of a notice of intent to delete. This action will be effective June 30, 2003, unless EPA receives adverse comments by June 23, 2003. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment on this deletion process.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution, Water supply.

Dated: May 2, 2003.

Robert E. Roberts,

Regional Administrator, Region 8.

■ For the reasons set out in this document, 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.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended under ''Utah'' by removing the entry for ''Rose Park Sludge Pit''.

[FR Doc. 03–12612 Filed 5–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7500–6]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of deletion of the Petrochem Recycling Corp./Ekotek, Inc., Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is publishing a Direct final Notice of Deletion of the Petrochem Recycling Corp./Ekotek, Inc., Superfund Site (Site), located in Salt Lake City, Utah, from the National Priorities List (NPL).

The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is Appendix B to 40 CFR Part 300, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Utah, through the Utah Department of Environmental Quality (UDEQ), based on EPA's determination that all appropriate response actions under CERCLA have been completed at the Site and, therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final deletion will be effective June 30, 2003, unless EPA receives adverse comments by June 23, 2003. If EPA receives significant adverse comment(s), EPA will withdraw the Direct Final Notice of Deletion and it will not take effect. EPA will, as appropriate, address all public comments in a subsequent final deletion notice based on this Notice.

ADDRESSES: Comments should be mailed to: Armando Saenz, Remedial Project Manager (RPM), Mail Code: 8EPR–SR, U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466.

Information Repository: Comprehensive information is available

for viewing and copying at the information repository for the Site located at: U.S. EPA Region 8 Superfund Records Center, 999 18th Street, Fifth Floor, Denver, Colorado 80202–2466, Monday through Friday, 8:00 a.m.–4:30 p.m.

FOR FURTHER INFORMATION CONTACT:

Armando Saenz, 303–312–6559, Remedial Project Manager (RPM), Mail Code: 8EPR–SR, U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region 8 is publishing this Direct Final Notice of Deletion of the Petrochem Recycling Corp./Ekotek, Inc., Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action, pursuant to EPA's authority under CERCLA and the NCP.

Because EPA considers this action to be noncontroversial, this action is being taken without prior publication of a notice of intent to delete. This action will be effective June 30, 2003 unless EPA receives adverse comments by June 23, 2003 on this document. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of this Notice and the comments already received. There will be no additional opportunity to comment on this deletion process.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Petrochem Recycling Corp./Ekotek, Inc., Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the State, 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 Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

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

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c), requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate or order remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) The EPA, lead agency for the Site, consulted with Utah on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) Utah concurred with deletion of the Site from the NPL.

(3) Concurrent with the publication of this Direct Final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete was published today in the ''Proposed Rules'' section of the **Federal Register**, is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the Site information repository identified above.

(5) If adverse comments are received within the 30-day public comment period on this notice, EPA will publish a timely notice of withdrawal of this Direct Final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Location & History

The Site is located in Township 1 North, Range 1 West, Section 23, and occupies approximately seven acres in an industrial corridor in the northern section of Salt Lake City, Utah. The Site was originally owned and operated as an oil refinery by O. C. Allen Oil Company, from 1953 to 1968. In 1968, Flinco, Inc., purchased the facility and operated the refinery until 1978. During that time Flinco changed its name to Bonus International Corp. In 1978, Axel Johnson, Inc., acquired the facility and operated it through its Delaware-based subsidiary, Ekotek, Inc. At that time, Ekotek, Inc., converted the Site into a hazardous waste storage and treatment and petroleum recycling facility. In 1981, the Site was reincorporated as Ekotek Incorporated, a Utah corporation.

From 1980 to 1987, the facility operated under Resource Conservation and Recovery Act (RCRA) Interim Status, and received a hazardous waste storage permit, issued by UDEQ, in July 1987 for a limited number of activities. Ekotek, Inc., declared bankruptcy in November of 1987. Petrochem Recycling Corp. leased the facility in 1987 from Ekotek, Inc., and continued operations until February 1988.

Site operations were shut down in February 1988 after the issuance to Petrochem Recycling Corp. of a Notice of Violation by the Utah Bureau of Solid and Hazardous Waste and the Bureau of Air Quality. In November 1988, Region 8 EPA Emergency Response Branch initiated an emergency surface removal action at the Site.

On August 2, 1989, an Administrative Order on Consent (AOC) for Emergency Surface Removal (Docket CERCLA–VIII–89–25) was issued to 27 Potentially Responsible Parties (PRPs) to undertake actions to clean up the Site. These PRPs operated as members of a voluntary association termed the ESRC (Ekotek Site Remediation Committee.) As part of the emergency surface removal action, the ESRC removed surface and underground storage tanks, containers, contaminated sludges, pooled liquids and processing equipment from the Site.

In November 1989, EPA began site assessment field operations. The Site was proposed for listing on the National Priorities List (NPL) on July 29, 1991. The Site was listed on the NPL on October 14, 1992. Only one operable unit was designated for the Site.

Remedial Investigation and Feasability Study (RI/FS)

An Administrative Order on Consent (AOC) for the performance of the Remedial Investigation/Feasibility Study (RI/FS) was signed in July 1992 (Docket No. CERCLA (106) VIII–92–21). Members of the ESRC were Respondents for the RI/FS AOC. The Phase I field investigation was undertaken from December 1992 to March 1993 and Phase II investigations were conducted from August to October 1993. A final RI report was issued in July 1994 and the final FS report was issued in January 1995. Two addenda to the FS were submitted on February 24, 1995 and April 7, 1995. EPA published the notice of completion for the FS and the Proposed Plan for remedial action on July 19, 1995.

The results of the remedial investigation indicated that surface soils on the property contained petroleum hydrocarbon contaminants, including semivolatile organic compounds (SVOCs) and polychlorinated biphenyls (PCBs). Contaminated soil extended to the water table in the vicinity of the former tank farm/processing area where a plume of light non-aqueous phase liquids (LNAPL) was present. Groundwater analytical results collected during the RI indicated that vinyl chloride, cis-1,2-DCE, benzene, and arsenic were present at concentrations above their maximum contaminant levels (MCLs). The feasibility study was completed in January 1995 and included development and evaluation of ten site-wide remedial alternatives. The alternatives consisted of various combinations of technologies for soil and groundwater remediation, including soil excavation and disposal or treatment, containment, LNAPL removal, groundwater extraction and disposal, and intrinsic groundwater remediation.

Record of Decision (ROD) and Explanations of Significant Differences (ESDs)

EPA's remedy decision was embodied in a final ROD signed on September 27, 1996. The components of the selected remedy included:

- Removal/Disposal of Hot Spot Soils
- Consolidation/Capping of Soils that Exceed Soil Performance Standards
- Partial Removal/Disposal of Soil and Buried Debris and Cap Remaining Debris
- Removal/Treatment of 100% of the LNAPL
- Natural Attenuation/Intrinsic Remediation of Ground Water
- Access and Land Use Restrictions for the Site

An ESD was issued on December 9, 1997, by EPA to modify certain remediation criteria established in the 1996 Record of Decision. The significant differences addressed in the ESD were: corrected and revised soil performance standard values for 2,3,7,8,-TCDD(TEF) and PCBs; revised soil hot spot performance standard value for PCBs; and an alternative to permit discharge of water to re-injection wells or to a surface water/storm drain via the substantive requirements of a UPDES permit.

A second ESD was issued on May 11, 1999, by EPA. The second ESD modified two aspects of the 1996 Record of Decision; first it deleted manganese as a designated contaminant of concern in the ground water, and second it increased the volume of contaminated soil destined for off-site disposal.

Changes to the original remedy due to the two ESDs resulted in the following remedy:

- Removal/Disposal of soils exceeding hot spot and soil performance standards
- Removal/Incineration of floating LNAPL down to 0.02 feet thickness
- Natural Attenuation/Intrinsic Remediation of groundwater
- Backfilling excavations with clean soil and regrading/restoration of Site

Response Actions

Removal Action. An Administrative Order on Consent for Removal Action was issued on December 22, 1997 (Docket No. CERCLA (106) VIII–98–05) for the performance of Drum and Sludge Removal. Members of the ESRC were Respondents for the Administrative Order on Consent for Removal Action. The actions under this AOC were completed prior to the Remedial Design and Remedial Action (RD/RA) Consent Decree in order to expedite and facilitate the remedial action. The actions completed under the Drum and Sludge Removal included the following: the characterization of drummed waste and filter cake sludge, the disposal of approximately 230 drums and the associated waste at a permitted RCRA facility and the disposal of approximately 450 cubic yards of filter cake sludge at a permitted RCRA facility. A final Drum and Sludge Removal Completion Report was issued in December 1998.

Remedial Actions. EPA and the ESRC representatives negotiated an agreement to implement the remedy selected in the ROD. This agreement, in the form of a consent decree for remedial design and remedial action (RD/RA Consent Decree), was lodged on March 4, 1998, and entered on April 27, 1998, in the U.S. District Court for Utah.

Remedial actions were conducted in four stages:

- Stage 1: Building Demolition
- Stage 2: Site Demolition, Hot Spot and Removal of Buried Debris
- Stage 3: Soil Excavation and Disposal and LNAPL Excavation and Incineration
- Stage 4: Groundwater Studies

All remedial actions were conducted in accordance with the ROD, ESDs, Remedial Design (May 1999) and Consent Decree. Groundwater studies supported the choice of monitored natural attenuation/intrinsic remediation for the groundwater component of the remedy. Confirmatory sampling verified that the Site achieved the ROD cleanup objectives for soil and groundwater and that all cleanup actions specified in the ROD and ESDs had been implemented.

Operation & Maintenance (O&M)

Disposal of hazardous materials, identified in the ROD and ESDs, to a permitted off-site disposal facility and the achievement of the groundwater remediation levels has eliminated the need for O&M at the Site.

Five-Year Review

Pursuant to CERCLA section 121(c), 42 U.S.C. 9621(c), five-year reviews are required at sites with remaining hazardous substances, pollutants, or contaminants above levels that allow for

unlimited use and unrestricted exposure. Hazardous substances above health-based levels were removed from the Site, eliminating the five-year review requirement.

Community Involvement

The impacted community, near the Site, has been represented by the Capital Hill Neighborhood Council (Council). The Council was funded by a Technical Assistance Grant from EPA. Mr. Paul Anderson acted as the Council's advisor and actively participated as a stakeholder during the planning and cleanup of the Site. Community relation activities included public meetings, site tours and fact sheets.

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket, which EPA relied on for recommendation of the deletion from the NPL, are available to the public in the information repository.

V. Deletion Action

The EPA, with concurrence from the State of Utah through UDEQ, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA are necessary. Therefore, EPA is taking this action to delete the Site from the NPL.

Because EPA considers this action to be noncontroversial, this action is being taken without prior publication of a notice of intent to delete. This action will be effective June 30, 2003, unless EPA receives adverse comments by June 23, 2003. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment on this deletion process.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution, Water supply.

Dated: May 2, 2003.

Robert E. Roberts,

Regional Administrator, Region 8.

■ For the reasons set out in this document, 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.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended under ''Utah'' by removing the entry for ''Petrochem Recycling Corp./Ekotek, Plant''.

[FR Doc. 03–12614 Filed 5–21–03; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 301–53 and 301–74

[FTR Case 2003–304; FTR Amendment 2003–04]

RIN 3090–AH81

Federal Travel Regulation; Using Promotional Materials; Conference Planning

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) by clarifying provisions regarding promotional benefits or materials that a conference planner receives from a travel service provider. The explanation of changes is addressed in the supplementary information below.

DATES: Effective Date: May 22, 2003.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jim Harte, Office of Governmentwide Policy, Travel Management Policy, at (202) 501–0438. Please cite FTR case 2003–304, FTR Amendment 2003–04.

SUPPLEMENTARY INFORMATION:

A. Background

The changes in this final rule clarify existing sections of chapter 301 as follows:

1. In § 301–53.2 a new note is added.
2. Section 301–53.3 is revised.
3. Section 301–74.1 is revised by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d).

B. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 301–53 and 301–74

Government employees, Travel and transportation expenses.

Dated: May 12, 2003.

Stephen A. Perry,

Administrator of General Services.

■ For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, GSA amends 41 CFR parts 301–53 and 301–74 as set forth below:

PART 301–53—USING PROMOTIONAL MATERIALS AND FREQUENT TRAVELER PROGRAMS

■ 1. The authority citation for 41 CFR part 301–53 continues to read as follows:

Authority: 5 U.S.C. 5707, 31 U.S.C. 1353.

■ 2. Amend § 301–53.2 by adding a note to read as follows:

§ 301–53.2 What may I do with promotional benefits or materials I receive from a travel service provider?

* * * * *

Note to § 301–53.2: Promotional benefits or materials you receive from a travel service

provider in connection with your planning and/or scheduling an official conference or other group travel (as opposed to performing official travel yourself) are considered property of the Government, and you may only accept the benefits or materials on behalf of the Federal Government (*see* § 301–74.1(d) of this chapter).

■ 3. Revise § 301–53.3 to read as follows:

§ 301–53.3 How may I use promotional materials and frequent traveler benefits?

Promotional materials and frequent traveler benefits may be used as follows:

(a) You may use frequent traveler benefits earned on official travel to obtain travel services for a subsequent official travel assignment(s); however, you may also retain such benefits for your personal use, including upgrading to a higher class of service while on official travel.

(b) If you are offered such benefits as a result of your role as a conference planner or as a planner for other group travel, you may not retain such benefits for your personal use (*see* § 301–53.2 of this chapter). Rather, you may only accept such benefits on behalf of the Federal Government. Such accepted benefits may only be used for official Government business.

PART 301–74—CONFERENCE PLANNING

■ 4. The authority citation for 41 CFR part 301–74 continues to read as follows:

Authority: 5 U.S.C. 5707.

■ 5. Amend § 301–74.1 by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

§ 301–74.1 What policies must we follow in planning a conference?

* * * * *

(d) Ensure that the conference planner or designee does not retain for personal use any promotional benefits or materials received from a travel service provider as a result of booking the conference (*see* §§ 301–53.2 and 301–53.3 of this chapter); and

* * * * *

[FR Doc. 03–12896 Filed 5–21–03; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

42 CFR Part 8

RIN 0910–AA52

Opioid Drugs in Maintenance and Detoxification Treatment of Opiate Addiction; Addition of Buprenorphine and Buprenorphine Combination to List of Approved Opioid Treatment Medications

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services.

ACTION: Interim final rule.

SUMMARY: This interim final rule amends the Federal opioid treatment program regulations by adding buprenorphine and buprenorphine combination products to the list of approved opioid treatment medications that may be used in federally certified and registered opioid treatment programs. The Food and Drug Administration (FDA) recently approved Subutex® (buprenorphine) and Suboxone® (buprenorphine in fixed combination with naloxone) for the treatment of opiate dependence. These two products will join methadone and ORLAAM® as medications that may be used in opioid treatment programs for the maintenance and detoxification treatment of opioid dependence. Opioid treatment programs that choose to use these new products in the treatment of opioid dependence will adhere to the same Federal treatment standards established for methadone and ORLAAM®. The Secretary invites public comments on this action.

DATES: This interim final rule is effective May 22, 2003. This interim final rule is also being presented here for public comments. Written comments must be received by the Substance Abuse and Mental Health Services Administration (SAMHSA) on or before July 21, 2003.

ADDRESSES: Comments should be submitted to the Division of Pharmacologic Therapy, Center for Substance Abuse Treatment, Rockwall II, Room 6–18, 5600 Fishers Lane, Rockville, MD, 20857; Attention: DPT Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Nicholas Reuter, Center for Substance Abuse Treatment (CSAT), Division of Pharmacologic Therapy, SAMHSA, Rockwall II Room 6–18, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0457, email: *nreuter@samsha.gov.*

SUPPLEMENTARY INFORMATION:

Background

In a rule document published in the **Federal Register** of January 17, 2001 (66 FR 4076, January 17, 2001), the Substance Abuse and Mental Health Services Administration (SAMHSA) issued final regulations for the use of narcotic drugs in maintenance and detoxification treatment of opioid addiction. That final rule established an accreditation-based regulatory system under 42 CFR part 8 (''Certification of Opioid Treatment Programs,'' ''OTPs''). The regulations also established (under § 8.12) the Secretary's standards for the use of opioid medications in the treatment of addiction, including standards regarding the quantities of opioid drugs which may be provided for unsupervised use.

Section 8.12(h) sets forth the standards for medication administration, dispensing and use. Under this section, OTPs shall use only those opioid agonist treatment medications that are approved by the Food and Drug Administration under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in the treatment of opioid addiction. The regulation listed methadone and levomethadyl acetate (ORLAAM®) as the opioid agonist treatment medications considered to be approved by the FDA for use in the treatment of opioid addiction.

On October 8, 2002, FDA approved two new opioid treatment medications, buprenorphine and buprenorphine combination for the treatment of opioid addiction. These medications are controlled under schedule III of the Controlled Substances Act (''CSA,'' 21 U.S.C. 812). *See* final rule published October 7, 2002 (67 FR 62354). By adding these two medications to the previous list of approved opioid treatment medications, the Secretary allows OTPs to use buprenorphine and buprenorphine combination for the treatment of opioid addiction. OTPs will apply the same treatment standards that were finalized on January 17, 2001, for methadone and ORLAAM®.

Summary of Regulation

The opioid treatment program regulations (42 CFR part 8) establish the procedures by which the Secretary will determine whether a practitioner is qualified under section 303(g) of the CSA (21 U.S.C. 823(g) (1)) to dispense certain therapeutic narcotic drugs in the treatment of individuals suffering from narcotic addiction. These regulations

also establish the Secretary's standards regarding the appropriate quantities of narcotic drugs that may be provided for unsupervised use by individuals undergoing such treatment (21 U.S.C. 823(g) (3)). (*See also* 42 U.S.C. 257a.)

This interim final rule does not change any of the provisions in subpart A (Accreditation) or subpart C (Procedures for Review of Suspension or Proposed Revocation of OTP Certification, and of Adverse Action Regarding Withdrawal of Approval of an Accreditation Body). Instead, the rule provides for a minor amendment to subpart B, Certification and Treatment Standards. The rule amends only one section of subpart B, section 8.12(h)(2) Medication administration, dispensing, and use.

Under 42 CFR 8.12(h)(2), OTPs are limited to using only those opioid agonist treatment medications that are approved by the Food and Drug Administration under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355). This section notes that ''currently the following medications will be considered to be approved by the Food and Drug Administration for use in the treatment opioid addiction: (i) Methadone; and (ii) levomethadyl acetate (LAAM).'' The effect of this rule is to add buprenorphine and buprenorphine combination to this list by adding a new item (iii).

Justification for Interim Final Rule

The Administrative Procedure Act (5 U.S.C. 553) requires agencies to follow certain procedures for informal rulemaking, including publication of proposed rules in the **Federal Register** with an opportunity for public comment. Section 553(b)(B) allows agencies to dispense with prior notice and opportunity for public comment if the agency finds for good cause that use of such procedures is impracticable, unnecessary, or contrary to the public interest. Section 553(d)(3) permits the Secretary to waive the 30 day effective date if it is contrary to the public interest.

The Secretary has determined that good cause exists for publication of this rule without prior notice and opportunity for public comment and without a delayed effective date since such procedures are contrary to the public interest and unnecessary. It is contrary to the public interest to deny OTPs' access to this important new medication for the treatment of persons addicted to opioids. As compared to methadone and ORLAAM®, buprenorphine and buprenorphine combination are particularly useful in treating patients who have had a shorter course of addiction. Similarly, it would be contrary to the public interest to deny patients access to such prescription drugs from OTPs particularly in areas in which there are no physicians who have obtained a waiver under the Drug Addiction Treatment Act of 2000 (''DATA,'' section 3502 of Pub. L. 106–310).

To further elaborate, while OTPs may continue to use methadone and ORLAAM® for medicated assisted treatment, buprenorphine and buprenorphine combinations will provide OTPs with an important additional option for the treatment of addiction. Indeed, because of its ''partial'' agonist pharmacology, buprenorphine will provide programs with more flexibility in finding the most appropriate medication for each patient. It would thus be contrary to the public interest to delay the availability of buprenorphine products.

In addition to the public interest in having buprenorphine and buprenorphine combination products available for treatment use as soon as possible, prior notice and comment procedures are unnecessary. Currently, the rule states: ''OTPs shall use only those opioid agonist treatment medications that are approved by the Food and Drug Administration * * * for use in the treatment of opioid addiction * * *. Currently the following opioid agonist treatment medications will be considered to be approved by the Food and Drug Administation for use in the treatment of opioid addiction: (i) Methadone; and (ii) Levomethadyl acetate (LAAM).'' Because the buprenorphine products have been approved by the FDA as required by section 8.12(h)(2), the proposed modification is technical in nature in that it simply adds buprenorphine and buprenorphine combination to the list of FDA-approved medications that may be used by OTPs. Thus, comment is not necessary before finalizing this change to the regulation.

Although we are making the rule effective immediately without first obtaining public comment, we are providing for a 60-day comment period after publication. Specifically, we seek comments on the applicability of the existing OTP rules to these newly approved medications.

Analysis of Economic Impacts

The Secretary has examined the impact of this interim final rule under Executive Order 12866. Executive Order 12866 directs Federal 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). This interim final rule does not establish additional regulatory requirements, it allows an activity that is otherwise prohibited. According to Executive Order 12866, a regulatory action is ''significant'' if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or if it raises novel legal or policy issues. A detailed discussion of the Secretary's analysis is contained in the recent opioid treatment final rule published in the **Federal Register** of January 17, 2001 (66 FR 4086–4090). That notice described the impact of the opioid treatment regulations, analyzed alternatives, and considered comments from small entities.

The Secretary also finds that this rule is a not a significant regulatory action as defined by Executive Order 12866. The rule merely adds buprenorphine and buprenorphine combination products to the list of medications that may be used in the detoxification or maintenance treatment of opioid dependence. If opioid treatment programs choose to use the new medications, the new medications will be used in accordance with the standards set forth in the January 17, 2001, final rule (66 FR 4090). No new regulatory requirements are imposed by this interim final rule.

For the reasons outlined above, the Secretary has determined that this interim final rule will not have a significant impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 605(b)). Therefore an initial regulatory flexibility analysis is not required for this interim final rule.

The Secretary has determined that this rule is not a major rule for the purpose of congressional review. For the purpose of congressional review, a major rule is one which is likely to cause an annual effect on the economy of $100 million; a major increase in costs or prices; significant effects on competition, employment, productivity, or innovation; or significant effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This is not a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

The Secretary has examined the impact of this rule under the Unfunded Mandates Reform Act of 1995 (UMRA)

(Pub. L. 104–4). This rule does not trigger the requirement for a written statement under section 202(a) of the UMRA because it does not impose a mandate that results in an expenditure of $100 million (adjusted annually for inflation) or more by State, local, and tribal governments in the aggregate, or by the private sector, in any one year.

Environmental Impact

The Secretary has previously considered the environmental effects of this rule as announced in the final rule (66 FR 4076 at 4088). 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 neither an environmental assessment nor an environmental impact statement is required.

Executive Order 13132: Federalism

The Secretary has analyzed this interim final rule in accordance with Executive Order 13132: Federalism. Executive Order 13132 requires Federal agencies to carefully examine actions to determine if they contain policies that have federalism implications or that preempt State law. As defined in the Order, ''policies that have federalism implications'' refer to regulations, legislative comments or proposed legislation, and other policy statements or actions 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.

The Secretary is publishing this interim final rule to modify minimally treatment regulations that provide for the use of approved opioid agonist treatment medications in the treatment of opiate addiction. The Narcotic Addict Treatment Act (the NATA, Pub. L. 93–281) modified the Controlled Substances Act (CSA) to establish the basis for the Federal control of narcotic addiction treatment by the Attorney General and the Secretary. Because enforcement of these sections of the CSA is a Federal responsibility, there should be little, if any, impact from this rule on the distribution of power and responsibilities among the various levels of government. In addition, this interim final rule does not preempt State law. Accordingly, the Secretary has determined that this interim final rule does not contain policies that have federalism implications or that preempt State law.

Paperwork Reduction Act of 1995

This interim final rule adds buprenorphine and buprenorphine combination products to the list of approved medications that may be used in SAMHSA-certified opioid treatment programs. The interim final rule establishes no new reporting or recordkeeping requirements beyond those discussed in the January 17, 2001, final rule (66 FR 4076 at 4088). The Office of Management and Budget has approved the information collection requirements of the final rule under control number 0930–0206.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires us 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'' 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.''

This interim 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.

Dated: May 5, 2003.

Tommy G. Thompson,

Department of Health and Human Services.

List of Subjects in 42 CFR Part 8

Health professions, Levo-Alpha-Acetyl-Methadol (LAAM), Methadone, Reporting and recordkeeping requirements.

■ For the reasons set forth above, part 8 of title 42 of the Code of Federal Regulations is amended as follows:

PART 8—CERTIFICATION OF OPIOID TREATMENT PROGRAMS

■ 1. The authority citation for part 8 continues to read as follows:

Authority: 21 U.S.C. 823; Sections 301(d), 543, and 1976 of the 42 U.S.C. 257a, 290aa(d), 290 dd–2, 300x–23, 300x–27(a), 300y–ll.

■ 2. Section 8.12(h) (2) is revised to read as follows:

§ 8.12 Federal opioid treatment standards.

* * * * *

(h)* * *

(2) OTPs shall use only those opioid agonist treatment medications that are approved by the Food and Drug Administration under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in the treatment of opioid addiction. In addition, OTPs who are fully compliant with the protocol of an investigational use of a drug and other conditions set forth in the application may administer a drug that has been authorized by the Food and Drug Administration under an investigational new drug application under section 505(i) of the Federal Food, Drug, and Cosmetic Act for investigational use in the treatment of opioid addiction. Currently the following opioid agonist treatment medications will be considered to be approved by the Food and Drug Administration for use in the treatment of opioid addiction:

(i) Methadone;

(ii) Levomethadyl acetate (LAAM); and

(iii) Buprenorphine and buprenorphine combination products that have been approved for use in the treatment of opioid addiction.

* * * * *

[FR Doc. 03–11469 Filed 5–21–03; 8:45 am]

BILLING CODE 4160–20–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1477; MB Docket No. 02–255; RM–10524]

Radio Broadcasting Services; Cottage Grove, Depoe Bay, Garibaldi, Toledo, and Veneta, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document at the request of Alexandra Communications, Inc. licensee of Station KDEP(FM), Depoe Bay, Oregon, Signal Communications, Inc., licensee of Station KEUG, Inc., Cottage Grove, Oregon, and Agpal Broadcasting, Inc., licensee of Station KPPT(FM), Toledo, Oregon, substitutes channel 288A for channel 288C3 at Depoe Bay, Oregon, reallots channel 288A from Depoe Bay to Garibaldi, Oregon, and modifies the license of Station KDEP(FM) to specify the new community. It also substitutes channel 283C3 for Channel 288A at Cottage

Grove, Oregon, reallots channel 288C3 to Veneta, Oregon, and modifies the license of station KEUG(FM) to specify the new community. Finally, it reallots channel 264C2 from Toledo, Oregon to Depoe Bay, and modifies the license of station KPPT(FM) to specify the new community. Channel 288A can be allotted at Garibaldi at a site 11 kilometers (6.8 miles) south of the community at coordinates NL 45–27–50 and WL 123–56–37. Channel 288C3 can be allotted at Veneta at a site 4.8 kilometers (3.0 miles) southwest of the community at coordinates NL 44–01–56 and WL 123–24–19. Channel 264C2 can be allotted at Depoe Bay at station KPPT(FM)'s current site 5.9 kilometers (3.7 miles) south of the community at coordinates NL 44–45–23 and WL 124–03–01.

DATES: Effective June 19, 2003.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–255, adopted April 30, 2003, and released May 5, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing channel 288A and adding channel 264C2 at Depoe Bay, by removing channel 288A at Cottage Grove, by removing Toledo, channel 264C2, by adding Garibaldi, channel 288C3, and by adding Veneta, channel 288C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–12792 Filed 5–21–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1227; MB Docket No. 02–199; RM–102–199; RM–10514]

Radio Broadcasting Services; Magnolia, AR and Oil City, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, at the request of Columbia Broadcasting Company, Inc., licensee of Station KVMA–FM, Magnolia, Arkansas, the Commission substitutes channel 300C2 for 300C1 at Magnolia, Arkansas and reallots Channel 300C2 from Magnolia to Oil City, Louisiana, as the community's first local transmission service, and modifies Station KVMA's authorization to specify Oil City as the community of license. Comments filed by Access.1 Communications—Shreveport, LLC opposing the reallotment are dismissed. Channel 300C2 can be reallotted from Magnolia to Oil City at petitioner's proposed site 27.6 kilometers (17.1 miles) northeast of the community at coordinates 32–54–06 NL and 93–44–01 WL.

DATES: Effective June 16, 2003.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–199, adopted, April 28, 2003, and released April 30, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Magnolia, channel 300C1.

■ 3. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Oil City, channel 300C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–12791 Filed 5–21–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 68, No. 99
Thursday, May 22, 2003

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Docket Number TM–03–02]

RIN 0581–AC27

National Organic Program; Proposed Amendments to the National List of Allowed and Prohibited Substances

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List) to reflect recommendations submitted to the Secretary by the National Organic Standards Board (NOSB) from November 15, 2000 through September 17, 2002. Consistent with recommendations from the NOSB, this proposed rule would: add five substances, along with any restrictive annotations, to the National List, and revise the annotation of one substance.

DATES: Comments must be received by June 2, 2003.

ADDRESSES: Interested persons may comment on this proposed rule using the following procedures:

- Mail: Comments may be submitted by mail to: Richard H. Mathews, Program Manager, National Organic Program, USDA–AMS–TMP–NOP, 1400 Independence Ave., SW., Room 4008–So., Ag Stop 0268, Washington, DC 20250.
- E-mail: Comments may be submitted via the Internet to: *National.List@usda.gov.*
- Fax: Comments may be submitted by fax to: (202) 205–7808.
- Written comments on this proposed rule should be identified with the docket number TMD–03–02. Commenters should identify the topic and section number of this proposed rule to which the comment refers.
- Clearly indicate if you are for or against the proposed rule or some portion of it and your reason for it. Include recommended language changes as appropriate.
- Include a copy of articles or other references that support your comments. Only relevant material should be submitted.

It is our intention to have all comments to this proposed rule, whether submitted by mail, e-mail, or fax, available for viewing on the NOP homepage. Comments submitted in response to this proposed rule will be available for viewing in person at USDA–AMS, Transportation and Marketing, Room 4008–South Building, 1400 Independence Ave., SW., Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this proposed rule are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Toni A. Strother, Agricultural Marketing Specialist, Telephone: (202) 720–3252; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000 the Secretary established, within the National Organic Standards (NOS) (7 CFR part 205), the National List (§§ 205.600 through 205.607). The National List is the Federal list that identifies synthetic substances and ingredients that are allowed and nonsynthetic (natural) substances and ingredients that are prohibited for use in organic production and handling. Since established, the National List has not been amended. However, under the authority of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501 *et seq.*), the National List can be amended by the Secretary based on proposed amendments developed by the NOSB.

This proposed rule would amend the National List to reflect recommendations submitted to the Secretary by the NOSB from November 15, 2000 through September 17, 2002. Between the specified time period, the NOSB has recommended that the Secretary add five substances to § 205.605 of the National List based on petitions received from industry participants. These substances were evaluated by the NOSB using the criteria specified in OFPA (7 U.S.C. 6517 and 6518) and the NOS. The NOSB also recommended that the Secretary revise the annotation of one substance included within section 205.605.

The NOSB has recommended that the Secretary add additional substances to sections 205.605 and 205.606 which have not been included in this proposed rule but are under review and, as appropriate, will be included in future rulemaking.

II. Overview of Proposed Amendments

The following provides an overview of the proposed amendments made to designated sections of the National List:

§ 205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as ''organic'' or ''made with organic (specified ingredients or food group(s)).''

This proposed rule would amend paragraph (a) of § 205.605 by adding calcium sulfate—mined and glucono delta-lactone. This proposed rule would also amend paragraph (b) of § 205.605 by adding animal enzymes—without Lysosyme, cellulose, and tetrasodium pyrophosphate.

This proposed rule would revise current paragraph (b) of § 205.605 by amending an annotation to read as follows:

Potassium hydroxide—prohibited for use in lye peeling of fruits and vegetables except when used for peeling peaches during the Individually Quick Frozen (IQP) production process.

III. Related Documents

Eight notices were published regarding the meetings of the NOSB and its deliberations on recommendations and substances petitioned for amending the National List. Substances and recommendations included in this proposed rule were announced for NOSB deliberation in the following **Federal Register** Notices: (1) 65 FR 64657, October 30, 2000, (Animal enzymes); (2) 66 FR 10873, February 20, 2001, (Calcium sulfate); (3) 66 FR 48654, September 21, 2001, (Cellulose, and Potassium hydroxide); and (4) 67 FR 54784, August 26, 2002, (Glucono delta-lactone, and Tetrasodium pyrophosphate).

IV. Statutory and Regulatory Authority

The Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501 *et seq.*), authorizes the Secretary, at § 6517 (d)(1), to make amendments to the National List based on proposed amendments developed by the NOSB. Sections 6518 (k)(2) and 6518 (n) of OFPA authorize the NOSB to develop proposed amendments to the National List for submission to the Secretary and establish a petition process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion onto or deletion from the National List. The National List petition process is implemented under § 205.607 of the NOS. The current petition process (65 FR 43259) can be accessed through the NOP Web site at *http://www.ams.usda.gov/nop.*

A. Executive Order 12866

This action has been determined to be non-significant for purposes of Executive Order 12866, and therefore, does not have to be reviewed by the Office of Management and Budget.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. The final rule was reviewed under this Executive Order and no additional related information has been obtained since then. This proposed rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under section 2115 of the Organic Foods Production Act (OFPA) (7 U.S.C. 6514) from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in section 2115 (b) of the OFPA (7 U.S.C. 6514 (b)). States are also preempted under sections 2104 through 2108 of the OFPA (7 U.S.C. 6503 through 6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to section 2108(b) (2) of the OFPA (7 U.S.C. 6507(b) (2)), a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) Further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to section 2120 (f) of the OFPA (7 U.S.C. 6519 (f)), this regulation would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspections Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

Section 2121 of the OFPA (7 U.S.C. 6520) provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action.

Pursuant to the requirements set forth in the RFA, the Agricultural Marketing Service (AMS) performed an economic impact analysis on small entities in the final rule published in the **Federal Register** on December 21, 2000. AMS has also considered the economic impact of this action on small entities. Due to the changes reflected in this proposed rule that allow the use of additional substances in agricultural production and handling, the Administrator of AMS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. This action relaxes the regulations published in the final rule and provides small entities with more tools to use in day-to-day operations. Small agricultural service firms, which include producers, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000 and small agricultural producers are defined as those having annual receipts of less than $5,000,000.

The U.S. organic industry at the end of 2001 included nearly 6,600 certified crop and livestock operations, including organic production and handling operations, producers, and handlers. These operations reported certified acreage totaling more than 2.34 million acres, 72,209 certified livestock, and 5.01 million certified poultry. Data on the numbers of certified handling operations are not yet available, but likely number in the thousands, as they would include any operation that transforms raw product into processed products using organic ingredients. Growth in the U.S. organic industry has been significant at all levels. From 1997 to 2001, the total organic acreage grew by 74 percent; livestock numbers certified organic grew by almost 300 percent over the same period, and poultry certified organic increased by 2,118 percent over this time. Sales growth of organic products has been equally significant, growing on average around 20 percent per year. Sales of organic products were approximately $1 billion in 1993, but are estimated to reach $13 billion this year, according to the Organic Trade Association (the association that represents the U.S. organic industry). In addition, USDA has accredited 81 certifying agents who have applied to USDA to be accredited in order to provide certification services to producers and handlers. A complete list of names and addresses of accredited certifying agents may be found on the AMS NOP Web site, at *http://www.ams.usda.gov/nop.* AMS believe that most of these entities would be considered small entities under the criteria established by the SBA.

Additional regulatory flexibility analysis beyond the regulatory flexibility analysis published in the NOP final rule on December 21, 2000, is not required for the purposes of this proposed rule. Comments from small entities affected by parts of this proposed rule will be considered in relation to the requirements of the RFA. These comments must be submitted

separately and cite 5 U.S.C. 609 in the correspondence.

D. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995, the existing information collection requirements for the NOP are approved under OMB number 0581–0181. No additional collection or recordkeeping requirements are imposed on the public by this proposed rule. Accordingly, OMB clearance is not required by section 350(h) of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulation at 5 CFR Part 1320.

E. General Notice of Public Rulemaking

This proposed rule reflects recommendations submitted to the Secretary by the NOSB. The five substances proposed to be added to the National List were based on petitions from the industry and evaluated by the NOSB using criteria in the Act and the regulations. Because these substances are critical to organic production and handling operations, producers and handlers should be able to use them in their operations as soon as possible. Accordingly, AMS believes that a 10-day period for interested persons to comment on this rule is appropriate.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR Part 205, Subpart G is proposed to be amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

1. The authority citation for 7 CFR Part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

2. Section 205.605 (proposed to be revised at 68 FR 18560, April 16, 2003) is amended by:

a. Adding two substances to paragraph (a).

b. Adding three substances to paragraph (b).

c. Revising Potassium hydroxide in paragraph (b).

The additions and revisions read as follows:

§ 205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as ''organic'' or ''made with organic (specified ingredients or food group(s)).''

* * * * *

(a) * * *

* * * * *

Calcium sulfate—mined.

* * * * *

Glucono delta-lactone.

* * * * *

(b) * * *

Animal enzymes—(Rennet—animals derived; Catalase—bovine liver; Animal lipase; Pancreatin; Pepsin; and Trypsin).

* * * * *

Cellulose—for use in regenerative casings, as an anti-caking agent (non-chlorine bleached) and filtering aid.

* * * * *

Potassium hydroxide—prohibited for use in lye peeling of fruits and vegetables except when used for peeling peaches during the Individually Quick Frozen (IQP) production process.

* * * * *

Tetrasodium pyrophosphate—for use only in textured meat analog products.

* * * * *

Dated: May 16, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Services.

[FR Doc. 03–12803 Filed 5–21–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV03–930–2 PR]

Tart Cherries Grown in the States of Michigan, et al.; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the assessment rate for tart cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.00175 to $0.0019 per pound. It would also increase the assessment rate for cherries utilized for juice, juice concentrate, or puree from $0.000875 to $0.0019 per pound. The single assessment rate for all assessable tart cherries was recommended by the Cherry Industry Administrative Board (Board) under Marketing Order No. 930 for the 2002–2003 and subsequent fiscal periods. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in the production area. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The fiscal period began July 1, 2002, and ends June 30, 2003. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by June 2, 2003.

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

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737, telephone: (301) 734–5243, or Fax: (301)–734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this proposed rule in

conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein would be applicable to all assessable tart cherries beginning July 1, 2002, and continue until amended, suspended, or terminated. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposed rule.

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

This proposed rule would increase the assessment rate established for the Board for the 2002–2003 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.00175 to $0.0019 per pound of cherries. The assessment rate for cherries utilized for juice, juice concentrate, or puree would also be increased from $0.000875 to $0.0019 per pound.

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

For the 2001–2002 fiscal period, the Board recommended, and the Department approved, assessment rates that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the USDA upon recommendation and information submitted by the Board or other information available to USDA.

Section 930.42(a) of the order authorizes a reserve sufficient to cover one year's operating expenses. The increased rates are expected to generate enough income to meet the Board's operating expenses in 2002–2003.

The Board met on January 24, 2002, and unanimously recommended 2002–2003 expenditures of $522,500. The Board also recommended that an assessment rate of $0.0019 be established for all tart cherry products if an amendment to do so passed in a May 2002 referendum of producers and processors. The amendment passed and was finalized by USDA on August 8, 2002 (67 FR 51698). The provisions requiring the establishment of different assessment rates for different products were removed. In their place, the Board is required to consider the volume of cherries used in making various products and the relative market value of those products in deciding whether the assessment rate should be a single, uniform rate applicable to all cherries or whether varying rates should be recommended for cherries manufactured into different products. Prior to the amendment passing in referendum, the Department issued a proposed rule on June 10, 2002 (67 FR 39637) proposing a dual assessment rate at higher amounts ($0.0021 and $0.00105, respectively, for high and low value cherry products) since the uniform assessment rate amendment was not yet effective. A rule withdrawing that proposal was published on April 2, 2003 (68 FR 15971). This proposal reflects the amended provisions and the Board's January 24, 2002 recommendation.

The amended assessment provisions allow the Board to recommend a uniform single assessment rate for all assessable tart cherries handled, or variable rates depending on the quantities and values of the cherries used in the various products. A two-tiered assessment rate scheme may be appropriate in some years, it may not be in others.

The amended order specifically provides that under § 930.41(f)(1) and (2) the established assessment rates may be uniform, or may vary depending on the product the cherries are used to manufacture. The Board may consider the differences in the number of pounds of cherries utilized for various cherry products and the relative market values of such cherry products. The Board considered the above items and decided that one assessment rate should be recommended for all assessable tart cherries for the 2002–2003 fiscal period.

According to the Board, processors have developed a strong market for juice and concentrate products over the past few years. There is considerable belief that juice will be one of the growth outlets for tart cherries. This derives from the industry's promotional efforts being undertaken for juice and concentrate products, the segmentation of the market into retail and industrial components and the nutritional/nutraceutical profile of the product. As a result, there has been an increase in consumer recognition, acceptance, purchases, and the value of tart cherry juice and concentrate. According to the Board, prices received for tart cherry juice concentrate are now $25.00 per gallon or more. This is derived by using the fairly common conversion ratio of 100 pounds to the gallon for mid-west production, which has a raw product value of $0.25 per pound. Using a 50 gallon conversion for the product, as has been used on the west coast, this represents a per pound value of $0.50. The difference in the west and mid-west conversion factors is that tart cherries produced in the western United States generally have a higher sugar content and larger fruit size, thus fewer raw product is needed. The average grower price received ranges between $0.17 to $0.20 per pound.

According to the Board, puree products are as valuable and comparable to juice and juice concentrate products. The Board reported that the spot price for single strength puree for 2001–02 was about $0.60 cents per pound. The raw product equivalent (RPE) volume of pureed fruit was 539,504 pounds which is about 0.15 percent of all processed fruit. The Board also reported for 2001–02 that the price for five plus one product was $0.67 cents per pound. Five plus one is a product of cherries and sugar which is manufactured by many processors (25 pounds of cherries and five pounds of sugar to make a 30 pound commercial container). It is the main product that handlers produce. Five plus one cherries are primarily sold and remanufactured into assorted bakery items, canned pie fill, and dried cherries. Since juice, juice concentrate, and puree are not considered to be low value products at this time, the Board considers one assessment to be

appropriate. It is important to understand that product is moved around between production areas and may be converted into puree or concentrate at a later date. The market drives the processing of these various products each season.

In comparing the prices of juice, juice concentrate, and puree with the 5 plus 1 product, the Board determined that current prices for these products are similar. The information received from the Board indicates that puree products are becoming a viable market and should be assessed at a higher assessment rate.

As a result of this season's 2002–2003 short crop, much of the tart cherry products released from inventory were in the form of tart cherry juice and/or juice concentrate. There is not much, if any, of this product available on the market today. The Board contends that given these factors, it is hard to suggest that juice/concentrate, or puree, are of lesser value than are the more traditional products such as pie-fill or individually quick frozen tart cherries. Thus, the Board determined that one assessment rate is appropriate for the 2002–03 fiscal period.

Last year's budgeted expenditures were $442,500. The recommended assessment rate of $0.0019 is higher than the current rates of $0.00175 for cherries used in the production of other than juice, juice concentrate, or puree products, and $0.000875 for cherries used for juice, juice concentrate or puree products.

The major expenditures recommended by the Board for the 2002–2003 fiscal period include $85,000 for meetings, $170,000 for compliance, $185,000 for personnel, $80,000 for office expenses, and $2,500 for industry educational efforts. Budgeted expenses for those items in 2001–2002 were $80,000 for meetings, $100,000 for compliance, $185,000 for personnel, $75,000 for office expenses, and $2,500 for industry educational efforts, respectively. As discussed below, the Board's staff has taken steps to reduce actual expenditures for 2002–03 due to the assessment revenue shortfall. In comparison, last year's budgeted expenditures were $442,500. The recommended assessment rate of $0.0019 is higher than the current rates of $0.00175 and $0.000875, respectively. The Board recommended an increased assessment rate to generate larger revenue to meet its expenses and keep its reserves at an acceptable level.

In deriving the recommended assessment rates, the Board determined assessable tart cherry production for the fiscal period at 260 million pounds. However, the tart cherry industry experienced a severe frost, mainly in Michigan, which significantly reduced the crop. The tart cherry industry is expected to only produce 60 million pounds. The Board staff has responded to this decrease in funds by reducing staff and Committee travel for meetings and is expected to use reserve funds to continue administrative operations this season. Therefore, total assessment income for 2002–2003 is estimated at $114,000. This amount plus adequate funds in the reserve and interest income would be adequate to cover budgeted expenses. Funds in the reserve (approximately $233,000) would be kept within the approximately six months' operating expenses as recommended by the Board consistent with § 930.42(a).

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

Although the assessment rates are effective for an indefinite period, the Board would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rates. The dates and times of Board meetings are available from the Board or the USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modifications of the assessment rates are needed. Further rulemaking would be undertaken as necessary. The Board's 2002–2003 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the USDA.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) allows AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS's Fruit and Vegetable Programs (Programs) no longer opts for such certification, but rather performs regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

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

There are approximately 40 handlers of tart cherries who are subject to regulation under the order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $5,000,000, and small agricultural producers are those whose annual receipts are less than $750,000. A majority of the tart cherry handlers and producers may be classified as small entities.

The Board unanimously recommended 2002–2003 expenditures of $522,500 and assessment rate increases from $0.00175 to $0.0019 per pound for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree, and from $0.000875 to $0.0019 per pound for cherries utilized for juice, juice concentrate, or puree.

This proposed rule would increase the assessment rate established for the Board and collected from handlers for the 2002–2003 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products to $0.0019 per pound. The Board unanimously recommended 2002–2003 expenditures of $522,500. The quantity of assessable tart cherries expected to be produced during the 2002–2003 crop year was estimated at 260 million pounds. However, the tart cherry industry experienced a severe frost, mainly in Michigan, which has significantly reduced the crop. The tart cherry industry is expecting to only produce 60 million pounds during 2002–03. The Board staff has responded to this decrease in funds by reducing staff and Committee travel for meetings and is expected to use reserve funds to continue administrative operations this season. Assessment income, based on this crop, along with interest income and reserves, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 2002–2003 fiscal period include $85,000 for meetings, $170,000 for compliance, $185,000 for personnel, $80,000 for office expenses, and $2,500 for industry educational efforts. Budgeted expenses for those items in 2001–2002 were $80,000 for meetings, $100,000 for compliance, $185,000 for personnel, $75,000 for office expenses, and $2,500 for industry educational efforts, respectively.

The Board discussed the alternative of continuing the existing assessment rates, but concluded that would cause the amount in the operating reserve to be reduced to an unacceptable level.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. Data from the National Agricultural Statistics Service (NASS) states that during the period 1995/96 through 2002/03, approximately 92 percent of the U.S. tart cherry crop, or 285.7 million pounds, was processed annually. Of the 285.7 million pounds of tart cherries processed, 58 percent was frozen, 30 percent was canned, and 12 percent was utilized for juice.

Based on NASS data, acreage in the United States devoted to tart cherry production has been trending downward. Since 1987/88 tart cherry bearing acres have decreased from 50,050 acres, to 36,900 acres in the 2002/03 crop year. In 2002/03, 93 percent of domestic tart cherry acreage was located in four States: Michigan, New York, Utah, and Wisconsin. Michigan leads the nation in tart cherry acreage with 74 percent of the total production. Michigan produces about 75 percent of the U.S. tart cherry crop each year. Tart cherry acreage in Michigan decreased from 28,500 acres in 2000–2001, to 27,400 acres in 2002–2003.

A review of historical information and preliminary information pertaining to the 2002–2003 fiscal period indicates that the grower price could range between $0.448 and $0.45 cents per pound of tart cherries. This is a high price due to the short crop this year. Therefore, the estimated assessment revenue for the 2002–2003 fiscal period as a percentage of total grower revenue could be less than one-half of one percent.

While this action will impose additional costs on handlers, the costs are in the form of assessments which are applied uniformly. Some of the costs may also be passed on to producers. However, these costs are offset by the benefits derived from the operation of the marketing order. The Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the January 24, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action will impose no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

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

A 10-day comment period is provided to allow interested persons to respond to this proposed rule. Ten days is deemed appropriate because: (1) The 2002–2003 fiscal period began on July 1, 2002, and ends on June 30, 2003, and the marketing order requires that the rates of assessment for each fiscal period apply to all assessable tart cherries handled during such fiscal period; (2) the Board needs the funds to operate the program; and (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 930.200 is revised to read as follows:

§ 930.200 Handler assessment rate.

On and after July 1, 2002, the assessment rate imposed on handlers shall be $0.0019 per pound of cherries handled for tart cherries grown in the production area.

Dated: May 16, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03–12804 Filed 5–21–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2003–15124; Airspace Docket No. 03–ASO–5]

Proposed Amendment of Class E5 Airspace; Augusta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E5 airspace at Augusta, GA. A Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 17 Standard Instrument Approach Procedure (SIAP) to Augusta Regional at Bush Field Airport has been developed. Additionally, it has been determined a modification should be made to the Augusta, GA, Class E5 airspace area to contain the Nondirectional Radio Beacon (NDB) or GPS RWY 17 SIAP to Augusta Regional at Bush Field Airport. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain these SIAPs.

DATES: Comments must be received on or before June 23, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15124/Airspace Docket No. 03–ASO–5, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal

holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

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, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–15125/Airspace Docket No. 03–ASO–5.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed on the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, 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 Class E5 airspace at Augusta, GA. Class E airspace designations for airspace areas designated as 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 designations 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. 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, 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 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—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 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 amended as follows: Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO GA E5 Augusta, GA [REVISED]

Augusta Regional At Bush Field Airport, GA
(Lat. 33°22′12″ long. 81°57′52″)
Bushe NDB
(Lat. 33°17′13″ long. 81°56′49″)
Emory NDB
(Lat. 33°27′46″ long. 81°59′49″)
Daniel Field
(Lat. 33°27′59″ long. 82°02′21″)
Burke County Airport
(Lat. 33°02′28″ long. 82°00′14″)
Burke County NDB
(Lat. 33°02′33″ long. 82°00′17″)

That airspace extending upward from 700 feet above the surface within an 8.2-mile radius of Augusta Regional At Bush Field Airport, and within 8 miles west and 4 miles east of the 172° bearing from the Bushe NDB extending from the 8.2-mile radius to 16 miles south of Bushe NDB, and within 8 miles west and 4 miles east of the 349° bearing from the Emory NDB extending from the 8.2-mile radius to 16 miles north of Emory NDB, and within a 6.3-mile radius of Daniel Field, and within a 6.2-mile radius of Burke County Airport and within 3.5 miles each side of the 243° bearing from the Burke County NDB extending from the 6.2-mile radius to 7 miles southwest of the NDB.

* * * * *

Issued in College Park, Georgia on May, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–12818 Filed 5–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255 and Part 399

[Dockets Nos. OST–97–2881, OST–97–3014, OST–98–4775, and OST–99–5888]

RIN 2105–AC65

Computer Reservations System (CRS) Regulations; Statements of General Policy

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of change in time of public hearing; notice of procedures for hearing.

SUMMARY: On Thursday, May 22, 2003, at 9 a.m., the Department will conduct a public hearing on its pending rulemaking on computer reservations systems (CRSs). The public hearing will be held at the Marriott at Metro Center, 775 12th Street, NW., Washington, DC. This notice changes the beginning time from 9:30 a.m. to 9 a.m., sets forth the procedures for the hearing, and lists the speakers in order of appearance.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St., SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: The Department is conducting a rulemaking to determine whether its rules governing CRS operations, 14 CFR part 255, remain necessary and, if so, whether the current rules are effective. Our notice of proposed rulemaking set forth our tentative proposals regarding the existing rules and our tentative belief that we should not extend the rules to cover the sale of airline tickets through the Internet. 67 FR 69366, November 15, 2002. While interested persons have the opportunity to file comments and reply comments, we are also holding a public hearing on May 22 where interested persons may present their views on the major issues. 68 FR 25844, May 14, 2003. Michael Reynolds, the Deputy Assistant Secretary for Aviation and International Affairs, will preside. We must limit each speaker's time and the number of persons who may speak, because the hearing will last only one day. Persons who are unable to speak at the hearing may, of course, present their views on the issues (and on statements made at the hearing) in their reply comments.

We initially planned to begin the hearing at 9:30 a.m. We have now decided to begin at 9 a.m., which will allow us to give each speaker more time for his or her presentation.

We asked persons who wished to speak at the hearing to submit requests to us as soon as possible. We received 26 requests by noon on Friday, May 16. We have determined to allow all 26 persons to speak. Each of them will have fifteen minutes to speak, which will include any time needed for answering questions from Mr. Reynolds. If we have additional time at the end of the hearing, we may allow others to speak as well. We are not allowing rebuttals, and we have decided that organizing the hearing in panel form would be impracticable due to the number of speakers and the complexity of the issues.

We plan to have the following persons speak in the morning session, in the following order: Sabre, Amadeus, Worldspan, TechNet Texas, Galileo, Orbitz, America West, American, Travelers First, and United. The speakers in the afternoon session will be as follows: Delta, Continental, U.S. Airways, Northwest, Southwest, Shepherd Systems, Air Carrier Association, Travelocity, American Society of Travel Agents, Expedia, Large Agency Coalition, Stratton Travel Management, Interactive Travel Services Association, Competitive Enterprise Institute, Progress & Freedom Foundation, and Mercatus.

Speakers need not provide written statements at the hearing. If they choose to do so, they must also submit a copy to the docket for this proceeding.

A transcript of the hearing prepared by a court reporter will be put in the docket for this rulemaking, so that anyone who is unable to attend the hearing can learn what was said. We plan to place the transcript in the docket within one week of the hearing.

Issued in Washington, DC, on May 19, 2003.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–12943 Filed 5–20–03; 8:53 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–02–099]

RIN 1625–AA11 (Formerly RIN 2115–AE84)

Regulated Navigation Area in Hampton Roads, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the Regulated Navigation Area in Hampton Roads, Virginia, by imposing vessel reporting requirements and speed limit restrictions in certain areas of the port. These measures are necessary because of the unique physical characteristics and resources contained in the port. These regulations will enhance the safety and security of vessels and property in the Hampton Roads port complex while minimizing, to the extent possible, the impact on commerce and legitimate waterway use.

DATES: Comments and related material must reach the Coast Guard on or before July 21, 2003.

ADDRESSES: You may mail comments and related material to the Marine Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704. The Marine Safety Division of the Fifth Coast Guard District maintains the public docket for this rulemaking. The docket, as well as documents indicated in this preamble as being available in the docket, will be available for inspection or copying at the Coast Guard Fifth District, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Roger Smith, Marine Safety Division, Fifth Coast Guard District, (757) 398–6389, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–02–099), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. You may submit a request for a meeting by writing to the Marine Safety Division at the address under **ADDRESSES**, explaining why one would

be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

History

Terrorist attacks on September 11, 2001, inflicted catastrophic human casualties and property damage. These attacks highlighted the terrorists' ability and desire to utilize multiple means in different geographic areas to increase their opportunities to successfully carry out their mission, thereby maximizing destruction using multiple terrorist acts.

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. The threat of maritime attacks is real as evidenced by the October 2002 attack on a tank vessel off the coast of Yemen and the prior attack on the USS COLE. These attacks manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September, 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02–07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD more recently issued Advisory 03–01 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. The ongoing hostilities in Afghanistan and growing tensions in Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

Due to increased awareness that future terrorist attacks are possible, the Coast Guard as lead federal agency for maritime homeland security, has determined that the District Commander must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. A Regulated Navigation Area is a tool available to the Coast Guard that may be used to control vessel traffic by specifying times of vessel entry, movement, or departure to, from, within, or through ports, harbors, or other waters.

On October 24, 2001, we published a temporary final rule entitled, ''Regulated Navigation Area; Chesapeake Bay Entrance and Hampton Roads, VA and Adjacent Waters,'' in the **Federal Register** (66 FR 53712). The temporary final rule required that all vessels of 300 gross tons or greater to reduce speed to eight knots in the vicinity of Naval Station Norfolk, in order to improve security measures and reduce the potential threat to Naval Station Norfolk security that may be posed by these vessels. We have received no comments since the publication of this rule.

On December 27, 2001, we published a temporary final rule entitled, ''Regulated Navigation Area; Chesapeake Bay Entrance and Hampton Roads, VA and Adjacent Waters,'' in the **Federal Register** (66 FR 66753). The temporary rule expanded the geographic definitions of the Hampton Roads Regulated Navigation Area to include the waters of the 12 nautical mile territorial sea off the Coast of Virginia and added new port security measures. The port security measures required that vessels in excess of 300 gross tons, including tug and barge combinations in excess of 300 gross tons combined, perform the following. Check in with the Captain of the Port or his representative at least 30 minutes prior to entry to obtain permission to transit the Regulated Navigation Area. The vessel may enter the Regulated Navigation Area upon authorization and approval by the Captain of the Port or his representative. A vessel that receive permission to enter the Regulated Navigation Area remain subject to a Coast Guard port security boarding. Thirty (30) minutes prior to getting underway, vessels departing or moving within the Regulated Navigation Area must contact the Captain of the Port or his representative via VHF–FM channel 13 or 16, call (757) 444–5209/5210 or (757) 441–3298 for the Captain of the Port Duty Officer. We have received no comments since the publication of this rule.

This rule proposes to update the Regulated Navigation Area to encompass aspects of navigational safety and security in a post September 11, 2001 environment. The reporting and speed limit restrictions will enable the COTP to closely monitor vessel movements in the Regulated Navigation Area.

Discussion of Proposed Rule

Regulated Navigation Area

Offshore Zone: The proposed rule will expand the geographical definition of the Hampton Roads Regulated Navigation Area to include the waters of the 12 nautical mile territorial sea off the Coast of Virginia.

Inland Zone: The geographical boundaries of the inland waters included in the existing Regulated Navigation Area will be unchanged under the proposed rule.

Definitions

The proposed rule will expand the definition section of the existing Regulated Navigation Area to define I–664 Bridge, Designated Representative of the Captain of the Port, Offshore waters, Inland waters, and Coast Guard Patrol Commander.

Applicability

This section will be unchanged by the proposed rule.

Regulations

Anchoring Restrictions: The proposed rule will simplify anchoring restrictions. Under the proposed rule vessels may anchor in all areas of the offshore waters of the Regulated Navigation Area except for the entrances to the shipping channels without prior permission from the Captain of the Port. No vessel over 65 feet long may anchor or moor in the inland waters of the Regulated Navigation Area outside the anchorage designated in § 110.168 of 33 CFR unless the vessel has the permission of the Captain of the Port or has an emergency. Vessels may not anchor within the confines of Little Creek Harbor, Desert Cove, or Little Creek Cove without the permission of the Captain of the Port.

Anchoring Detail Requirements: The proposed rule will not change the Anchoring Detail Requirements section, but places it immediately after the Anchoring Restrictions section.

Secondary Towing Rig Requirements: This section will be unchanged by the proposed rule.

Thimble Shoals Channel Controls: The proposed rule will combine the Draft Limitation section and Traffic Direction sections of the existing

Regulated Navigation Area into one section.

Restrictions on Vessels with Impaired Maneuverability: The proposed rule will simplify this section by preventing vessels over 100 gross tons, with impaired maneuverability, from entering the Regulated Navigation Area without the permission of the Captain of the Port. The proposed rule will require vessels over 100 gross tons that experience impaired maneuverability, while operating within the Regulated Navigation, to report the impairment to the Captain of the Port.

Requirements for Navigation Charts, Radars and Pilots: The proposed rule will exempt naval and public vessels from maintaining corrected charts of the Regulated Navigation Area if the naval or public vessel carries electronic charting and navigation systems that have met the applicable agency regulations regarding navigation safety.

Emergency Procedure: The proposed rule will simplify this section by removing many of the existing restrictions. The proposed rule will allow any vessel experiencing an emergency to deviate from the regulations in this section to the extent necessary to avoid endangering the safety of persons, property, or the environment. The proposed rule will require that vessels over 100 gross tons with an emergency that is within two nautical miles of the CBBT or I–664 Bridge Tunnel to notify the Captain of the Port of its location and the nature of the emergency as soon as possible.

Vessel Speed Limits: The proposed rule will consolidate the Vessel Speed Limits sections into one section. The proposed rule will incorporate the vessel speed limit for the Norfolk Harbor Reach, as originally published as a temporary final rule in the **Federal Register** (66 FR 53712). Under the proposed rule vessels 300 gross tons or greater may not transit through the Southern Branch of the Elizabeth River alongside Naval Station Norfolk Restricted Area at a speed in excess of 8 knots. This speed restriction does not apply to public vessels as defined in 33 U.S.C. 1321(a)(4). The vessel speed limits on Little Creek and the Southern Branch of the Elizabeth River will be unchanged by the proposed rule.

Port Security Requirements: The proposed rule will incorporate the additional port security measures for all vessels over 300 gross tons, as originally published as a temporary final rule in the **Federal Register** (66 FR 66753). Under the proposed rule the additional port security measures will require that vessels over 300 gross tons, including tug and barge combinations in excess of 300 gross tons combined to do the following. Obtain authorization from the Captain of the Port, or the designated representative of the Captain of the Port, prior to entering the Regulated Navigation Area. Ensure that no person who is not a permanent member of the vessel's crew, or a member of a Coast Guard boarding team, boards the vessel without a valid purpose and photo identification. Report any departure from or movement within the Regulated Navigation Area to the designated representative of the Captain of the Port prior to getting underway. The designated representative of the Captain of the Port shall be contacted on VHF–FM channel 12, or by calling (757) 444–5209, (757) 444–5210, or (757) 668–5555. All vessels entering or remaining in the Regulated Navigation Area may be subject to a vessel port security inspection. Vessels awaiting a port security inspection or Captain of the Port authorization to enter may be directed to anchor in a specific location.

The proposed rule will expand port security measures for vessels over 300 gross tons operating inside inland waters. All vessels over 300 gross tons, including tug and barge combinations in excess of 300 gross tons, must receive authorization from the Captain of the Port prior to any vessel movement. This requirement enables the Captain of the Port to maintain maritime domain awareness.

Waivers

This section will be unchanged by the proposed rule.

Control of Vessels Within the Regulated Navigation Area

The proposed rule will make minor grammatical and syntax changes to the existing section.

Deleted Sections

Section (d)(11), Restrictions on Vessel Operations During Aircraft Carrier and Other Large Naval Transits of the Elizabeth River will be deleted under the proposed rule. This section is no longer necessary because the Coast Guard published 33 CFR 165.2025, Protection of Naval Vessels, which creates a naval vessel protection zone around U.S. naval vessels greater than 100 feet in length overall at all times in the navigable waters of the United States.

Section (d)(12), Restrictions on Vessel Operations During Liquefied Petroleum Gas Carrier Movements on the Chesapeake Bay and Elizabeth River will be deleted under the proposed rule. Liquefied Petroleum Gas and Liquefied Natural Gas Carriers will be addressed in a future notice of proposed rulemaking.

Section (d)(13), Restrictions on the Use of the Elizabeth River Ferry Dock at the Foot of High Street, Portsmouth, Virginia will be deleted under the proposed rule. The Elizabeth River Ferry Dock has been removed and replaced by a cove at the Foot of High Street, Portsmouth, Virginia. This section was a necessary safety measure to avoid potential collisions between Elizabeth River traffic and the Elizabeth River Ferry when the ferry operated from the then existing dock. Since the dock has been removed and the Elizabeth River Ferry embarks and disembarks passengers within a cove, there is no longer a need for this section.

Additional grammar and syntax changes have been made throughout this proposed rule.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is not necessary. The eight knot speed limit restriction for the Norfolk Harbor Reach will apply to vessels 300 gross tons or greater. Vessels under 300 gross tons will be exempt. The speed limit requirements will only be in effect for less than four miles, and typical vessel speed will be 10 knots, so the actual delay for each vessel will be less than 6 minutes in each direction. Therefore, the delay caused by the two-knot reduction in speed will be minimal. The proposed port security measures will affect only those vessels in excess of 300 gross tons that enter or move within the Port of Hampton Roads.

Based upon the information received in response to this NRPM, the Coast Guard intends to carefully consider the costs and benefits associated with this rulemaking. Accordingly, comments, information and data are solicited on the economic impact of any proposed recommendation for changes to the Fifth District regulations as mentioned in *Background and Purpose,* above.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would affect the following entities, some of which might be small entities: Shipping companies, towing companies, dredging companies, commercial fishing vessels, small passenger vessels and recreational vessels that operate within the Regulated Navigation Area.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Roger Smith, Marine Safety Division, Fifth Coast Guard District, (757) 398–6389.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

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

List of Subjects in 33 CFR 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Revise § 165.501 to read as follows:

§ 165.501 Chesapeake Bay entrance and Hampton Roads, VA and adjacent waters—regulated navigation area.

(a) *Location.* The waters enclosed by the shoreline and the following lines are a Regulated Navigation Area:

(1) *Offshore zone.* A line drawn due East from the mean low water mark at the North Carolina and Virginia border at latitude 36°33′03″ N, longitude 75°52′00″ W, to the Territorial Seas boundary line at latitude 36°33′05″ N, longitude 75°36′51″ W, thence generally Northeastward along the Territorial Seas boundary line to latitude 38°01′39″ N, longitude 74°57′18″ W, thence due West to the mean low water mark at the Maryland and Virginia border at latitude 38°01′39″ N, longitude 75°14′30″ W,

thence South along the mean low water mark until Cape Charles Light, thence South along the inland waters boundary line at the entrance to Chesapeake Bay.

(2) *Inland Zone.*—

(i) A line drawn across the entrance to Chesapeake Bay between Wise Point and Cape Charles Light, and then continuing to Cape Henry Light.

(ii) A line drawn across the Chesapeake Bay between Old Point Comfort Light and Cape Charles City Range ''A'' Rear Light.

(iii) A line drawn across the James River along the eastern side of U.S. Route 17 highway bridge, between Newport News and Isle of Wight County, Virginia.

(iv) A line drawn across Chuckatuck Creek along the northern side of the north span of the U.S. Route 17 highway bridge, between Isle of Wight County and Suffolk, Virginia.

(v) A line drawn across the Nansemond River along the northern side of the Mills Godwin (U.S. Route 17) Bridge, Suffolk, Virginia.

(vi) A line drawn across the mouth of Bennetts Creek, Suffolk, Virginia.

(vii) A line drawn across the Western Branch of the Elizabeth River along the eastern side of the West Norfolk Bridge, Portsmouth, Virginia.

(viii) A line drawn across the Southern Branch of the Elizabeth River along the northern side of the I–64 highway bridge, Chesapeake, Virginia.

(ix) A line drawn across the Eastern Branch of the Elizabeth River along the western side of the west span of the Campostella Bridge, Norfolk, Virginia.

(x) A line drawn across the Lafayette River along the western side of the Hampton Boulevard Bridge, Norfolk, Virginia.

(xi) A line drawn across Little Creek along the eastern side of the Ocean View Avenue (U.S. Route 60) Bridge, Norfolk, Virginia.

(xii) A line drawn across Lynnhaven Inlet along the northern side of Shore Drive (U.S. Route 60) Bridge, Virginia Beach, Virginia.

(b) *Definitions.* In this section:

(1) *CBBT* means the Chesapeake Bay Bridge Tunnel.

(2) *Thimble Shoal Channel* consists of the waters bounded by a line connecting Thimble Shoal Channel Lighted Bell Buoy 1TS, thence to Lighted Gong Buoy 17, thence to Lighted Buoy 19, thence to Lighted Buoy 21, thence to Lighted Buoy 22, thence to Lighted Buoy 18, thence to Lighted Buoy 2, thence to the beginning.

(3) *Thimble Shoal North Auxiliary Channel* consists of the waters in a rectangular area 450 feet wide adjacent to the north side of Thimble Shoal Channel, the southern boundary of which extends from Thimble Shoal Channel Lighted Buoy 2 to Lighted Buoy 18.

(4) *Thimble Shoal South Auxiliary Channel* consists of the waters in a rectangular area 450 feet wide adjacent to the south side of Thimble Shoal Channel, the northern boundary of which extends from Thimble Shoal Channel Lighted Bell Buoy 1TS, thence to Lighted Gong Buoy 17, thence to Lighted Buoy 19, thence to Lighted Buoy 21.

(5) *I–664 Bridge* means the Monitor Merrimac Bridge Tunnel.

(6) *Designated representative of the Captain of the Port* means a person, including the duty officer at the Coast Guard Marine Safety Office Hampton Roads, the Joint Harbor Operations Center watchstander, or the Coast Guard or Navy patrol commander who has been authorized by the Captain of the Port to act on his or her behalf and at his or her request to carry out such orders and directions as needed. All patrol vessels shall display the Coast Guard Ensign at all times when underway.

(7) *Offshore waters* means waters seaward of the COLREGS Line of Demarcation.

(8) *Inland waters* means waters within the COLREGS Line of Demarcation.

(9) *Coast Guard Patrol Commander* is a Coast Guard commissioned, warrant or petty officer who has been designated by the Commander, Coast Guard Group Hampton Roads.

(c) *Applicability.* This section applies to all vessels operating within the Regulated Navigation Area, including naval and public vessels, except vessels that are engaged in the following operations:

(1) Law Enforcement.

(2) Servicing aids to navigation.

(3) Surveying, maintenance, or improvement of waters in the Regulated Navigation Area.

(d) *Regulations.* (1) *Anchoring Restrictions.* (i) Vessels may anchor in all areas of the offshore waters of the Regulated Navigation Area except for the entrances to the shipping channels without prior permission from the Captain of the Port.

(ii) No vessel over 65 feet long may anchor or moor in the inland waters of the Regulated Navigation Area outside an anchorage designated in § 110.168 of this title, with these exceptions:

(A) The vessel has the permission of the Captain of the Port.

(B) Only in an emergency, when unable to proceed without endangering the safety of persons, property, or the environment, may a vessel anchor in a channel.

(C) A vessel may not anchor within the confines of Little Creek Harbor, Desert Cove, or Little Creek Cove without the permission of the Captain of the Port. The Captain of the Port shall consult with the Commander, Naval Amphibious Base Little Creek, before granting permission to anchor within this area.

(2) *Anchoring Detail Requirements.* A self-propelled vessel over 100 gross tons, which is equipped with an anchor or anchors (other than a tugboat equipped with bow fenderwork of a type of construction that prevents an anchor being rigged for quick release), that is underway within two nautical miles of the CBBT or the I–664 Bridge Tunnel shall station its personnel at locations on the vessel from which they can anchor the vessel without delay in an emergency.

(3) *Secondary Towing Rig Requirements on Inland Waters.* (i) A vessel over 100 gross tons may not be towed in the inland waters of the Regulated Navigation Area unless it is equipped with a secondary towing rig, in addition to its primary towing rig, that:

(A) Is of sufficient strength for towing the vessel.

(B) Has a connecting device that can receive a shackle pin of at least two inches in diameter.

(C) Is fitted with a recovery pickup line led outboard of the vessel's hull.

(ii) A tow consisting of two or more vessels, each of which is less than 100 gross tons, that has a total gross tonnage that is over 100 gross tons, shall be equipped with a secondary towing rig between each vessel in the tow, in addition to its primary towing rigs, while the tow is operating within this Regulated Navigation Area. The secondary towing rig must:

(A) Be of sufficient strength for towing the vessels.

(B) Have connecting devices that can receive a shackle pin of at least two inches in diameter.

(C) Be fitted with recovery pickup lines led outboard of the vessel's hull.

(4) *Thimble Shoals Channel Controls.* (i) A vessel drawing less than 25 feet may not enter the Thimble Shoal Channel, unless the vessel is crossing the channel. Channel crossings shall be made as perpendicular to the channel axis as possible.

(ii) Except when crossing the channel, a vessel in the Thimble Shoal North Auxiliary Channel shall proceed in a westbound direction.

(iii) Except when crossing the channel, a vessel in the Thimble Shoal

South Auxiliary Channel shall proceed in an eastbound direction.

(5) *Restrictions on Vessels with Impaired Maneuverability.* (i) *Before entry.* A vessel over 100 gross tons, whose ability to maneuver is impaired by heavy weather, defective steering equipment, defective main propulsion machinery, or other damage, may not enter the Regulated Navigation Area without the permission of the Captain of the Port.

(ii) *After entry.* A vessel over 100 gross tons, which is underway in the Regulated Navigation Area, that has its ability to maneuver become impaired for any reason, shall, as soon as possible, report the impairment to the Captain of the Port.

(6) *Requirements for Navigation Charts, Radars, and Pilots.* No vessel over 100 gross tons may enter the Regulated Navigation Area, unless it has on board: (i) Corrected charts of the Regulated Navigation Area. In lieu of corrected paper charts, naval and public vessels may carry electronic charting and navigation systems that have met the applicable agency regulations regarding navigation safety;

(ii) An operative radar during periods of reduced visibility;

(iii) When in inland waters, a pilot or other person on board with previous experience navigating vessels on the waters of the Regulated Navigation Area.

(7) *Emergency Procedures.* (i) Except as provided in paragraphs (d)(7)(b) of this section, in an emergency any vessel may deviate from the regulations in this section to the extent necessary to avoid endangering the safety of persons, property, or the environment.

(ii) A vessel over 100 gross tons with an emergency that is located within two nautical miles of the CBBT or I–664 Bridge Tunnel shall notify the Captain of the Port of its location and the nature of the emergency, as soon as possible.

(8) *Vessel Speed Limits.* (i) *Little Creek.* A vessel may not proceed at a speed over five knots between the Route 60 bridge and the mouth of Fishermans Cove (Northwest Branch of Little Creek).

(ii) *Southern Branch of the Elizabeth River.* A vessel may not proceed at a speed over six knots between the junction of the Southern and Eastern Branches of the Elizabeth River and the Norfolk and Portsmouth Belt Line Railroad Bridge between Chesapeake and Portsmouth, Virginia.

(iii) *Norfolk Harbor Reach.* Nonpublic vessels of 300 gross tons or more may not proceed at a speed over eight knots between the Elizabeth River Channel Lighted Gong Buoy (LL 9470) of Norfolk Harbor Reach (southwest of Sewells Point) at approximately 36°58′00″ N, 076°20′00″ W, and gated Elizabeth River Channel Lighted Buoys 17 (LL 9595) and 18 (LL 9600) of Craney Island Reach (southwest of Norfolk International Terminal at approximately 36°54′17″ N, and 076°20′11″ W.

(9) *Port Security Requirements.* Vessels in excess of 300 gross tons, including tug and barge combinations in excess of 300 gross tons (combined), shall not enter the Regulated Navigation Area, move within the Regulated Navigation Area, or be present within the Regulated Navigation Area, unless they comply with the following requirements.

(i) Obtain authorization to enter the Regulated Navigation Area from the designated representative of the Captain of the Port prior to entry. All vessels entering or remaining in the Regulated Navigation Area may be subject to a Coast Guard boarding.

(ii) Ensure that no person who is not a permanent member of the vessel's crew, or a member of a Coast Guard boarding team, boards the vessel without a valid purpose and photo identification.

(iii) Report any departure from or movement within the Regulated Navigation Area to the designated representative of the Captain of the Port prior to getting underway.

(iv) The designated representative of the Captain of the Port shall be contacted on VHF–FM channel 12, or by calling (757) 444–5209, (757) 444–5210, or (757) 668–5555.

(v) In addition to the authorities listed in this Part, this paragraph is promulgated under the authority under 33 U.S.C. 1226.

(e) *Waivers.* (1) The Captain of the Port may, upon request, waive any regulation in this section.

(2) An application for a waiver must state the need for the waiver and describe the proposed vessel operations.

(f) *Control of Vessels Within the Regulated Navigation Area.* (1) When necessary to prevent damage, destruction or loss of any vessel, facility or port infrastructure, the Captain of the Port may direct the movement of vessels or issue orders requiring vessels to anchor or moor in specific locations.

(2) If needed for the maritime, commercial or security interests of the United States, the Captain of the Port may order a vessel to move from the location in which it is anchored to another location within the Regulated Navigation Area.

(3) The master of a vessel within the Regulated Navigation Area shall comply with any orders or directions issued to the master's vessel by the Captain of the Port.

Dated: April 16, 2003.

James D. Hull,

Vice Admiral, Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–12549 Filed 5–21–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[VT–1226b; FRL–7501–9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Vermont; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the sections 111(d) negative declaration submitted by the Vermont Department of Environmental Conservation (DEC) on August 29, 1996. This negative declaration adequately certifies that there are no existing municipal solid waste (MSW) landfills located in the state of Vermont that have accepted waste since November 8, 1987 and that must install collection and control systems according to EPA's emissions guidelines for existing MSW landfills.

DATES: EPA must receive comments in writing by June 23, 2003.

ADDRESSES: You should address your written comments to: Mr. Steven Rapp, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023.

Copies of documents relating to this proposed rule are available for public inspection during normal business hours at the following location: Environmental Protection Agency, Air Permits, Toxics & Indoor Program Unit, Office of Ecosystem Protection, One Congress Street, Suite 1100, Boston, Massachusetts 02114–2023. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

FOR FURTHER INFORMATION CONTACT: John Courcier, Office of Ecosystem Protection (CAP), EPA-New England, Region 1, Boston, Massachusetts 02203, (617) 918–1659, or by e-mail at *courcier.john@epa.gov.* While the public may forward questions to EPA via e-

mail, it must submit comments on this proposed rule according to the procedures outlined above.

SUPPLEMENTARY INFORMATION: Under section 111(d) of the Clean Air Act, EPA published regulations at 40 CFR part 60, subpart B which require states to submit control plans to control emissions of designated pollutants from designated facilities. In the event that a state does not have a particular designated facility located within its boundaries, EPA requires that a state submit a negative declaration in lieu of a control plan.

The Vermont DEC submitted the negative declaration to satisfy the requirements of 40 CFR part 60, subpart B. In the Final Rules Section of this **Federal Register**, EPA is approving the Vermont negative declaration as a direct final rule without a prior proposal. EPA is doing this because the Agency views this action as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA does not receive any significant, material, and adverse comments to this action, then the approval will become final without further proceedings. If EPA receives adverse comments, we will withdraw the direct final rule and EPA will address all public comments received in a subsequent final rule based on this proposed rule. EPA will not begin a second comment period.

Dated: May 8, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 03–12864 Filed 5–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7500–7]

National Oil and Hazardous Substance, Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Rose Park Sludge Pit Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is issuing a Notice of Intent to Delete the Rose Park Sludge Pit Superfund Site (Site) located in Salt Lake City, Utah, from the National Priorities List (NPL) and requests public comments on this Notice. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR Part 300, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Utah, through the Utah Department of Environmental Quality (UDEQ), have determined that all appropriate response actions under CERCLA, other than five-year reviews and operation & maintenance, have been completed at the Site. However, this deletion does not preclude future actions under Superfund if determined necessary by EPA.

In the ''Rules and Regulations'' section of today's **Federal Register**, EPA is publishing a Direct Final Notice of Deletion of the Rose Park Sludge Pit Superfund Site without prior notice of intent to delete because EPA views this as a non-controversial action. EPA has explained its reasons for this deletion in the preamble to the Direct Final Notice of Deletion. If EPA receives no significant adverse comment(s) on the Direct Final Notice of Deletion, EPA will not take further action on this Notice of Intent to Delete and deletion of the Site will proceed. If EPA receives significant adverse comment(s), EPA will withdraw the Direct Final Notice of Deletion and it will not take effect. EPA will, as appropriate, address all public comments in a subsequent final deletion notice based on this Notice of Intent to Delete. EPA will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so within the time frame noted below. For additional information, see the Direct Final Notice of Deletion, located in the ''Rules and Regulations'' section of this **Federal Register**.

DATES: Comments concerning this Site must be received by June 23, 2003.

ADDRESSES: Written comments should be addressed to: Armando Saenz, Remedial Project Manager (RPM), Mail Code: 8EPR–SR, U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466.

FOR FURTHER INFORMATION CONTACT: Armando Saenz, 303–312–6559, Remedial Project Manager (RPM), Mail Code: 8EPR–SR, U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final Notice of Deletion published in the ''Rules and Regulations'' section of this **Federal Register**.

Information Repositories

Repositories at the following addresses have been established to provide detailed information concerning this decision and all documents forming the basis for the response actions taken at this Site as well as documentation of the completion of those actions: (1) U.S. EPA Region 8 Superfund Records Center, 999 18th Street, Fifth Floor, Denver, Colorado 80202–2466, Monday through Friday, 8 a.m.–4:30 p.m.; and, (2) Utah Department of Environmental Quality, Division of Environmental Response & Remediation, 168 North 1950 West, Salt Lake City, Utah 84116.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution, Water supply.

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.

Dated: May 2, 2003.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 03–12613 Filed 5–20–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7500–5]

National Oil and Hazardous Substance, Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Petrochem Recycling Corp./Ekotek, Inc., Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is issuing a Notice of Intent to Delete the Petrochem Recycling Corp./Ekotek, Inc., Superfund Site (Site) located in Salt Lake City, Utah, from the National Priorities List (NPL) and requests public comments on this Notice. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300, the National Oil and Hazardous Substances Pollution Contingency Plan

(NCP). The EPA and the State of Utah, through the Utah Department of Environmental Quality (UDEQ), have determined that all appropriate response actions under CERCLA have been completed at the Site. However, this deletion does not preclude future actions under Superfund if determined necessary by EPA.

In the ''Rules and Regulations'' section of today's **Federal Register**, EPA is publishing a Direct Final Notice of Deletion of the Petrochem Recycling Corp./Ekotek, Inc., Superfund Site without prior notice of intent to delete because EPA views this as a non-controversial action. EPA has explained its reasons for this deletion in the preamble to the Direct Final Notice of Deletion. If EPA receives no significant adverse comment(s) on the Direct Final Notice of Deletion, EPA will not take further action on this Notice of Intent to Delete and deletion of the Site will proceed. If EPA receives significant adverse comment(s), EPA will withdraw the Direct Final Notice of Deletion and it will not take effect. EPA will, as appropriate, address all public comments in a subsequent final deletion notice based on this Notice of Intent to Delete. EPA will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so within the time frame noted below. For additional information, see the Direct Final Notice of Deletion, located in the ''Rules and Regulations'' section of this **Federal Register**.

DATES: Comments concerning this Site must be received by June 23, 2003.

ADDRESSES: Written comments should be addressed to: Armando Saenz, Remedial Project Manager (RPM), Mail Code: 8EPR–SR, U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466.

FOR FURTHER INFORMATION CONTACT: Armando Saenz, 303–312–6559, Remedial Project Manager (RPM), Mail Code: 8EPR–SR, U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Deletion published in the ''Rules and Regulations'' section of this **Federal Register**.

Information Repository

A repository at the following address has been established to provide detailed information concerning this decision and all documents forming the basis for the response actions taken at this Site as well as documentation of the completion of those actions: U.S. EPA Region 8 Superfund Records Center, 999 18th Street, Fifth Floor, Denver, Colorado 80202–2466, Monday through Friday, 8 a.m.–4:30 p.m.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution, Water supply.

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.

Dated: May 2, 2003.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 03–12615 Filed 5–21–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

RIN 1090–AA84

General Rules Relating to Procedures and Practice; Special Rules Applicable to Public Land Hearings and Appeals

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Hearings and Appeals (OHA) is proposing to revise its existing regulations governing petitions for stays and requests to put bureau decisions into immediate effect. The revisions would specifically authorize OHA administrative law judges to decide such petitions and requests, which arise most frequently in the context of appeals from grazing decisions that the Bureau of Land Management (BLM) issues. This change would expedite the administrative review process by eliminating an inefficient division of authority. The revisions would also improve the format and clarity of the regulations.

DATES: You should submit your comments by July 21, 2003.

ADDRESSES: Send comments to: Director, Office of Hearings and Appeals, Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, U. S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, VA 22203, Phone: 703–235–3750. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. *Public Comment Procedures*
II. *Background*
III. *Review Under Procedural Statutes and Executive Orders*

I. Public Comment Procedures

A. How Do I Comment on the Proposed Rule?

You may submit your comments by mailing or delivering them to Director, Office of Hearings and Appeals, Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, VA 22203, Attn: RIN 1090–AA84.

Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should refer to the specific section or paragraph of the proposal that you are addressing.

The Department of the Interior will not necessarily consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (*see* **DATES**) or comments delivered to an address other than that listed above (*see* **ADDRESSES**).

B. How Do I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES** during regular business hours (9 a.m. to 5 p.m.), Monday through Friday, except holidays.

Individual respondents may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

II. Background

The existing regulations governing hearings and appeals of BLM grazing decisions allocate responsibility for deciding petitions for a stay of such decisions to the Interior Board of Land Appeals (IBLA) and the Director, OHA. Responsibility for conducting the hearing, ruling on other motions, and

making the initial decision on the appeal, however, rests with administrative law judges (ALJs) in the Hearings Division, OHA.

When an appeal of a grazing decision is filed with BLM, BLM currently forwards the decision and accompanying record to the Hearings Division office in Salt Lake City, Utah. If a petition for a stay of the decision accompanies the notice of appeal, the Hearings Division must forward the record to IBLA in Arlington, Virginia. Under 43 CFR 4.21(b)(4), IBLA (or the Director) has 45 days to decide whether or not to grant the petition; after IBLA decides, it returns the record to the Hearings Division in Salt Lake City. In the meantime, the ALJ to whom the case is assigned normally waits to schedule the hearing and to rule on any motions concerning the appeal, such as a motion to intervene in the appeal or a motion by BLM to dismiss the appeal. IBLA does not have authority to rule on such motions. The same situation applies, but less frequently, to requests to place grazing decisions into immediate effect under 43 CFR 4.21(a)(1) if BLM has not done so under 43 CFR 4160.3(f).

This division of responsibility results in delays and inefficiencies that would be alleviated if the ALJs also had authority to rule on petitions for a stay and requests to place grazing decisions into immediate effect. For example, IBLA sometimes finds during its consideration of a stay petition that a motion to dismiss should be granted. However, under the existing regulations, IBLA cannot grant the motion but must proceed to decide the stay petition and then refer the case, including the motion to dismiss, back to the Hearings Division. If the ALJ had authority to rule on petitions for a stay and requests to place decisions into immediate effect, he or she could consider any other pending motions at the same time and, where appropriate, grant a motion to dismiss without having to rule on the petition or request. Moreover, under the existing regulations, IBLA must thoroughly review the record in deciding whether to grant a stay petition, and the ALJ must then do the same in deciding the merits of the case. This is an unnecessary duplication of effort and takes time away from IBLA's consideration of other appeals.

By contrast, the regulations governing hearings under the Surface Mining Control and Reclamation Act of 1977 authorize an ALJ to consider whether to grant a motion for temporary relief (which is comparable to a petition for a stay) and also to decide the merits. IBLA gets involved in temporary relief cases only if a party appeals an ALJ's decision. *See, e.g.,* 43 CFR 4.1267, 4.1367(f), 4.1376(h). OHA has found these procedures workable and cost-effective. ALJs are also authorized to grant stays of decisions issued under BLM's onshore oil and gas operations regulations, *see* 43 CFR 3165.3(e), 3165.4(c), and of civil penalties issued by the Minerals Management Service, *see* 30 CFR 241.55(b).

Therefore, OHA proposes amendments to the existing regulations to provide the authority to ALJs to rule on petitions for a stay of BLM grazing decisions and requests to place these decisions into immediate effect. We also propose that any party may appeal to the IBLA an order of an ALJ granting or denying (1) a petition for a stay, or (2) a request to place a decision into immediate effect. Any party (other than BLM) wishing to appeal an order of an ALJ denying a petition for a stay or granting a request to place a decision into immediate effect may seek judicial review instead of appealing to IBLA.

The proposed rule would revise both 43 CFR 4.21, which applies to OHA proceedings generally, and 43 CFR 4.470–4.478, which apply to appeals from BLM grazing decisions. Currently OHA does not encounter the inefficient division of responsibility described above outside the context of grazing appeals. However, by revising § 4.21, we would eliminate the same inefficiency should it arise in some other context where the merits of the appeal were pending before the Hearings Division but, under current regulations, a stay petition must be decided by IBLA. In any case in which the ALJ has jurisdiction of the merits, we believe the ALJ should be authorized to decide a stay petition or a request to place a bureau decision in immediate effect. By revising § 4.21 as well as § 4.477, we would be keeping the two sets of provisions consistent.

OHA is also proposing to revise the existing regulatory language to make it clearer and to conform to Departmental requirements for writing rules in plain language. *See* 318 DM 4.2. We propose to do so by defining terms, creating more sections, reorganizing the provisions to put the main ideas first, and shortening sentences. In 43 CFR part 4, subpart B, we propose to revise existing § 4.21, to add new §§ 4.22 through 4.26, and to redesignate existing §§ 4.22 through 4.31 as §§ 4.27 through 4.36, respectively. Similarly, in 43 CFR part 4, subpart E, we would revise existing § 4.470, add new §§ 4.471 and 4.472, and redesignate existing §§ 4.471 through 4.478 as §§ 4.473 through 4.480, respectively. We would add paragraph (c) to newly redesignated § 4.474, and revise newly redesignated §§ 4.478 and 4.479. If this proposed rule becomes final, BLM would have to amend its regulations that refer to existing §§ 4.21 through 4.31 or §§ 4.470 through 4.478 to update the cross-references.

III. Review Under Procedural Statutes and Executive Orders

A. Regulatory Planning and Review (E.O. 12688)

In accordance with the criteria in Executive Order 12866, we find that this document is not a significant rule. The Office of Management and Budget has not reviewed this rule under Executive Order 12866.

1. This rule would not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, competition, jobs, the environment, public health or safety, or other units of government. A cost-benefit and economic analysis is not required. These amended rules would have virtually no effect on the economy because they would only add authority for ALJs to decide petitions for a stay of grazing decisions and to place such decisions into immediate effect.

2. This rule would not create inconsistencies with or interfere with other agencies' actions. The rules propose to amend existing OHA regulations to add authority for ALJs to decide petitions for a stay of grazing decisions and to place such decisions into immediate effect.

3. This rule would not alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. These regulations have to do only with the procedures for hearings and appeals of BLM grazing decisions, not with entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The proposed rule would only add authority for ALJs to decide petitions for a stay of grazing decisions and to place such decisions into immediate effect.

4. This rule does not raise novel legal or policy issues. The rule would simply extend ALJs' existing authority to include the authority to decide petitions for a stay of BLM grazing decisions and requests to place such decisions into immediate effect.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The extension of authority to ALJs to decide petitions

for a stay of BLM grazing decisions and to place such decisions into immediate effect would have no effect on small entities. A Small Entity Compliance Guide is not required.

C. Small Business Regulatory Enforcement Fairness Act

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

1. Would not have an annual effect on the economy of $100 million or more. Granting authority to ALJs to decide petitions for a stay of BLM grazing decisions and to place such decisions into immediate effect should have no effect on the economy.

2. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Granting ALJs authority to decide petitions for a stay of BLM grazing decisions and to place such decisions into immediate effect would not affect costs or prices for citizens, individual industries, or government agencies.

3. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Extending authority to ALJs to decide petitions for a stay of BLM grazing decisions and to place such decisions into immediate effect should have no effects, adverse or beneficial, on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*), we find that:

1. This rule would not have a significant or unique effect on state, local, or tribal governments or the private sector. Small governments do not often appeal BLM grazing decisions. Authorizing ALJs to decide petitions for a stay of such decisions and to place such decisions into immediate effect would neither uniquely nor significantly affect these governments because such authority currently exists elsewhere. A statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.,* is not required.

2. This rule would not produce an unfunded Federal mandate of $100 million or more on State, local, or tribal governments or the private sector in any year, *i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

E. Takings (E.O. 12630)

In accordance with Executive Order 12630, we find that the rule would not have significant takings implications. A takings implication assessment is not required. These amendments to existing rules authorizing ALJs to decide petitions for a stay of BLM grazing decisions and to place such decisions into immediate effect should have no effect on property rights.

F. Federalism (E.O. 13132)

In accordance with Executive Order 13132, we find that the rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. There is no foreseeable effect on states from extending to ALJs the existing authority to decide petitions for a stay of BLM grazing decisions and to place such decisions into immediate effect. A federalism assessment is not required.

G. Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b)(2) of the Order. These regulations, because they simply extend to ALJs already existing authority to decide petitions for a stay of BLM grazing decisions and to place such decisions into immediate effect, will not burden either administrative or judicial tribunals.

H. Paperwork Reduction Act

This proposed rule wold not require an information collection from 10 or more parties, and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I has not been prepared and has not been approved by the Office of Policy Analysis. These regulations would only extend authority to ALJs to decide petitions for stay of BLM grazing decisions and to place such decisions into immediate effect; they would not require the public to provide information.

I. National Environmental Policy Act

The Department has analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.,* Council on Environmental Quality (CEQ) regulations, 40 CFR part 1500, and the Department of the Interior Departmental Manual (DM). CEQ regulations, at 40 CFR 1508.4, define a ''categorical exclusion'' as a category of actions that the Department has determined ordinarily do not individually or cumulatively have a significant effect on the human environment. The regulations further direct each department to adopt NEPA procedures, including categorical exclusions. 40 CFR 1507.3. The Department has determined that the proposed rule is categorically excluded from further environmental analysis under NEPA in accordance with 516 DM 2, Appendix 1, which categorically excludes ''[p]olicies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature.'' In addition, the Department has determined that none of the exceptions to categorical exclusions, listed in 516 DM 2, Appendix 2, applies to the proposed rule. The proposed rule is an administrative and procedural rule, relating to the authority of ALJs to decide petitions for stays of BLM grazing decisions and requests to place such decisions into immediate effect. The rule would not change the requirement that projects must comply with NEPA. Therefore, neither an environmental assessment nor an environmental impact statement under NEPA is required.

J. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, the Department of the Interior has evaluated potential effects of these rules on Federally recognized Indian tribes and has determined that there are no potential effects. These rules would not affect Indian trust resources; they would provide authority to ALJs to decide petitions for a stay of BLM grazing decisions and to place such decisions into immediate effect.

K. Effects on the Nation's Energy Supply

In accordance with Executive Order 13211, we find that this regulation does not have a significant effect on the nation's energy supply, distribution, or use. The extension of authority to ALJs to decide petitions for a stay of BLM grazing decisions and to place such decisions into immediate effect would not affect energy supply or consumption.

L. Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand, including answers to the

following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example, § 4.21 General provisions.) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

List of Subjects in 43 CFR Part 4

Administrative practice and procedure; Grazing lands; Public lands.

For the reasons set forth in the preamble, under authority delegated to the Director, Office of Hearings and Appeals, by the Secretary of the Interior, part 4, subparts B and E, of title 43 of the Code of Federal Regulations are proposed to be amended as set forth below:

Dated: May 13, 2003.

Robert S. More,

Director, Office of Hearings and Appeals.

PART 4—[AMENDED]

1. The authority for 43 CFR part 4 continues to read as follows:

Authority: R.S. 2478, as amended, 43 U.S.C. sec. 1201, unless otherwise noted.

Subpart B—General Rules Relating to Procedures and Practice

§§ 4.22 through 4.31 [Redesignated as §§ 4.27 through 4.36].

2. Sections 4.22 through 4.31 are redesignated as §§ 4.27 through 4.36.

3. Section 4.21 is revised and new §§ 4.22 through 4.26 are added to read as follows:

§ 4.21 Definitions of terms used in this subpart.

As used in this subpart:

Appropriate official means the Director of the Office of Hearings and Appeals, an Appeals Board, or an administrative law judge, as applicable in a particular situation.

Bureau means a bureau or office of the Department of the Interior.

Days means calendar days unless otherwise stated.

Decision means a written determination or, if applicable, a portion of a written determination.

§ 4.22 Effect of a decision pending appeal.

(a) The provisions of this section apply to any decision by a bureau that includes a right of appeal to the Office of Hearings and Appeals, unless a law or other applicable regulation provides otherwise.

(b) No such bureau decision is effective during the period of time allowed for filing an appeal, unless it is made immediately effective under paragraph (c)(2) of this section.

(c) A bureau decision becomes effective as shown in the following table:

If . . .	And . . .	Then . . .
(1) A statute or other regulation provides that the bureau decision will not take effect pending a decision on an appeal,	a person who has a right of appeal files a notice of appeal,	the bureau decision will become effective if and when it is affirmed by the Office of Hearings and Appeals or the appeal is dismissed.
(2) A person who has a right of appeal under § 4.410 or other applicable regulation files a timely notice of appeal,	a party to the appeal demonstrates that the public interest requires making the bureau decision effective immediately,	the appropriate official (see § 4.21) may provide that the bureau decision becomes effective immediately.
(3) A person who has a right of appeal under § 4.410 or other applicable regulation files a timely notice of appeal and a petition for a stay,	the appellant satisfies the requirements of § 4.23,	the appropriation official may stay the effect of the bureau decision under § 4.24, and the bureau decision will become effective if and when it is affirmed by the Office of Hearings and Appeals or the appeal is dismissed.
(4) A person who has a right of appeal under § 4.410 or other applicable regulation files a timely notice of appeal and a petition for a stay,	the appellant does not satisfy the requirements of § 4.23,	the bureau decision becomes effective when the appropriate official denies the petition.
(5) A person who has a right of appeal under § 4.410 or other applicable regulation files a timely notice of appeal and a petition for a stay,	the appropriate official does not act on petition within 45 days of the end of the appeal period,	the decision becomes effective on the 46th day after the end of the appeal period.

§ 4.23 How to petition for a stay of the effective date of a decision.

(a) To request a stay of a bureau decision, an appellant must file a notice of appeal and a petition for a stay as required under paragraphs (b) and (c) of this section. The appellant must file these documents before the end of the appeal period specified in the bureau decision. The provisions of this section apply unless a law or other applicable regulation provides otherwise.

(b) To obtain a stay under this section, an appellant must:

(1) Be a person who has a right of appeal under § 4.410 or other applicable regulation; and

(2) Demonstrate that the appropriate official should grant a stay based on the following standards:

(i) The relative harm to the parties if the stay is granted or denied;

(ii) The likelihood of the appellant's success on the merits;

(iii) The likelihood of immediate and irreparable harm if the appropriate official does not grant the stay; and

(iv) Whether the public interest favors granting the stay.

(c) The appellant must serve a copy of the notice of appeal and petition for a stay on each of the following simultaneously:

(1) The appropriate official before whom the appeal is pending;

(2) The bureau official who made the decision being appealed; and

(3) Each party, if any, named in the bureau decision that is being appealed.

§ 4.24 Action on a petition for a stay.

(a) Any party who is served with a copy of a stay petition under § 4.23(c) may file a response but must do so within 10 days after service. This includes the bureau official who made the decision being appealed.

(1) The responding party must serve the response on the persons listed in § 4.23(c) either by delivering it personally or by registered or certified mail, return receipt requested.

(2) The appropriate official will not grant a stay by default merely because no response to a petition has been filed.

(b) Within 45 days after the end of the time for filing an appeal, the appropriate official must grant or deny any petition for a stay.

(c) Any person who has a right of appeal under § 4.410 or other applicable regulation may appeal to the appropriate Appeals Board from an order of an administrative law judge to:

(1) Grant or deny a petition for a stay; or

(2) Make a bureau decision effective immediately.

(d) As an alternative to paragraph (c) of this section, any party other than the bureau may seek judicial review under 5 U.S.C. 704 of an order of an administrative law judge to:

(1) Deny a petition for a stay (either directly or by failing to meet the deadline in paragraph (b) of this section); or

(2) Make a bureau decision effective immediately.

(e) If a party appeals under paragraph (c) of this section, the Appeals Board must issue an expedited briefing schedule and expeditiously issue a decision on the appeal.

(f) Unless the Appeals Board or the court orders otherwise, an appeal under paragraph (c) of this section does not:

(1) Suspend the effectiveness of the decision of the administrative law judge; or

(2) Suspend further proceedings before the administrative law judge.

§ 4.25 Decisions subject to judicial review.

This section applies to any bureau decision that can be appealed to the Office of Hearings and Appeals. The bureau decision is not final agency action subject to judicial review under 5 U.S.C. 704 unless it has become effective under § 4.22 or other applicable regulation.

§ 4.26 Finality and reconsideration of decisions.

(a) A decision by the Director or an Appeals Board is final for the Department and cannot be appealed. However, the Director or an Appeals Board may reconsider a decision if either:

(1) In the judgment of the Director or the Appeals Board there exist extraordinary circumstances and sufficient reason for reconsideration; or

(2) Other regulations allow for reconsideration under standards other than those set forth in paragraph (a)(1) of this section.

(b) To request reconsideration under paragraph (a) of this section, an appellant must:

(1) File the request promptly, or within the time required by the regulations relating to the type of proceeding concerned; and

(2) State clearly and completely the nature of the error prompting the request for reconsideration.

(c) Filing a request for reconsideration does not stay the effectiveness of the decision unless the Director or the Appeals Board so orders.

(d) An appellant does not have to file a request for reconsideration in order to exhaust administrative remedies.

Subpart E—Special Rules Applicable to Public Land Hearings and Appeals

4. The authority for 43 CFR part 4, subpart E is revised to read as follows:

Authority: 43 U.S.C. 1201 and 315a.

5. In § 4.421, revise paragraph (c) to read as follows:

§ 4.421 Definitions.

* * * * *

(c) *Bureau* or *BLM* means the Bureau of Land Management.

* * * * *

§§ 4.471 through 4.478 [Redesignated as §§ 4.473 through 4.480].

6. Sections 4.471 through 4.478 are redesignated as §§ 4.473 through 4.480, respectively.

7. Section 4.470 is revised and §§ 4.471 and 4.472 are added to read as follows:

§ 4.470 How to appeal a BLM decision to an administrative law judge.

(a) Any person who has a right of appeal under § 4.410 or other applicable regulation may appeal a final bureau decision within 30 days after receiving it. To do this, the person must file a notice of appeal with the BLM field office that issued the decision.

(b) The notice of appeal must state clearly and concisely the reasons why the appellant thinks the BLM decision is wrong.

(c) Any ground for appeal not included in the notice of appeal is considered waived. The appellant may not present a waived ground for appeal at the hearing unless permitted to do so by the administrative law judge.

(d) Any person who, after proper notification, does not appeal a final BLM decision within the period allowed in the decision may not later challenge the matters adjudicated in the final decision.

(e) An administrative law judge may consolidate appeals for purposes of hearing and decision when:

(1) Appellants file separate appeals; and

(2) The issues involved are common to two or more appeals.

(f) Filing a notice of appeal does not by itself change the effective date of the decision. To request a change in the effective date, *see* § 4.471.

§ 4.471 How to request a change in the effective date of a final BLM decision.

(a) An appellant under § 4.470 may petition for a stay of the BLM decision pending appeal. The appellant must do this within 30 days after receiving the BLM decision by filing a petition for stay together with the notice of appeal required by § 4.470.

(b) An appellant under § 4.470 may request that a BLM decision become effective immediately. The appellant must do this within 30 days after receiving the BLM decision by filing a request for an immediate effective date together with the notice of appeal required by § 4.470.

(c) The appellant must file documents required by this section with both:

(1) The BLM office that issued the decision; and

(2) The Hearings Division, Office of Hearings and Appeals, 801 North Quincy Street, Suite 300, Arlington, VA 22203.

(d) The standards and procedures for obtaining a stay or requesting an immediate effective date are those set forth in §§ 4.22 through 4.24.

§ 4.472 Action on appeals and requests for effective date changes.

(a) The BLM field office must promptly forward to the State Director any documents received under §§ 4.470 and 4.471. If the State Director does not file a motion to dismiss under paragraph (b) of this section:

(1) The State Director must promptly forward all documents and the administrative record to the Office of Hearings and Appeals; and

(2) An administrative law judge will rule on the appeal and any motion or request.

(b) Within 30 days after receiving documents submitted under paragraph (a) of this section, the State Director may file a motion to dismiss the appeal for one or more of the following reasons:

(1) The appeal is frivolous;

(2) The appeal was filed late;

(3) The errors are not clearly and concisely stated;

(4) The issues are immaterial; or

(5) The issues have been previously adjudicated in an appeal involving the same grazing preference, the same parties, or their predecessors in interest.

(c) The State Director must send a copy of the motion to the appellant.

(d) The appellant may file a written answer with the State Director within 30 days after receiving the motion to dismiss.

(e) The State Director will transmit the appeal, any petition or request, motion to dismiss, and answer, along with the administrative record, to the Hearings Division, Office of Hearings and Appeals, 801 North Quincy Street, Suite 300, Arlington, VA 22203.

(f) An administrative law judge will rule on the motion to dismiss and, if the motion is sustained, dismiss the appeal by written order.

8. In newly redesignated § 4.474, add paragraph (c) to read as follows:

§ 4.474 Authority of administrative law judge.

* * * * *

(c) The administrative law judge may consider and rule on all motions and petitions, including:

(1) A petition for a stay of a final grazing decision of the BLM field office; and

(2) A request that a final grazing decision of the BLM field office become effective immediately.

9. Revise newly redesignated § 4.478 to read as follows:

§ 4.478 Appeals to the Board of Land Appeals.

(a) A person who has a right of appeal under § 4.410 or other applicable regulation may appeal under § 4.24(c) an order of an administrative law judge to:

(1) Grant or deny a petition for a stay; or

(2) Make a final grazing decision effective immediately.

(b) Any party affected by the administrative law judge's decision on the merits, including the State Director, has the right to appeal to the Board of Land Appeals under the procedures in this part.

10. Revise newly redesignated § 4.479 to read as follows:

§ 4.479 Effect of decision during appeal.

(a) A BLM decision may provide that the decision will be effective immediately pending decision on an appeal from the BLM decision. This paragraph applies:

(1) Notwithstanding the provisions of § 4.22(b) pertaining to the period during which a final decision will not be in effect; and

(2) Consistent with the provisions of § 4160.3.

(b) An administrative law judge or the Board may change or revoke any action that BLM takes pursuant to a BLM decision on appeal.

(c) This paragraph applies to any BLM decision that, at the time it is made, is subject to appeal before a superior authority in the Department. In order to ensure the exhaustion of administrative remedies before resort to court action, the BLM decision is not final agency action subject to judicial review under 5 U.S.C. 704 unless the BLM decision has become effective under this section or § 4.22.

[FR Doc. 03–12504 Filed 5–21–03; 8:45 am]

BILLING CODE 4310–79–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1473, MB Docket No. 03–111, RM–10701]

Radio Broadcasting Services; Kernville, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Linda A. Davidson proposing the allotment of Channel 289A at Kernville, CA, as that community's second local service. Channel 289A can be allotted to Kernville, consistent with the minimum distance separation requirements of the Commission's Rules, provided there is a site restriction of 5.6 kilometers (3.5 miles) northeast of the community. The reference coordinates for Channel 289A at Kernville are 35–46–29 North Latitude and 118–22–09 West Longitude.

DATES: Comments must be filed on or before June 26, 2003, and reply comments on or before July 11, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Linda A. Davidson, 2134 Oak Street, Unit C, Santa Monica, CA 90405.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–111, adopted April 30, 2003, and released May 5, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 289A at Kernville.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–12793 Filed 5–21–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1474; MM Docket No. 01–169; RM–10145]

Radio Broadcasting Services; Danville & Nonesuch, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: Action in this document denies a petition for rule making filed by Clear Channel Broadcasting Licenses, Inc., requesting the reallotment of Channel 296A from Danville, Kentucky to Nonesuch, Kentucky, and modification of the license for Station WHIR–FM to specify operation on Channel 296A at Nonesuch. *See* 66 FR 41489, August 8, 2001. Based on the information provided by Clear Channel Broadcasting Licenses, Inc., we believe it has failed to establish that Nonesuch qualifies as a community for allotment purposes and therefore it would not serve the public interest to reallot Channel 296A from Danville to Nonesuch, Kentucky. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–169, adopted April 30, 2003, and released May 5, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 44512th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone: 202 863–2893, facsimile: 202 863–2898, or via e-mail *qualexint@aol.com.*

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–12794 Filed 5–21–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH53

Endangered and Threatened Wildlife and Plants; Delisting the Plant *Frankenia johnstonii* (Johnston's frankenia) and Notice of Petition Finding

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a proposal to remove the plant *Frankenia johnstonii* (Johnston's frankenia) from the List of Endangered and Threatened Wildlife and Plants under the Endangered Species Act of 1973, as amended (Act). This species is endemic to three counties in south Texas and an adjacent area in northeastern Mexico. Due to an expansion of our knowledge of the species' known range, the number of newly discovered populations, some with large numbers of individual plants, increased knowledge of the life history requirements of this species, and clarification of the degree of threats to its continued existence, we have determined that Johnston's frankenia is not in danger of extinction throughout all or a significant portion of its range now or within the foreseeable future. This proposed rule also constitutes our 90-day and 12-month finding for the petition to delist *Frankenia johnstonii.*

DATES: We will consider comments on this proposal if they are received by August 20, 2003. Public hearing requests must be received by July 7, 2003.

ADDRESSES: Written comments and materials concerning this proposal should be sent to: Field Supervisor, Ecological Services Field Office, U.S. Fish and Wildlife Service, c/o TAMU–CC, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412. The proposal, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robyn Cobb, U.S. Fish and Wildlife Service, at the above address, or telephone 361–994–9005 or e-mail to *robyn_cobb@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

Frankenia johnstonii (Correll) was first collected in 1966 in Zapata County, Texas, by Dr. D. S. Correll who later named the species in honor of Dr. M. C. Johnston (Correll 1966). *Frankenia johnstonii* is a low, somewhat sprawling, perennial shrub, in the Frankeniaceae Family. Mature plants are approximately 30 centimeters (cm) (12 inches (in)) in height, 30 to 60 cm (12 to 24 in) wide, and rounded or sphere-shaped in appearance. This spineless subshrub has a woody, trunk-like stem which gives rise to several-to-many ascending or recurved (bent or curved downward or backward) herbaceous stems. The entire plant may be grayish-green or bluish-green in color most of the year, turning crimson red in late fall when it is easily detected among its surrounding deciduous neighbors. This color change can also be brought on by severe drought conditions (Janssen and Williamson 1994). The gray-green leaf surfaces are haired, with salt crystals frequently visible on the underside of the leaves. Leaf margins are somewhat rolled or turned under. Flowers are small, with five slightly fringed or toothed white petals and a distinct yellow center. Flowering occurs from April to November, especially when stimulated by rainfall events (Janssen and Williamson 1994).

Frankenia johnstonii generally grows on open or sparsely vegetated, rocky, gypseous hillsides or saline flats. In Texas, this species is endemic to Webb, Zapata and Starr Counties, where it occurs within the mesquite-blackbrush community encompassed in the South Texas Plains vegetation zone as described by McMahan (*et al.* 1984). *Frankenia johnstonii* populations have a clumped distribution, occurring in openings of the Tamaulipan thornscrub where the plant thrives in a high light intensity setting. Populations of this species appear to be restricted to pockets of hyper-saline soil, analysis of which shows salinity and sodium content that is approximately 10 times greater than that found in soils occurring outside the populations (Janssen and Williamson 1994). The population in Mexico occurs in the transition zone between the Tamaulipan Scrub and the Chihuahuan Desert (Whalen 1980).

Frankenia johnstonii was listed August 7, 1984 (49 FR 31418), as an endangered species under the Act. Critical habitat was never designated for this species. The Johnston's Frankenia (*Frankenia johnstonii*) Recovery Plan, completed in 1988, did not quantify criteria for down-listing or delisting due

to a lack of basic knowledge about the species (USFWS 1988). Instead the recovery plan concentrated on the major actions believed necessary to recover *Frankenia johnstonii*. These actions included maintenance of known populations through landowner cooperation and habitat management, provision of permanent Service or conservation group protection of at least one site, establishment of populations in botanical gardens, obtaining biological information needed to effectively manage the species, and developing public support for the preservation of the species. Among the potential threats to *Frankenia johnstonii* identified in the recovery plan were habitat modification by land management practices that included overgrazing, blading, and bulldozing. The recovery plan also recognized the risk of population losses from intensive land uses and non-specific habitat alterations, including a variety of construction activities. The low reproductive potential of this species was considered another threat to its continued existence since the restricted number of individual plants was thought to imply a small gene pool with limited variability, thereby potentially diminishing the species' ability to tolerate stress and threats (USFWS 1988). Since 1993, intensive surveys in Webb, Zapata, and Starr Counties in South Texas, as well as additional information from Mexico have shown this species to be more widespread and abundant than was previously known (Janssen 1999).

At the time it was listed, *Frankenia johnstonii* was known from only four sites in Texas, two each in Zapata and Starr Counties, and from one locality in Mexico. When the recovery plan for this species was finalized in 1988, seven populations (including the original five) had been identified, all occurring on private land. At that time, the six Texas populations were encompassed within a 56-kilometer (km) (35-mile (mi)) radius, with the population in Mexico located approximately 201 km (125 mi) to the west. Since 1988, the discovery of new populations has extended the species' range to north and west of Laredo in Webb County, farther east in Zapata County, and farther south in Starr County. Currently a total of four populations are known from Mexico. Three of the four populations in Mexico are in relatively close proximity to one another along Highway 53 in the State of Nuevo Leon, while the fourth population location extends the species' range north-northeast to the vicinity of Nuevo Laredo in western Tamaulipas (Janssen 1999).

Frankenia johnstonii was first collected by Dr. D. S. Correll in 1966 in Zapata County, Texas, about 40 km (25 mi) northeast of San Ygnacio, and soon thereafter at a second site in Starr County, just east of El Sauz (Correll and Johnston 1970). The continued existence of *Frankenia johnstonii* at Correll's first site was confirmed by Poole in 1986, and the population at the second site was revisited by Poole, Turner, and Whalen at various times (USFWS 1988). The species was also found in 1966 by A. D. Wood in the hills northeast of Roma, Starr County (USFWS 1988). In 1967, Correll found a second Zapata County population about 8 km (5 mi) south of Zapata. Although Whalen was unable to relocate the Roma population during her doctoral research, she did relocate Correll's second Zapata County population (USFWS 1988). Collectors James Everitt and R. J. Fleetwood found *Frankenia johnstonii* at a site approximately 21 km (13 mi) north of Roma, Starr County, in 1974. Four different investigators had revisited this population by 1986 (USFWS 1988). In 1971, Turner identified what he considered to be a new species of *Frankenia* from a location 100 km (62 mi) northwest of Monterrey, Mexico, and named it *Frankenia leverichii* (Turner 1973). Whalen later studied specimens from this population as part of her doctoral research on the genus *Frankenia* and concluded that it was not distinct from *Frankenia johnstonii* (Whalen 1980), thus this was the single Mexican population referenced in the listing rule and the recovery plan.

An intensive status survey and study of ecological and biological characteristics of *Frankenia johnstonii* was conducted by Texas Parks and Wildlife Department (TPWD) botanist Gena Janssen between 1993 and 1999. The final report for this 6-year study contained documentation for 58 populations of *Frankenia johnstonii* in the U.S. and 4 in Mexico (Janssen 1999). Four of the 62 total populations reported by Janssen (1999) were part of the 7 populations referenced in the recovery plan. The results of this recent status survey have dramatically increased the known numbers of individual plants, from approximately 1,500 at the time of listing to greater than 9 million by 1999. The TPWD status survey resulted in an expansion of the species' known range to the northwest, east and south in Texas, and to the north of the previously known location in Mexico (Janssen 1999).

All 58 U.S. populations of *Frankenia johnstonii* identified in Janssen's 1999 report occur primarily on private land, but a portion of one population in Starr County is located on a Lower Rio Grande Valley National Wildlife Refuge (LRGVNWR) tract. A second population occurs, partially, in the Texas Department of Transportation's (TDOT) Highway 83 right-of-way in Zapata County. A third population, found growing on three private ranches in western Zapata County, also extends onto land below the 307-foot elevation mark adjacent to Falcon Reservoir. All property below this elevation mark is controlled by the International Boundary and Water Commission (IBWC). A fourth population, also in close proximity to Falcon Reservoir, may also be on IBWC-controlled land but Janssen was unable to determine exact land ownership for this population (Janssen 1999).

Using Pavlik's suggested method of deriving an estimated minimum viable population size (MVP) (Pavlik 1996), we calculated that approximately 2,000 individual plants may constitute a conservative estimate for a *Frankenia johnstonii* MVP. We used this estimated MVP to evaluate the distribution of known *Frankenia johnstonii* populations in relation to threats to those sites. Table 1 displays the numbers of small, intermediate-sized, and large populations in each Texas county and in Mexico, grouped with the smallest populations numbering below the calculated MVP, the intermediate-sized populations containing between 2,000 to 5,000 plants, and the largest populations consisting of greater than 5,000 individuals.

TABLE 1.—NUMBER AND LOCATION OF SMALL, INTERMEDIATE-SIZED AND LARGE FRANKENIA JOHNSTONII POPULATIONS

Number of individual plants	Starr County, TX	Zapata County, TX	Webb County, TX	Mexico
Less than 2,000	5	16	1	1
Between 2,000 and 5,000	1	6	2	1
Greater than 5,000	1	13	4	0

TABLE 1.—NUMBER AND LOCATION OF SMALL, INTERMEDIATE-SIZED AND LARGE FRANKENIA JOHNSTONII POPULATIONS—Continued

Number of individual plants	Starr County, TX	Zapata County, TX	Webb County, TX	Mexico
Unknown # of plants	9	0	0	2
Total number of Populations	16	35	7	4

Of the 7 *Frankenia johnstonii* populations confirmed in Webb County, 4 have greater than 5,000 individual plants, and 1 of the 4 is described as containing ''hundreds of thousands of plants'' (Janssen 1999). Two of the 7 populations consist of between 2,000 and 5,000 plants, and 1 has less than 2,000 plants.

Thirty-five *Frankenia johnstonii* populations are documented in Zapata County, 13 of which have greater than 5,000 plants, with several of the 13 composed of more than a million individuals (Janssen 1999). Six of the 35 populations have between 2,000 and 5,000 plants, and 16 have less than 2,000 plants.

For the 16 *Frankenia johnstonii* populations reported from Starr County, only 7 were confirmed by Janssen's site visits (Janssen 1999). One of the 16 had approximately 10,000 plants, 1 had approximately 2,000 plants, and 5 had less than 2,000 plants. For the 9 Starr County populations not visited by the TPWD principal investigator, locality information was provided by another biologist who furnished no data on numbers of individuals or condition of the plants (Janssen 1999).

A total of 5,600 individual plants were estimated from two of the four Mexican *Frankenia johnstonii* populations. Although the individual plant numbers are not available for the remaining two populations, one was described by a Mexican botanist as being ''Abundante!'' (Janssen 1999).

In Texas, approximately 80% of potential habitat has been surveyed for *Frankenia johnstonii* (Gena Janssen, Janssen Biological, pers. comm. 2001). Landowner permission for access was one of the primary factors affecting the extent of potential habitat covered by surveys, since parts of all populations located to date occur on privately owned land. Within Texas, a greater extent of suitable habitat, defined by the presence of the correct types of soils, exists in Zapata County rather than in the neighboring Starr or Webb Counties (Janssen, pers. comm. 2000). Zapata was the county most intensively surveyed by Janssen between 1993 and 1996, and the relatively higher numbers of landowners willing to grant access in this county may be correlated with an extensive landowner outreach campaign conducted by TPWD (Janssen 1996, 1999). In some cases in Zapata County, there was high potential for the presence of additional populations on land that adjoined ranches with known populations, however permission to access these areas was not attainable, therefore presence/absence could not be confirmed. Landowner contacts were not as readily available for Starr and Webb Counties, and additional population locations are possible in those counties. In Mexico, the level of effort to survey for *Frankenia johnstonii* has been limited. It is probable that populations remain undiscovered throughout suitable habitat in all three Texas counties, with the highest potential in Zapata County, and in Mexico (Janssen, pers. comm. 2001). Although only locality data has been documented thus far for plants in the nine Starr County populations, further assessment of these plants (such as their numbers and condition) is a possibility in the future.

At the time of listing, we considered *Frankenia johnstonii* to be vulnerable to extinction due to the following: (1) The low number and restricted distribution of populations; (2) low numbers of individual plants; (3) threats to the integrity of the species' habitat such as clearing and planting to improve pasture species, including introduced grasses; and (4) direct loss from construction associated with highways, residential development, and oil- and natural gas-related activities; and (5) the species' low reproductive potential.

The intensive survey effort by TPWD in South Texas has shown *Frankenia johnstonii* to be much more widespread and abundant than was known at the time of listing or when the recovery plan was prepared. Initial fears regarding the species' vulnerability to competition from exotic plant species such as buffelgrass (*Pennisetum ciliare*) have been alleviated by the results of biological and ecological research on this species. Analysis of data collected for soils, structural characteristics, and composition of the surrounding plant community show *Frankenia johnstonii* to be well adapted to the harsh environment in which it is a dominant vegetative component. This plant is a halophytic (salt-loving) perennial, suited to life in hyper-saline soils in which the elevated salinity and sodium levels are likely to exclude buffelgrass, the grass species that is most frequently planted for pasture improvement purposes in Webb, Zapata, and Starr Counties (John Lloyd-Reilley, U.S. Department of Agriculture, Natural Resource Conservation Service, pers. comm. 2001). In fact, *Frankenia johnstonii* is the dominant woody species within the plant community where it is found (Janssen 1999).

Mechanical and chemical brush-clearing practices that are commonly used prior to planting pasture grasses can, however, adversely impact *Frankenia johnstonii* populations or portions thereof by uprooting or damaging plants. In order to address conservation concerns associated with land management practices, TPWD conducted an extensive endangered and rare species education and outreach campaign in Webb, Zapata, and Starr Counties that encompassed activities such as landowner meetings, coordination with the U.S. Department of Agriculture's (USDA) Natural Resource Conservation Service (NRCS), county fair exhibits, development of printed information, and school presentations. This campaign promoted conservation of *Frankenia johnstonii,* in part by sharing the results of Janssen's field studies on the ecology and biology of this species. In October 2000, a presentation was made to NRCS District Conservationists from Webb, Zapata, and Starr Counties to emphasize their agency's role in helping landowners identify and avoid impacts to *Frankenia johnstonii* population sites, especially in light of the futility of converting the land on these hyper-saline sites to pastures of buffelgrass. The inability of buffelgrass to tolerate the high soil salinities typically found at *Frankenia johnstonii* sites results in the failure of grass plantings to thrive, the associated loss of time, energy, and money in trying to establish the grass, and an increased potential for soil erosion since the site is left without vegetative cover (Janssen 1999).

In a further effort to promote conservation of populations occurring on private land, TPWD initiated a voluntary conservation agreement in 1995 that was designed to protect *Frankenia johnstonii* from mechanical and chemical habitat alteration and overstocking of cattle. These agreements have been signed by 10 landowners controlling 19 of the largest populations and will endure for 10 years from the date of signature (Janssen 1999).

Protection for *Frankenia johnstonii* on public land is assured for the portion of the one population that extends onto a Lower Rio Grande Valley National Wildlife Refuge tract. The refuge monitors the status of these plants and considers protection of that part of the population whenever activities are being planned for that tract. At the TDOT's Highway 83 right-of-way population site, installation of reflector stakes is used to protect the plants from mowing and from Border Patrol maintenance activities (Janssen, pers. comm. 2001).

We used a Geographic Information System (GIS)-based analysis of the distribution of *Frankenia johnstonii* populations in relation to locations of existing and proposed highways, and residential developments (Shelley and Pulich 2000), to pinpoint the U.S. populations most likely to be threatened by these types of activities, as well as those populations furthest removed from them. The results of this analysis showed that 18 of the intermediate-sized and largest populations remain in remote locations on rangeland, where threats from road and residential construction activities are diminished (Janssen 1999, Shelley and Pulich 2000). Portions of 10 of the intermediate-sized and largest populations occur within 1 mile of State Highway 83, State Highway 16, or State Highway 359, 3 of the main transportation arteries in this region.

Thirteen of the smallest (less than 2,000 individuals) *Frankenia johnstonii* populations occur on remote rangeland, removed from road and residential construction threats. Of the remaining 10 smaller populations, 3 occur within 1 mile of State Highway 83 while 4 others are found in close proximity to Falcon Reservoir where residential construction is likely to remain a threat.

Oil and gas exploration and production activities, which can pose threats to portions of populations via road or well-pad construction or clearing of seismic lines, were nearly impossible to quantify or to project in terms of future geographic sitings. The TPWD did offer to search for populations and delineate perimeters, thereby helping companies to avoid *Frankenia johnstonii*, but no companies have signed any type of agreements to date. However, the landowner conservation agreements include provisions for landowners to contact TPWD whenever damage, including that caused by oil and gas activities, accidentally occurs or is anticipated so that TPWD can inspect populations and make recommendations for avoidance or recovery.

Rare species can be vulnerable to reproductive failure, and low reproductive potential was considered a potential threat to *Frankenia johnstonii* (Turner 1980, USFWS 1988). Among the factors that can contribute to the risk of reproductive failure in plants are high dependence on specialized pollinators, absence of back-up reproductive mechanisms such as self-fertilization and vegetative reproduction, and poor ability to compete for pollinators (Janssen 1999). The results of reproductive biology studies for *Frankenia johnstonii*, as reported in Janssen and Williamson (1996) and Janssen (1999), show that this species is a generalist rather than a specialist with regard to insect pollinators, hosting a variety of bees and flies. This reduces the danger associated with declines in any specific pollinator species. The high rates of floral visitation at *Frankenia johnstonii* by these insects shows the plant to be competing successfully for pollinators, and it is readily cross pollinated (Janssen 1999).

Previous Federal Action

Federal government actions on this species began with section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report (House Document No. 94–51), which included *Frankenia johnstonii* in the endangered category, was presented to Congress on January 9, 1975. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(20), now section 4(b)(3)(A), of the Act, and of our intention thereby to review the status of those plants. *Frankenia johnstonii* was included as endangered in this notice. On June 16, 1976, we published a notice in the **Federal Register** (41 FR 24524) soliciting comments on the Smithsonian report in order for the finally adopted rule to be as accurate and effective as possible. *Frankenia johnstonii* was proposed for listing as an endangered species on July 8, 1983 (48 FR 31414). The final rule listing *Frankenia johnstonii* as an endangered species was published August 7, 1984 (49 FR 31418). The Johnston's Frankenia Recovery Plan was completed in 1988 (USFWS 1988).

Federal involvement with *Frankenia johnstonii* subsequent to listing has included funding for activities such as surveys for new locations, monitoring of known and new populations, and collection and analysis of ecological and biological data. A GIS-based approach for analyzing threats to the continued existence of the species was contracted by us to Southwest Texas State University (Shelley and Pulich 2000). The species has been included in all informal section 7 consultations over Federal projects occurring in suitable habitat in Starr and Zapata Counties, and more recently in Webb County, Texas, as new populations were delimited. This species has not been included in any formal consultations.

On February 8, 1997, we received a petition dated February 3, 1997, from the National Wilderness Institute. The petitioner requested that the Service remove *Frankenia johnstonii* from the List of Endangered and Threatened Wildlife and Plants on the basis of original data error. We were not able to act on this petition upon receipt due to the low priority assigned to delisting activities in our Fiscal Year 1997 Listing Priority Guidance which was published in the **Federal Register** on December 5, 1996 (61 FR 64475). That guidance clarified the order in which the Service would process rulemakings following two related events—(1) the lifting on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Pub. L. 104–6), and (2) the restoration of significant funding for listing through the passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996.

The Fiscal Year 1997 Listing Priority Guidance identified delisting activities as the lowest priority (Tier 4). Due to the large backlog of higher priority listing actions, we did not conduct any delisting activities during Fiscal Year 1997. In Fiscal Year 1998, with a reduced backlog of higher priority listing actions, we were able to return to a more balanced listing program. We also placed delisting activities within Tier 2 in our Fiscal Years 1998 and 1999 Listing Priority Guidance, published in the **Federal Register** on May 8, 1998 (63 FR 25502).

We began to process the *Frankenia johnstonii* petition under the 1998 guidance. At that time we believed that

the petitioners did not adequately present information about the status, distribution, and abundance of the species and that they did not address any of the potential threats to the species. The petition requested that we remove this plant from the List of Endangered and Threatened Wildlife and Plants on the basis of original data error and cited the Report to Congress on the Endangered and Threatened Species Recovery Program, USFWS, 1990, Washington DC, as stating that ''New populations have been found in the lower Rio Grande Valley and this species now appears to be more abundant and widespread than previously thought.'' The petitioner also indicated that information already in our possession showed that this plant was significantly more abundant than known at the time of listing.

Although the petitioner referred to sufficient information being in our possession to validate their request for delisting, we did not have this level of data within our files at that time. We also did not have locality maps, size or viability information for all the known populations, or the data to analyze threats to these populations at the time of the draft administrative finding. We also anticipated extensive new information being made available in the near future from an ongoing study of the species by TPWD. Thus we did not go forward with a finding at that time.

We received the TPWD report, dated December 15, 1999, in the spring of 2000. Based upon information contained in the report, as discussed throughout this proposed rule, we made a determination to proceed with a proposed rule to delist *Frankenia johnstonii.* Thus, this proposed rule constitutes our 90-day and 12-month finding for the petition to delist *Frankenia johnstonii.*

Summary of Factors Affecting the Species

After a thorough review and consideration of all the available information, including the TPWD's 1999 status report, we have determined that *Frankenia johnstonii* (Correll) should be removed from the List of Endangered and Threatened Wildlife and Plants. Section 4(a)(1) of the Act and regulations (50 CFR part 424) issued to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists of threatened and endangered species. The same procedures apply to reclassifying species or removing them from these lists. A species may be determined to be an endangered or threatened species based on the best scientific and commercial information available regarding one or more of the five factors described in section 4(a)(1). These factors and their application to *Frankenia johnstonii* (Correll) (Johnston's frankenia) are as follows:

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

The extent of past land conversion activities across the range of *Frankenia johnstonii,* including brush control, planting of buffelgrass or other non-native grasses, or construction activities that may have resulted in the loss of this plant, has not been quantified (Janssen, pers. comm. 1998). In the 1990s, road construction proliferated across the South Texas landscape, concentrating in corridors along the Rio Grande with the growth of small towns and multiplication of international bridges. Oil and gas exploration and production activities have proceeded throughout the region, accompanied by associated pipeline construction, including extensions of pipelines into Mexico. Fiber optic lines and cellular communication towers are frequent additions to the landscape as we have seen from the increasingly visible presence of the towers and section 7 consultations for these structures. These types of construction activities have accelerated since the passage of the North American Free Trade Agreement and have the potential to fragment habitat and destroy portions of *Frankenia johnstonii* populations (Shelley and Pulich 2000).

Frankenia johnstonii is restricted to highly specialized habitats with high salt, and sometimes gypsum content, in the soils. Although the historical land use at these locations has primarily been livestock grazing, the recovery plan alludes to additional intensive land uses (*e.g.,* road construction, oil and gas activities, and gypsum mining, as well as other widespread, non-specific habitat alterations such as residential development and reservoir construction) which can destroy these specialized habitats (USFWS 1988).

Across the South Texas Plain, the practice of woody brush eradication, frequently undertaken to improve pasture for grazing, has the potential to adversely affect *Frankenia johnstonii* populations or parts of populations. These brush removal efforts have generally been accomplished with mechanical means such as bulldozing, blading, root plowing and/or chaining, or by use of herbicides. After clearing, the land is often reseeded with highly competitive, non-native grasses, primarily buffelgrass in this region of Texas. The practice of root plowing (pulling a plow equipped with 3 to 6-foot-long tines) has historically been the favored technique for brush clearing in this region of south Texas, although this practice has diminished in recent years as cost-share funding for brush clearing has declined. Fluctuating cattle markets and continuing drought in the area have provided impetus to south Texas ranchers to diversify their sources of income. As a result many ranchers have shown increased interest in retaining native brush habitat to enhance wildlife habitat and hunting opportunities, and this has also decreased brush clearing and pasture improvement activities (Arturo Ibarra, USDA NRCS, pers. comm. 2001).

Although the actual mechanical and chemical means of brush clearing can directly destroy individual plants (USFWS 1988), ecological research shows that long-term replacement of *Frankenia johnstonii* by buffelgrass or other improved range grass species is unlikely due to the extraordinarily harsh conditions of the soils underlying *Frankenia johnstonii* populations. Janssen (1999) reported soil analyses from within and outside of *Frankenia johnstonii* populations that showed soil salinity, sodium and sodium absorption ratios differed drastically between the two areas. Soil salinity within populations averaged 4,444 parts per million (ppm), ranging from 949 to 10,400 ppm. Outside populations, this parameter averaged 423 ppm, ranging from 123 to 1,430 ppm. Soil sodium averaged 4,429 ppm within populations (1,011 to 112,404 ppm), while outside of the populations, the average was 383 ppm (21 to 2,983 ppm). Sodium absorption ratios averaged 19.02 (5.84–55.52) within the populations, while 3.38 (0.34–10.05) was the average outside. Janssen (1999) found *Frankenia johnstonii* growing in and/or recolonizing areas that were root plowed 6, 10, or 15 years in the past. She observed regrowth of this plant in eight populations or subpopulations and described one subpopulation, still replowed annually, as having ''pockets of *Frankenia johnstonii* hanging on.''

Frankenia johnstonii has leaves with a number of structural features characteristic of both halophytes and xerophytes, enabling the plant to tolerate extremely saline soils. As a halophyte, the plant can absorb and accumulate salt. This salt accumulation within the plant changes the osmotic gradient, allowing the root cells to absorb water from the soil solution. Salt glands within the leaves then extrude the salt onto the leaf surface. These structural adaptations equip the species

to live in extremely salty soils. Although *Frankenia johnstonii* is found in arid, saline, gypseous (relatively high gypsum content) habitat in open areas with high light intensities, it is not found in adjacent, less saline soils. The patchy occurrence of these high-salinity soil pockets or inclusions (units too small to be mapped within a soil series) within larger areas of less saline soils results in the characteristic clumped pattern of *Frankenia johnstonii's* distribution. Relatively few other plant species occur within the *Frankenia johnstonii* populations, but this species assemblage is consistently found at all *Frankenia johnstonii* sites. Janssen (1999) suggests that this species successfully competes within, but not outside, these saline pockets of soil.

Since nearly all of the known populations of *Frankenia johnstonii* occur on private land, the TPWD's voluntary landowner conservation agreements were designed to help conserve the species using recommendations concerning certain land management practices. These recommendations included avoiding root plowing, bulldozing, disking, roller chopping and herbicide applications in *Frankenia johnstonii* sites, as well as relieving areas containing populations from grazing pressure associated with overstocking of animal units. The agreements also provided TPWD personnel access for purposes of monitoring populations at least once annually. For the 13 populations that contain greater than 10,000 individual plants, 12 are covered under signed voluntary conservation agreements. For the 14 populations that contain between 2,000 and 10,000 plants, 7 populations are covered by signed voluntary conservation agreements. The earliest signatures were obtained in June 1996, and the most recent was signed in July 1998.

The impacts of construction projects on *Frankenia johnstonii* populations, especially highway improvements and/or commercial or residential building that is stimulated by highway construction or improvements, may be limited to the footprint of the project. Twelve of the known U.S. populations of *Frankenia johnstonii* occur within 1 mile of Highways 83, 16, or 359, three of the largest roads crossing the Texas range of this species. These highways are also among the roads most likely to undergo expansions as trade from Mexico, and commercial and residential development, increases.

Human population growth in Webb, Zapata, and Starr Counties has more than doubled since 1970 and is projected to double or triple again by 2030; however, this growth is not uniformly distributed across the three counties. Instead, people are concentrating residential development in a few geographic areas, with the highest level of growth in and around the City of Laredo in Webb County. Major areas of growth follow the primary transportation corridors including Interstate 35 and Highway 83, and along the Rio Grande downstream of the Falcon Lake Reservoir (Shelley and Pulich 2000). According to Shelley and Pulich (2000), relatively few people are living far from the cities and highways. If the current trend in population growth holds, this growth is unlikely to impact those individual populations or subpopulations of *Frankenia johnstonii* that are distant from centers of residential development or transportation corridors. The fact that much of the land within these three counties is away from the well-established transportation corridors should have the effect of discouraging explosive growth. Additionally, the high salinity of the soils supporting *Frankenia johnstonii,* in conjunction with the arid climate of the area, results in highly erodible soils that will not support plant communities desired by most real estate developers (Shelley and Pulich 2000). Existing *Frankenia johnstonii* populations that are distant from current development are likely to thrive in their unique environment (Shelley and Pulich 2000).

The development of colonias, or low-income, unincorporated settlements that lack running water, wastewater treatment, or other services, has generally occurred outside of incorporated communities. The largest concentrations of colonias are found near the transportation corridors and near the cities at the international boundary along the Rio Grande (Shelley and Pulich 2000). The majority of colonias in Starr County are found along Highway 83 and the Rio Grande. One population of *Frankenia johnstonii* that faces potential impacts from developing colonias also extends onto a national wildlife refuge tract and would therefore be partially protected.

In Zapata County, there are fewer recorded colonias, with the majority located near the northern end of Falcon Reservoir along Highway 83. Two *Frankenia johnstonii* populations appear to be most at risk from colonias in this geographic area. One of these is found within a subdivision, and its future is unclear because it consists of three ''neighborhood'' subpopulations that extend onto property with multiple ownerships and existing homes, suggesting that further development may be forthcoming. The plants were described as being in excellent-to-good condition when the population was surveyed (Janssen 1999). The second population, although close to Highway 83, has remained in good shape over the 30 years since it was first reported (Janssen 1999). This population extends partially on TDOT's roadway right-of-way. The TDOT and TPWD have enacted a verbal agreement providing for reflector posts around the population to protect it from mowing and Border Patrol maintenance activities (Janssen, pers. comm. 2001).

In Webb County, the majority of colonias are south, east, and north of Laredo, concentrated along Highway 83 and the Rio Grande, Farm to Market Road 1472 and the Rio Grande, and to the east along Highway 359 (Shelley and Pulich 2000). In these areas, the *Frankenia johnstonii* population appearing to be most vulnerable occurs within a colonia, and future prospects for its long-term survival are described as ''grim'' (Janssen 1999).

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

There is no evidence to indicate that this species is collected for commercial, recreational, scientific, or educational purposes.

C. Disease or Predation

Turner's 1980 status report and the species' recovery plan allude to *Frankenia johnstonii* plants under heavy grazing pressure having a ''hedged or clipped appearance common in plants grazed by cattle.'' The detrimental effects referred to in the recovery plan (USFWS 1988) were browsing of tender, new growth that might contribute to lowered reproductive success and direct trampling of young plants or seedlings, as well as soil compaction, which may negatively affect germination. Janssen (Janssen and Williamson 1993) observed that the population showing the most harmful effects of grazing was one where the fenced area was inadequate to support the number of cattle being stocked and the animals were not receiving any type of supplemental feed. R. Cobb observed cottontail rabbits and jackrabbits nibbling on *Frankenia johnstonii,* and she surmises that other mammals may also browse on it. Janssen (1999) summarized anecdotally that she had seen little difference in the appearance of *Frankenia johnstonii* populations between ranches with and without cattle in 6 years of field observations and concluded that grazing is not a direct threat, except possibly to

those sites under poor range management.

D. The Inadequacy of Existing Regulatory Mechanisms

Endangered plants do not receive a high degree of protection on private property under the Act. If the landowner is not using Federal funding or does not require any type of Federal permit or authorization, listed plants may be removed at any time unless prohibited by State law. Under chapter 88 of the Texas Parks and Wildlife Code, any Texas plant that is placed on the Federal list as endangered is also required to be listed by the State as endangered. In addition to the State of Texas regulations pertaining to listing, other State laws may apply. The State prohibits taking and/or possession of listed plants for commercial sale, or sale of all or any part of an endangered, threatened, or protected plant from public land. Scientific permits are required for purposes of collection of endangered plants or plant parts from public lands for scientific or educational purposes. Commercial permits must be obtained from the Texas Parks and Wildlife Department to collect endangered plants from private land—only if the collector intends to sell the plants or plant material. The destruction or removal of any plant from a State park without a permit from the TPWD Director is unlawful. If this proposed delisting rule is finalized, we anticipate that Texas will also remove *Frankenia johnstonii* from its State list of endangered species.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits removal and possession of endangered plants from areas under Federal jurisdiction. A portion of one population of *Frankenia johnstonii* is located in one of our National Wildlife Refuges. A small portion of another population is growing in a highway right-of-way where it is afforded some protection from TDOT mowing and Border Patrol maintenance activities. Portions of one, and possibly two, other Zapata County populations extend onto IBWC-controlled property. The remainder of the 4 aforementioned populations, as well as the other 54 populations found in the United States, are on privately owned land. The regulations described above, and the conservation activities agreed upon for 19 populations between the landowners and the TPWD, help to provide protection for a number of the U.S. populations.

We are not aware of any measures being taken by Mexico to protect *Frankenia johnstonii.* It appears that the populations known to us are all on ranchland. We will be contacting the Mexican Government during the comment period for this proposed rule for any additional information that they may have on the status of the species in Mexico.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Certain inherent biological characteristics, including small numbers of individuals, restricted distribution, and low reproductive potential, were also thought to affect the continued existence of *Frankenia johnstonii* (USFWS 1988). Turner (1980) observed seed set at less than 50 percent in the natural habitat, and Poole noted that seedlings are rarely seen (USFWS 1988). The recovery plan for *Frankenia johnstonii* referred to the approximately 1,500 plants known at the time of listing, and their occurrence in small populations with none greater than a few hundred plants, as implying a small gene pool with limited variability and therefore a diminished capacity for tolerating stresses and threats. The recovery plan indicated that scattered populations and disjunct distributions are commonly seen in the genus *Frankenia.* Whalen's (1980) reproductive data in the systematic analysis of the genus *Frankenia* showed *Frankenia johnstonii* had little propensity to reproduce. Turner (1980) found low seed viability (<50%) and had problems germinating seeds.

Janssen collected data on reproductive characteristics from six large populations in Webb (2), Zapata (3), and Starr (1) Counties. All attempts at germination in a greenhouse ended in failure, which was attributed to insufficient light conditions within the greenhouse (Janssen and Williamson 1996, Janssen 1999). Results of field observations showed that this species flowers throughout the year, but less abundantly in winter, with the highest numbers of flowers and fruit in spring/early summer. The flowers show no apparent morphological barriers to self-pollination. For plants having a reproductive system where gametophytic (the sexual generation of a plant which produces gametes) incompatibility is the case, the incompatibility can show up as an inhibition of pollen tube growth, but differential pollen tube growth was not observed in *Frankenia johnstonii.* Analysis of pollen grain viability resulted in a variance from 94–100% with an average of 96%. A large variety of diurnal pollinators visited *Frankenia johnstonii* flowers including flies, bees, and butterflies, with bee flies and bees being the most common. Within the fruit, only one of three ovules typically developed into a seed; the other two aborted (Janssen 1999). The percentage of seed set among populations that Janssen studied ranged from 15–30 percent. Using seed viability tests, 31 percent of the seeds were found to be viable. Results of soil seed bank analysis from three populations, over 1 year's time, yielded the germination of only four total seedlings. Seedling recruitment, as monitored within two populations, showed 82 and 85 percent recruitment.

The results of Janssen and Williamson's reproductive analysis of *Frankenia johnstonii* showed this species to be a generalist with respect to pollinators. Floral visitation rates were high, and the species appeared to successfully compete for pollinators. Although *Frankenia johnstonii* is readily cross-pollinated, this species also has a floral morphology that allows self-pollination, and self-compatibility is indicated (Janssen and Williamson 1996, Janssen 1999). Janssen (1999) concluded that ''although self-pollination can result in less genetic variability, it may not be so detrimental for plants that occupy narrow ecological habitats.''

Plant population growth and stability can be limited by the production of viable seeds, especially if there is not asexual reproduction. *Frankenia johnstonii* does not reproduce vegetatively, so seed production is critical. Seed production depends on plant size, fruit-to-flower ratio, and number of seed-producing ovules. With respect to the three aforementioned factors, *Frankenia johnstonii* has low fruit-to-flower ratio, low seed set, and low seed viability. Janssen (1999) acknowledged that her results regarding these factors may reflect decreased vigor in the limited number of populations on which she was able to conduct reproductive studies.

With respect to long-term survival of the seeds, the seed bank does not appear to be a persistent reservoir of buried viable seeds. The seeds are small in size, may remain for the most part in the above-ground litter, and probably could not emerge if buried deep. The seed's thin coat does not favor long-term survival in the soil, but is suited for taking in water fast and then subsequently germinating. This may be the reason that, despite low seed set and viability, those seeds that do germinate have a high rate of recruitment (82 percent and 85 percent in the two populations studied). The fruit does not appear to be specialized for dispersal, and the seedlings are always found in close proximity to the parent. Timing of

germination and seedling size are critical in determining the fate of seedlings. The variation in timing of germination and seedling survival seen in *Frankenia johnstonii* may be tied to rainfall amounts. Seedling loss seems to be primarily a result of browsing, trampling, and drought stress (Janssen 1999).

Frankenia johnstonii occurs in well-defined clumps within well-delineated salt flats or saline openings in the brush (Janssen and Williamson 1994). This species lives in open areas (amount of bare ground equaling 50 percent within populations) where it is subjected to high light intensities. The plant assemblages within *Frankenia johnstonii* populations differ from those in the brush community outside of those populations. Line intercept sampling data from 29 populations showed a distinct, recurring assemblage of plants at each *Frankenia johnstonii* population site (Janssen 1999). This species is the woody dominant where it occurs, having the highest relative dominance, frequency, density, and coverage compared to other woody species within this hypersaline environment. *Frankenia johnstonii* also has the highest importance value in this species assemblage, followed by *Varilla texana*, *Prosopis reptans*, *Thymophylla pentachaeta*, and *Opuntia leptocaulis*, respectively. The importance value provides an indication of the importance of the species in the habitat since its value is equal to the sum of the relative density, relative dominance, and relative frequency of the species. These five plant species are consistently found at each *Frankenia johnstonii* population site (Janssen 1999).

In summary, the threats to *Frankenia johnstonii's* future, as discussed in Factor E, focused on the species' small number of individuals, restricted distribution, and low reproductive potential. With regard to the small number of individuals, it is now known that *Frankenia johnstonii* is much more prevalent than originally thought, with greater than 9 million plants found between 1993 and 1999. The discovery of 51 new populations since the time the recovery plan was approved has brought the total to 58 known locations. These new population discoveries have expanded the geographic range of the species to include a third county in Texas and a third state in Mexico. Although the reproductive characteristics of *Frankenia johnstonii* may contribute to a reproductive potential that is relatively lower than many flowering plant species, this plant appears to be adapted to the arid climate and the saline soils which it inhabits. This species can take advantage of sporadic rainfall events, using the available moisture to germinate quickly. It readily cross pollinates, but also has the capability to self-fertilize. This plant hosts a variety of pollinators, reducing its dependence on the survival of any one pollinator species. It is unlikely that human activities have altered the effectiveness of *Frankenia johnstonii's* reproduction, except in cases where seedling survival has been adversely impacted by livestock trampling, a situation exacerbated by overstocking.

The regulations at 50 CFR 424.11(d) state that a species may be delisted if (1) it becomes extinct, (2) it recovers, or (3) the original classification data were in error. We conclude that the data supporting the original classification were incomplete, and new data show that removing *Frankenia johnstonii* from the List of Endangered and Threatened Wildlife and Plants is warranted. After conducting a review of the species' status, we determine that the species is not in danger of extinction throughout all or a significant portion of its range, nor is it likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range. Given the expanded range, number of newly discovered population locations and individuals, the lack of competition from introduced grasses, the remoteness of some of the larger populations, and the protection offered by a number of landowners who control those populations, we conclude, based on the best scientific and commercial information, that *Frankenia johnstonii* does not warrant the protection of the Act.

The Act requires us to make biological decisions based upon the best scientific and commercial data available. In accordance with our peer review policy (59 FR 34270), we will solicit the expert opinions of three appropriate and independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information on this proposed rule.

Effect of Delisting

Removal of *Frankenia johnstonii* from the List of Endangered and Threatened Wildlife and Plants would relieve Federal agencies from the need to consult with us to insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of this species.

The 1988 amendments to the Act require that all species which have been delisted due to recovery efforts be monitored for at least 5 years following delisting. *Frankenia johnstonii* is being proposed for delisting primarily due to new information about this species, rather than due to recovery. This new information has expanded the species' known range, has greatly increased number of known populations and individual plants, and has clarified life history requirements that apparently give *Frankenia johnstonii* a competitive advantage in the unique habitat it occupies. The Act does not require a post-delisting monitoring plan for *Frankenia johnstonii.* However, some voluntary monitoring will occur, covering 19 populations on private land and a portion of 1 population on refuge land. Ten landowners have signed conservation agreements, covering 19 separate populations, with the TPWD agreeing to protect this species on their property and allowing annual monitoring of its status.

The objectives listed in the Johnston's Frankenia Recovery Plan include protecting the existing habitat in the United States, identifying essential habitat required for the species' continued existence, contacting landowners and working together to create management plans to protect the plants, and obtaining permanent protection of at least one site. The TPWD has (beginning in 1999) initiated photo-monitoring at those populations located on properties for which voluntary conservation agreements were signed. Monitoring will continue at those sites for 10 years. The Service's Lower Rio Grande Valley National Wildlife Refuge will continue to monitor *Frankenia johnstonii* on the one refuge tract where it occurs, as well as surveying for this species on any new tracts which are being considered for purchase. Samples of *Frankenia johnstonii* seeds will be collected for cryogenic storage as part of a seed collection project targeting listed and priority plant species of the Lower Rio Grande area, a cooperative effort between the Service and the San Antonio Botanical Garden.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons 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) and 512 DM 2, we have determined that this rule will have no effect on Federally recognized Indian tribes.

Clarity of Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the interim rule? What else could we do to make the rule easier to understand?

Send a copy of any comments about how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You also may e-mail comments to: *Exsec@ios.doi.gov.*

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. You may call 361/994–9005 to make an appointment to view the files. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. Under limited circumstances, as allowable by law, we can withhold from the rulemaking record a respondent's identity. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representing an organization or business, available for public inspection in their entirety.

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Author

The primary author of this document is Robyn Cobb, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, Transportation.

Proposed Regulation Promulgation

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

PART 17—[AMENDED]

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

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

2. Amend § 17.12(h) by removing the entry ''*Frankenia johnstonii*'' under ''FLOWERING PLANTS'' from the List of Endangered and Threatened Wildlife and Plants.

Dated: August 9, 2003.

Steve Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 03–12748 Filed 5–21–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 051503A]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings and hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) Advisory Panels (APs) will meet on June 6 and 7, 2003, and the Council will hold its 118th meeting June 10 through 13, 2003, in Honolulu, HI. (see **SUPPLEMENTARY INFORMATION** for specific times, dates, and agenda items).

ADDRESSES: The AP meetings will be held at the Council Office Conference Room, 1164 Bishop St., Suite 1400, Honolulu, HI; telephone: 808 522–8220. The Council meeting will be held at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, HI; telephone: 808–955–4811.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION:

Dates and Times

APs

The Commercial, Recreational, Subsistence/Indigenous and Ecosystem and Habitat sub-panels will meet jointly on Friday, June 6, 2003, from 8:30 a.m. to noon. Sub-panels will meet individually on Friday, June 6, 2003, from 1:30 p.m. to 5 p.m. and continue on Saturday, June 7, 2003, from 8:30

a.m. to 12 noon. Panels will meet in a plenary session from 1:30 p.m. to 5 p.m. on Saturday, June 7, to review recommendations. The agenda for the Advisory Panel meetings will include the items listed below. Public comment periods will be provided throughout the agenda. The order in which agenda items are addressed may change. The APs will meet as late as necessary to complete scheduled business.

Friday, June 6, 2003

1. Welcome and introductions
2. Status of previous advisory panel recommendations
3. Overview of Council decision-making process
4. Report from Island coordinators
5. Report on oceanic conditions (water temperature) surrounding the Commonwealth of the Northern Mariana Islands (CNMI) archipelago
6. Bottomfish fisheries
A. Guam offshore bottomfish management
B. Community demonstration project Mau Zone new entry criteria
C. Bottomfish overfishing/overfished control rule
D. Status of State of Hawaii bottomfish area closures
7. Marine protected areas (MPAs)
A. Establishing process for identifying reserve preservation areas in the Northwestern Hawaiian Islands (NWHI)
B. Use of MPAs in fishery management (e.g. Hawaii legislature initiative, California Channel Islands and longline closures)
C. Comments on reserve preservation areas in the NWHI.
8. Pelagic fisheries
A. Marlin management
B. Seabird mitigation
C. Sea Turtle mitigation
D. Growing use of personal fish aggregation devises
9. Small boat outreach issues
10. Report on finfish farming
11. Sub-panel break-out sessions to discuss issues and develop recommendations

Saturday, June 7, 2003

12. Sub-panel break-out sessions continue from 8:30 a.m. to 12 noon
13. Joint panel session reconvenes at 1:30 p.m. to review and finalize recommendations to the Council

Committee Meetings

The following Standing Committees of the Council will meet on June 10, 2003. Enforcement/Vessel Monitoring System (VMS) from 7:30 a.m. to 9 a.m.; Fishery Rights of Indigenous People from 7:30 a.m. to 9 a.m.; International Fisheries/Pelagics from 9 a.m. to 12 noon; Bottomfish from 9:00 a.m. to 12 noon; Ecosystem and Habitat from 1:30 p.m. to 3 p.m.; Crustaceans from 3 p.m. to 4:30 p.m.; and Executive/Budget and Program from 4:30 p.m. to 6 p.m.

In addition, the Council will hear recommendations from its APs, plan teams (PTs), scientific and statistical committees (SSCs), and other ad hoc groups. Public comment periods will be provided throughout the agenda. The order in which agenda items are addressed may change. The Council will meet as late as necessary to complete scheduled business.

Public Hearings

Public hearings will be held at 3:30 p.m. on Thursday, June 12, 2003, on the issues of management of marlin fisheries in Hawaii, and sea turtle conservation measures; at 11:30 a.m on Friday, June 13, 2003, on the issuance of community development program (CDP) Mau Zone bottomfish permits; and at 11:45 a.m. on Friday, June 13, 2003, on managing Guam's offshore bottomfish fishery. The agenda during the full Council meeting will include the items listed here.

Wednesday, June 11, 2003

1. Introductions
2. Approval of Agenda
3. Approval of 117th Meeting Minutes
4. Island Reports
A. American Samoa
B. Guam
C. Hawaii
D. CNMI
5. Regional constituent meeting with Bill Hogarth
6. Reports from Federal fishery agencies and organizations
A. Department of Commerce
(1) NMFS
(a) Pacific Islands Region
(b) Pacific Island Fisheries Science Center
(2) NOAA General Counsel, Pacific Islands Region
(3) National Ocean Service (NOS)
(a) National Marine Sanctuaries Program
(b) Pacific Services Center
B. Department of the Interior, U.S. Fish and Wildlife Service
C. U.S. State Department
7. Enforcement and VMS
A. U.S. Coast Guard activities
B. NMFS activities
C. Enforcement activities of local agencies
D. Status of violations
E. Report on enforcement meeting
(1) Outreach efforts
(2) American Samoa vessel monitoring system costs
(3) Electronic data reporting for Hawaii longline fleet
8. Precious coral fisheries: Status of industry
9. Crustaceans fisheries
A. Main Hawaiian Islands lobster stock assessment
B. Lobster tagging administrative report

Thursday, June 12, 2003

Guest speaker: David Pauley: ''The Sea Around Us Project''
10. Pelagic fisheries
A. 2002 annual report
B. Report on American Samoa scientific data collection project
C. Report on Hawaii longline observer program
D. Report on phase two of chute trials for seabird conservation
E. Turtle conservation
(1) Implementation plan for conservation activities
(2) Fishery management alternatives (action item)
F. Marlin management (Action item)
G. Status of environmental impact statements (EISs)
(1) Supplemental pelagic EIS
(2) Main Hawaiian Islands turtle EIS
(3) Observer program EIS
(4) Turtle experiment EIS
H. Small boat outreach issues
I. International meetings and issues
(1) FAO Committee on Fisheries meeting
(2) NMFS turtle bycatch meeting
(3) 23rd turtle symposium
J. Public hearing on turtle conservation measures, and on management of marlin fisheries in Hawaii. Current turtle conservation measures for turtles which interact with the Hawaii-based longline fishery include a complete closure of all shallow set swordfish target longline fishing north of the equator and a seasonal closure in April and May each year of fishing grounds south of the Hawaiian Islands (from 15° N. lat. to the equator, and from 145° W. long. to 180° long.). The Council will consider whether to amend the Fishery Management Plan for the Pelagics Fishery of the Western Pacific Region (Pelagics FMP) and eliminate the southern April/May closure, or to modify the closure so that some areas would remain open during April and May. The Council will take public comment on modifications to the current management regime before taking further action on this issue.

The Council staff will consider a range of alternatives to address the fact that Pacific blue marlin landings are reportedly approaching maximum sustainable yield (MSY). Under new overfishing control rules recommended by the Council in its recent Sustainable

Fisheries Act amendments, the Council will be required to reduce fishing mortality if overfishing is determined to be occurring, if the stock is determined to be overfished, or if the fishery is identified to be approaching an overfished condition. The degree to which fishing mortality by Council managed fisheries should be reduced is unclear given that these fisheries are a small percentage of Pacific-wide harvests. The Council will deliberate on the appropriate scale of response, and on the appropriate measures that it could adopt as a preferred alternative in an amendment to the Pelagics FMP, should this be required. The Council will take public comment on whether an amendment to the Pelagics FMP is necessary, and if so, what should be the preferred alternative in the amendment to the Pelagics FMP.

11. Indigenous fishery rights

A. Transmittal of Hawaii marine conservation plans

B. Community demonstration projects program

(1) Report on first solicitation

(2) Report on 2nd Solicitation

C. Mau Zone community development program (see bottomfish)

D. Annual Report to Congress

Friday, June 13, 2003

12. Ecosystems and Habitats

A. Report on the NOS NWHI Reserve Science Workshop

B. NMFS/Council NWHI symposium

C. Report from Council MPAs working group

D. Report on Secretariat of the Pacific Communities Coastal Fishery Management Meeting

E. Report on the U.S. Coral Reef Task Force Meeting

(1) February 26 Meeting

(2) Pacific coral reef fisheries management workshop

F. Status of the Coral Reef Ecosystem Fishery Management Plan

13. Bottomfish Fisheries

A. 2002 Annual report modules

B. Status of Main Hawaiian Island management program

C. Overfishing control rule/MSY

D. Report on NWHI bottomfish observer program

E. New entry criteria for Mau Zone community development program bottomfish permits (Action item)

F. Guam offshore bottomfish management (Action Item)

G. Public hearing on final action for Mau Zone community development program bottomfish permits and Guam offshore bottomfish management.

The Council will consider alternatives to take final action on a process for issuing NWHI Mau Zone bottomfish CDP permits. The three alternatives to be considered for selecting participants for the program include a random selection process (lottery), a weighted point system, and evaluation criteria. Each alternative will be used in concert with the Western Pacific community eligibility criteria as described in a **Federal Register** document published on April 16, 2002 (67 FR 18512). The Council's preferred alternative adopted by the Council at is 117th meeting in Saipan on February 12, 2003, was incorporated into the existing draft framework amendment ''Measure to Establish Eligibility Criteria for New Entry into the Northwestern Hawaiian Islands Mau Zone Limited Access System''. The revised framework regulatory amendment incorporates the CDP permit issuance process to be presented and considered for final action by the Council at this meeting.

The Council will also consider alternatives and intends to take final action to manage Guam's offshore bottomfish fishery. The Council considered management alternatives at its 117th Council meeting in February 2003, and selected, as its preferred alternative, the option to prohibit targeting of bottomfish management unit species (BMUS) using vessels longer than 50 ft(15.24 m) that fish in Federal waters within 50 nautical miles from shore. In addition the preferred alternative would require Federal permits and reports for all vessels over 50 ft (15.24 m) in length that land BMUS in Guam.

Recent entry of larger vessels into the Guam bottomfish fishery has raised concerns regarding data collection gaps and resource status. These vessels harvest deep-slope species on offshore seamounts (or ''banks'') in Federal waters, land the bottomfish at Guam's commercial port, and export the bottomfish to Japan. Neither the level of fishing effort nor the amount of bottomfish harvested, which is believed to have started in 2001, is known. Guam's creel survey does not cover fish landed at the commercial port and the exported fish are not sold through any establishments that participate in the voluntary sales ticket monitoring program. Onaga (Etelis coruscans) appears to be the primary species that is targeted.

The southern banks have been fished for many years by Guam-based bottomfish fishermen using smaller vessels that engage in a mix of subsistence, recreational, and small-scale commercial fishing, particularly in the summer months, when weather conditions tend to be calmer. Most of the vessels fishing on the southern banks target the shallow-water bottomfish complex, but some target the deep-water complex.

It is unknown at this time whether the new component of the fishery is having significant impacts on marine resources. Initial discussions with fishery managers and Guam's fishing community (through a public scoping meeting held on Guam August 8, 2002 and February 8, 2003), indicate that the catch of fish by this new component may lead to localized overfishing of the bank area.

14. Program Planning

A. Legislation updates

B. Status of Pacific Islands Region

C. Pacific fishery management coordinating consultation

D. Social science research planning

E. Exclusive Economic Zone data collection

F. Report on fishery data coordination committee meeting/WPacFIN

15. Administrative matters

A. Financial reports

B. Administrative reports

C. Upcoming meetings and workshops including the 119th Council meeting

D. AP, SSC, PT and Sea turtle working group appointments

16. Other business

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Authority: 1801 *et seq.*

Dated: May 16, 2003.

Richard W. Surdi,

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

[FR Doc. 03–12743 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D.051403C]

RIN 0648–AQ68

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 17

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendment 17 to the Pacific Coast Groundfish Fishery Management Plan (FMP) for Secretarial review. Amendment 17 would revise the Council's annual groundfish management process so that it would become a biennial process with a NMFS public notice and comment period prior to implementation of the biennial specifications and management measures. Amendment 17 is intended to ensure that the specifications and management measures process comports with a Court ruling to make the Council's development process for specifications and management measures more efficient, and to streamline the NMFS regulatory process for implementing the specifications and management measures.

DATES: Comments on Amendment 17 must be received on or before July 21, 2003.

ADDRESSES: Comments on Amendment 17 or supporting documents should be sent to D. Robert Lohn, Administrator, Northwest Region, NMFS, Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or to Rodney McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

Copies of Amendment 17 and the Environmental Assessment/ Regulatory Impact Review (EA/RIR) are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Ave., Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736 and; e-mail: *yvonne.dereynier@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the Internet at the Web site of the Office of the **Federal Register**'s Web site at: *http://www/access/gpo.gov/su__docs/aces140.html*.

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit fishery management plans or plan amendments to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires NMFS, immediately upon receiving a fishery management plan or amendment, to publish notification in the **Federal Register** that the fishery management plan or plan amendment is available for public review and comment. At the end of the comment period, NMFS considers the public comments received during the comment period described above in determining whether to approve, partially approve, or disapprove the fishery management plan or plan amendment.

Amendment 17 is administrative in nature and is intended to revise Council and NMFS processes associated with the specifications and management measures. This annual process establishes harvest ''specifications,'' which are harvest levels or limits such as acceptable biological catches, optimum yields, or allocations for different user groups. Management measures, such as trip limits, closed times and areas, and gear restrictions are also set in the annual regulatory process. Since 1990, in order to use the most recent scientific information possible, the Council has annually developed its recommendations for specifications and management measures in a two-meeting process (usually its September and November meetings) followed by a NMFS final action published in the **Federal Register** and made available for public comment after the effective date of the action. In 2001, NMFS was challenged on this process in *Natural Resources Defense Council, Inc.* v. *Evans*, 168 F.Supp. 2d 1149 (N.D. Cal. 2001) and the Court ordered NMFS to provide prior public notice and allow public comment on the annual specifications. Amendment 17 would amend the FMP's framework for developing annual specifications and management measures to include time for NMFS to publish a proposed rule for the specifications and management measures, followed by a final rule.

In addition to needing to revise the notice and comment procedure associated with the specifications and management measures, the Council wished to take a new look at efficiency in the annual management process. Groundfish management workload levels have grown in recent years, particularly those associated with setting annual harvest levels for both depleted and healthy stocks. Because of the increasing workload associated with developing specifications and management measures, the Council and NMFS have had less time for addressing many other important groundfish fishery management issues. NMFS has recently asked all of the fishery management councils to consider how they might streamline their processes for developing regulatory recommendations. Amendment 17 responds to this request by setting the specifications and management measures process for biennial, rather than annual, development and implementation.

Public comments on Amendment 17 must be received by July 21, 2003, to be considered by NMFS in the decision whether to approve, disapprove, or partially approve Amendment 17. A proposed rule to implement Amendment 17 has been submitted for Secretarial review and approval. NMFS expects to publish and request public comment on proposed regulations to implement Amendment 17 in the near future.

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

Dated: May 16, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–12885 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 660

[Docket No. 030430106–3106–01; I.D. 040103C]

RIN 0648–AQ58

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Vessel Monitoring Systems

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing a rule that would require vessels registered to Pacific Coast groundfish fishery limited entry permits to carry and use mobile vessel monitoring system (VMS) transceiver units while fishing in the exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California. This action is necessary to monitor compliance with large-scale depth-based restrictions for fishing across much of the continental shelf.

This proposed rule also requires the operators of any vessel registered to a limited entry permit and any other commercial or tribal vessel using trawl gear, including exempted gear used to take pink shrimp, spot and ridgeback prawns, California halibut and sea cucumber, to declare their intent to fish within a conservation area specific to their gear type, in a manner that is consistent with the conservation area requirements. This action is intended to further the conservation goals and objectives of the Pacific Coast Groundfish Fishery Management Plan(FMP) by allowing fishing to continue in areas and with gears that can harvest healthy stocks with little incidental catch of low abundance species.

DATES: Comments must be received by July 21, 2003.

ADDRESSES: Send comments to, D. Robert Lohn, Administrator, Northwest Region, NOAA Fisheries, 7600 Sand Point Way, NE, Seattle, WA 98112, Attn: Becky Renko. Comments also may be sent via facsimile (fax) to 206–526–6736. Comments will not be accepted if submitted via e-mail or Internet.

Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) prepared for this action may be obtained from the Pacific Fishery Management Council (Council) by writing to the Council at 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280, or may be obtained from William L. Robinson, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115–0070. Send comments on collection-of-information requirements to the NMFS address above and to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Washington DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Becky Renko or Yvonne deReynier (Northwest Region, NMFS) 206–526–6140.

SUPPLEMENTARY INFORMATION: This rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.access.gpo.gpv/su-docs/aces/aces140.htm*. Background information and documents are available at the NMFS Northwest Region Web site at *http://www.nwr.noaa.gov/1sustfsh/gdfsh01.htm* and at the Council's Web site at *http://www.pcouncil.org*.

Specific Request for Comments

NMFS is specifically seeking comment on: the requirements to send declaration reports prior to leaving port; prohibition of vessels registered to limited entry permits with trawl endorsements from activities other than continuous transit through the Trawl Rockfish Conservation Area; and the requirement for continuous VMS position reports, particularly as it applies to small vessels that are regularly removed from the water.

Background

In general, a variety of methods are used to routinely monitor fishing fleets to ensure that vessel operators comply with fishery regulations. Traditional techniques used to monitor marine fisheries have been relatively limited and include monitoring from air and surface craft, through on-board observer programs, and by analyzing catch records and vessel logbooks. The efficiency of these traditional monitoring techniques can be enhanced by the addition of VMS and the use of declaration reports.

VMS is a tool that allows vessel activity to be monitored in relation to geographically defined management areas. VMS transceiver units installed aboard vessels automatically determine the vessel's position and transmit that position to a processing center via a communication satellite. At the processing center, the information is validated and analyzed before being disseminated for various purposes, which may include fisheries management, surveillance and enforcement. VMS transceivers automatically determine the vessel's position using Global Positioning System (GPS) satellites. Generally, the vessel's position is determined once per hour, but the position determinations may be more or less frequent depending on the fishery. VMS transceivers are designed to be tamper resistant. In most cases, the vessel owner is not aware of exactly when the unit is transmitting and is unable to alter the signal or the time of transmission. On September 23, 1993 (58 FR 49285)and March 31, 1994 (59 FR 15181) NMFS published VMS standards for transceiver units and service providers used for Federal fisheries management.

Information collected under a VMS program is subject to the confidentiality provisions of Section 402 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 6 U.S.C. 1881 a(b), and implementing regulations at 50 CFR part 600, Subpart E. These authorities specify in detail who may access and use the information and for what purposes.

Amendment 13 to the Pacific Coast groundfish FMP recognized the value of VMS systems in enforcing closed areas established to reduce bycatch levels. Amendment 13 also identified VMS as a technological tool that could be used to improve bycatch management by providing location data that can be used in conjunction with observer data collections.

Time and area closures have long been used in the Pacific Coast groundfish fishery to restrict fishing activity in order to keep harvests within sector allocations and at sustainable levels and to prohibit the catch of certain species. Until September 2002, geographically-defined areas tended to be in nearshore areas or defined by simple latitude and longitude lines. On September 13, 2002, NMFS took emergency action to implement the first depth-based management measures (67 FR 57973). This emergency rule restricted trawling north of 40°10′ N. lat., in the months of September-December 2002, to depths where darkblotched rockfish, an overfished species, was not expected to be encountered. These measures were taken to keep the total catch of darkblotched rockfish below the 2002 Optimum Yield level. The Darkblotched Rockfish Conservation Area was a depth-based management area based on bottom depth ranges where darkblotched rockfish commonly occur (100–250 fm). This large, irregularly-shaped geographical area was defined by a series of latitudinal and longitudinal coordinates which generally follow depth (fathom) contours. This area differed from previously closed areas because it extends far offshore making air and surface craft enforcement difficult.

For 2003, the Council sought a management strategy that would allow fishing to continue in areas and with gear that can harvest healthy stocks with little incidental catch of low abundance species such as bocaccio, yelloweye, canary and darkblotched rockfish. Measures must be taken to protect these

stocks and rebuild them to sustainable biomass levels. Therefore, the Council recommended that NMFS define additional management areas for the groundfish fishery that are based on bottom depth ranges where these low abundance species are commonly found. For 2003, large-scale depth-related closed areas, referred to as rockfish conservation areas or RCAs, are being used to restrict both commercial and recreational fishing across much of the Continental Shelf. Different RCAs are established for different gear types, as not all gear types encounter each overfished species at the same rate or in similar areas. For example, groundfish bottom trawling is banned in some RCAs (known as trawl RCAs); use of non-trawl gear -- such as limited entry and open access longline, pot or trap is banned in other RCAs (known as non-trawl RCAs).

Within the RCAs, fishing likely to result in the catch of substantial amounts of overfished species is banned, while other fishing is allowed. In addition, transit of the RCAs by fishing vessels headed for open areas seaward of the RCAs is allowed.

The depth-based management strategy associated with the RCAs is designed to allow fishing for healthy stocks to continue, while protecting overfished species. However, it presents new enforcement challenges, and requires new tools such as VMS to supplement existing enforcement mechanisms. NMFS and cooperating enforcement agencies (such as the U.S. Coast Guard and state marine law enforcement agencies) will continue to use traditional enforcement methods such as aerial surveillance and marine patrols that have proved effective in the past. Adding requirements for VMS and declaration reports will allow the enforcement agencies to continuously monitor vessels fishing in, and transiting through, the RCAs.

At its September 2002 meeting, the Council indicated that the information provided by a VMS program will be beneficial to managing the groundfish fishery, specifically, in maintaining the integrity of new, depth-based management measures. At this same meeting, the Council requested that NMFS further analyze a VMS program and develop implementing regulations.

At its November 2002 meeting, following public comment and Council discussion, the Council recommended that NMFS move forward with a proposed rule to implement a VMS program for the Pacific Coast groundfish fishery in 2003. During the initial phase of this program the Council recommended starting with requiring vessels registered to limited entry permits fishing in the EEZ off the Washington, Oregon, and California coasts to have VMS transceiver units. This is intended to be a pilot program that begins with the sector that is allocated the majority of the groundfish resources. In order to implement a VMS program effectively, the Council also recommended requiring the operator of any vessel registered to a limited entry permit; and any commercial or tribal vessel using trawl gear, including, exempted gear used to take pink shrimp, spot and ridgeback prawns, California halibut and sea cucumber, to declare their intent to fish within a conservation area specific to their gear type, in a manner that is consistent with the conservation area requirements.

Although the Council recommended that NMFS fully fund a VMS monitoring program, it is not possible at this time because neither state nor Federal funding is available for purchasing, installing, or maintaining VMS transceiver units, nor is funding available for data transmission. Because of the critical need to monitor the integrity of conservation areas that protect overfished stocks, while allowing for the harvest of healthy stocks, NMFS believes it is necessary to proceed with this rulemaking. To move this rulemaking forward at this time it is necessary to require fishery participants to bear the cost of purchasing, installing, and maintaining VMS transceiver units, VMS data transmissions, and reporting costs associated with declaration requirements. If state or Federal funding becomes available, fishery participants may be reimbursed for all or a portion of their VMS expenses.

Declaration Reports

Before the vessel is used to fish in any trawl RCA or the Cowcod Conservation Areas (CCA) in a manner that is consistent with the requirements of the conservation areas, a declaration report will be required from (1) any vessel registered to a limited entry permit with a trawl endorsement; (2) any vessel using trawl gear, including exempted gear used to take pink shrimp, spot and ridgeback prawns, California halibut and sea cucumber; and (3) any tribal vessel using trawl gear. In addition, declaration reports will be required from vessels registered to limited entry permits with longline and pot endorsements, before these vessels can be used to fish in any Non-trawl RCA or the CCA. The declaration report must be submitted before the vessel leaves port on the trip to fish in an RCA or CCA. Each declaration report will be valid until cancelled or revised by the vessel operator. The declaration report must state the type of fishing in which the vessel will engage. If the type of fishing changes, a new declaration report must be submitted.

During the period that a vessel has a valid declaration report on file with NMFS, it cannot fish with a gear other than a gear type that is within the gear category (50 CFR 660.303 (b)(5)) declared by the vessel. In addition, on any trip on which a vessel fishes in an RCA or CCA, the vessel cannot participate in any fishing that is inconsistent with the restrictions that apply within the RCA or CCA.

Declaration reports will be submitted to NMFS by using the VMS system or another approved method, such as email, facsimile or telephone, as identified by NMFS. Vessel operators making declaration reports will receive a confirmation notice or number that verifies that the reporting requirements were satisfied.

Declaration Requirements Example #1: If a vessel registered to a limited entry permit with a trawl endorsement leaves port on a trip to harvest Pacific whiting during the primary season, and the vessel is not used in another commercial fishery in the EEZ off the coasts of Washington, Oregon, or California during the year, a declaration report will be required before the vessel leaves port on its trip to harvest Pacific whiting with midwater trawl gear in the Trawl RCA. This is the only declaration report required for this vessel.

Declaration Requirements Example #2: If a vessel registered to a limited entry permit with a trawl endorsement is used to harvest pink shrimp inside the Trawl RCA from April to June; Pacific whiting inside the Trawl RCA from June to September; flatfish from areas not inside the Trawl RCA from September to December; and crab both inside the Trawl RCA and from areas not inside the Trawl RCA in December; the following declarations will be required: in April a declaration will be required to identify the gear as pink shrimp, spot and ridgeback prawn trawl gear; in June a declaration will be required to identify the gear as limited entry midwater trawl gear; in September a declaration will be sent to cancel the declaration to fish in a conservation area; in December a declaration will be sent identifying the gear type as crab or lobster gear. Each declaration report would be sent before the vessel leaves port on the first trip under that declaration.

VMS

Under this proposed rule, any vessel registered to a limited entry permit for the Pacific Coast groundfish fishery will be required to have an operating NMFS type-approved VMS transceiver unit on board while fishing in the EEZ off the states of Washington, Oregon and California. Type-approved VMS transceiver units may include but are not limited to, the following features: automatically generated position reports from transceivers with a fully integrated, tamper proof GPS, two-way communications for sending and receiving messages, global or near global coverage, delays between position transmission and receipt at processing center that averages 5 minutes, ability to add sensors and data input devices, sleep modes that detect lack of vessel movement (in port) and stop sending position reports (greatly reducing power consumption) until the vessel begins moving again, and visual or audible alarms for malfunctions.

Currently, the cost of a NMFS type-approved VMS transceiver unit, suitable for the Pacific Coast groundfish fishery, ranges from approximately $2,000 to $6,000. The charges for the transmission of VMS position data from these units ranges from $1.00 to $5.00 per day. NMFS is in the process of revising VMS standards for type-approved models and testing new, less expensive, VMS transceiver technologies for agency approval. NMFS intends to complete this approval process and provide the public with a list of type-approved transceiver units before NMFS implements a final rule requiring the use of VMS transceivers in the fishery. The cost for some of the VMS units that are being tested for type-approval are expected to be less expensive than the prices quoted above.

A list of VMS transceivers that have been type-approved by NMFS will be mailed to the permit owner's address of record. NMFS will also distribute installation and activation instructions for the affected vessel owners. The installation of the VMS transceiver is expected to take less than 4 hours and will be the responsibility of the vessel owners. Prior to fishing, the vessel owner will be required to fax an activation report to NMFS to verify that the unit was installed correctly and has been activated. This regulatory amendment will require that the vessel owner or operator of a vessel registered to a limited entry groundfish permit use a NMFS type-approved VMS transceiver at all times when participating in any and all fisheries in the U.S. West Coast EEZ. A vessel owner required to continuously operate a VMS transceiver, may choose to send an exemption report to discontinue transmissions during a period when the vessel will be continuously out of the water for more than 7 consecutive days, or if the vessel is operating seaward of the EEZ off Washington, Oregon, or California for more than 7 consecutive days.

The 2003 Annual Specifications and Management Measures

The 2003 Annual Specifications and Management Measures implemented gear restrictions that affect this rulemaking. When the annual specifications and management measures became effective on March 1, 2003 (68 FR 11182), it became unlawful to take and retain, possess, or land groundfish taken with limited entry groundfish trawl and open access exempted trawl gear in the Trawl RCA. The only exceptions are for exempted trawl gear that is used to harvest pink shrimp coastwide and prawns north of 4°10′ N. lat.; and for limited entry midwater trawl gear used to harvest yellowtail rockfish, widow rockfish or Pacific whiting during the primary whiting season. Similarly, recreational fishing for groundfish was prohibited within the Yelloweye RCA and directed fishing with non-trawl gear (open access or limited entry) was prohibited within the Non-trawl RCA. As it was in 2002, recreational and commercial fishing for groundfish continues to be prohibited within the CCA, except that recreational and commercial fishing for rockfish and lingcod is permitted in waters inside 20 fathoms (36.9 m).

Trawl vessels may transit through the Trawl RCA, with or without groundfish on board, provided all groundfish trawl gear is stowed either: (1) below deck; or (2) if the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing; or (3) remaining on deck uncovered if the trawl doors are hung from their stanchions and the net is disconnected from the doors. If a vessel fishes in an RCA, it may not participate in any fishing on that same trip that is inconsistent with the restrictions that apply within the RCA. In addition, a vessel is prohibited from having more than one type of trawl gear on board if it is trawling within an RCA and may only have trawl gear authorized for use within an RCA on board.

Classification

NMFS prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows:

A description of the action, why it is being considered, and the legal basis for this action are contained in the SUMMARY and at the beginning of this section of this proposed rule. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

A range of five alternative actions were considered and analyzed. The alternative monitoring systems included: (1) the status quo, (2) a declaration system, (3) a basic VMS program with 1–way communications (the proposed action), (4) an upgraded VMS program with 2–way communications, and (5) the expanded use of fishery observers. Vessel plotters were recommended as a monitoring system by the industry. After consideration, it was determined that vessel plotters, which were designed as a navigational aid, would not be an adequate enforcement monitoring tool for depth-based management.

Under the status quo (Alternative 1) for 2003, large-scale depth-related closed areas, referred to as rockfish conservation Areas or RCAs, are being used to restrict both commercial and recreational fishing across much of the Continental Shelf. The depth-based management strategy associated with the RCAs is designed to allow fishing for healthy stocks to continue, while protecting overfished species. However, this management system presents new enforcement challenges, and requires new tools to supplement existing enforcement mechanisms. These measures would remain in place under all alternatives, with increased access allowed to restricted areas as conditioned by the different alternatives.

Declaration reports (Alternative 2) alone were not considered to be as effective as VMS in monitoring vessels location in relation to restricted areas. Much of the information collected by observers (Alternative 5) goes beyond the identified need and was by far the most expensive alternative.

A VMS program is an effective tool for monitoring vessel location. The two approaches to VMS were: a basic VMS system (Alternative 3–proposed action) and an upgraded VMS system (Alternative 4). The primary difference between the two alternatives was that the upgraded system uses two-way communications between the vessel and shore such that full or compressed data messages can be transmitted and received by the vessel, while the basic system only transmits positions to a shore station. It was determined that the

basic system was the minimum system that would maintain the integrity of the closed areas. However, this action will not preclude vessels from installing an upgraded VMS system.

A VMS program that identified the sectors of the groundfish fleet that would be required to have a VMS or observer monitoring system was considered. The alternative coverage levels ranged from limited entry vessels actively fishing off the West Coast to all limited entry, open access, and recreational charter vessels regardless of where fishing occurs. During the initial phase of this program the Council recommended starting with vessels registered to limited entry permits fishing in the EEZ off the Washington, Oregon, and California coasts to be required to have VMS transceiver units. This is intended to be a pilot program that begins with the sector that is allocated the majority of the groundfish resources. In addition, alternative approaches for funding the purchasing, installation, and maintenance of VMS transceiver units, as well as the responsibilities for transmission of reports and data were considered and included the following alternatives: Vessel pays all costs, vessel pays only for the transceiver, NMFS pays for initial transceiver, and NMFS pays all costs.

Although the Council recommended that NMFS fully fund a VMS monitoring program, it is not possible at this time because neither state nor Federal funding is available for purchasing, installing, or maintaining VMS transceiver units, nor is funding available for data transmission. Because of the critical need to monitor the integrity of conservation areas that protect overfished stocks, while allowing for the harvest of healthy stocks, NMFS believes it is necessary to proceed with this rulemaking.

Approximately 424 vessels that are registered to limited entry permits that operate in the EEZ off the states of Washington, Oregon or California would be required to carry and operate a NMFS type-approved VMS transceiver unit. All but 10 of the affected entities qualify as small businesses. Vessels required to carry VMS transceiver units will provide installation/activation reports, hourly position reports, and exemption reports. As this proposed rule was developed, the burden on fishery participants was considered and changes were made to ensure that only the minimum data needed to monitor compliance with regulations are being required.

In addition to VMS requirements, declaration report requirements would apply to vessels registered to limited entry permits with trawl endorsements (262 vessels); other vessels using trawl gear, including exempted gear used to take pink shrimp, spot and ridgeback prawns, California halibut and sea cucumber (299 vessels); and tribal vessels using trawl gear, before these vessel are used to fish in any trawl RCA or the CCA. In addition, declaration reports would be required from vessels registered to limited entry permits with longline and pot endorsements (167), before the vessel could be used to fish in any non-trawl RCA or the CCA.

The Council's VMS Committee initially considered declaration reports as ''per trip'' reports. Following consultation with fishery participants, it was determined that the needs of NMFS and the USCG could be met with less frequently made declaration reports. Therefore, it was determined that a declaration report identifying the type of gear being used by a vessel would remain valid until cancelled or revised by the vessel operator. This results in a significant reduction in the number of reports. Following consultation with fishery participants, it was determined that some vessels may prefer to reduce the costs of reporting when leaving the EEZ off the coasts of Washington, Oregon, and California. A substantial number of permitted vessels also fish in waters off Alaska and in areas seaward of the EEZ. In addition, vessels are commonly pulled out of the water for extended periods. To reduce the reporting burden on vessels outside the EEZ, an optional exemption report was proposed to allow vessels to reduce or discontinue VMS hourly position reports when they are out of the EEZ for more than 7 consecutive days.

The proposed measure (alternative 3), which would require limited entry vessels to purchase and operate a VMS in the EEZ off of Washington, Oregon, and California, is expected to increase the profitability of individual vessels that participate in the VMS program. To determine profitability, the Council compared the costs of purchasing and operating a VMS unit to the increase in revenue that would be obtained from expanded fishing opportunities under the depth management program. Since revenue data for individual vessels were not readily available, the Council used average annual revenue per vessel as a proxy. In the absence of vessel operating cost data, the Council considered only the cost of purchasing and maintaining a VMS unit and assumed other costs to be constant.

The VMS units that have been type-approved for this fishery range in costs and service features. This allows the vessel owner the flexibility in choosing the model that best fits the needs of his or her vessel. NMFS would pay for all costs associated with polling (when the processing center queries the transceiver, outside of regular transmission, for a position report). The costs of installation are minimal because the transceivers can be installed by the vessel operator. Vessels that already have VMS transceiver units installed for other fisheries or personal purposes could use their current unit, providing it is a model that has been type-approved for the Pacific Coast groundfish fishery and the software has been upgraded to meet the defined requirements.

The Council estimated that, under the proposed VMS measure, costs of purchasing and installing the unit would be between $800 and $3800 per individual vessel, and between $548 and $1698 per year to operate and maintain the unit. Revenues from expanded fishing were estimated to increase $26,000 per year for limited entry trawl vessels and $14,000 per year for limited entry longline and pot vessels, far exceeding the exceeding the estimated start-up and maintenance costs of the VMS.

While ex-vessel revenues appear higher on average for vessels likely to be required to use VMS under the depth-based management regime, it should be noted that fishing costs may also be higher, offsetting some of the apparent gain. Unfortunately, vessel cost data necessary to estimate this effect are currently not available. It is also important to keep in mind that using average revenues masks the variability of ex-vessel revenues in each vessel class. While on average, additional revenues appear greater than VMS-related costs, for some individual vessels in each class this will not be the case.

Alternative 4, which would implement a two-way VMS, would produce higher costs per vessel (year 1 at $3,878-$7,607; subsequent years at $1,063-$2,342) and would yield less profit, ceteris paribis, than the proposed VMS alternative. Alternative 5, which would implement observer coverage, would be very costly at $300 per day, or $36,000 per year assuming 10 fishing days per month, and would most likely produce economic losses for the majority of limited entry vessels.

Alternative 2, which would allow expanded fishing by use of declaration only, would be more profitable to limited entry vessels than the proposed VMS measure, since they would earn the same revenue at a minimal cost. However, the Council believes that

mandatory VMS will allow for better enforcement of fishing regulations and provide a more accurate database of fishing activity to better meet the conservation goals of the Pacific Groundfish FMP.

The proposed measure to require all trawl vessels to declare their intentions to fish is expected to have only a minimal impact on individual trawlers since the cost of a declaration is minimal.

Most vessels affected by this action have gross annual receipts of under $3.5 million and are defined as small entities under Section 601 of the Regulatory Flexibility Act, however, there are approximately 10 vessels defined as large entities operating in the limited trawl fishery. There could be some disproportionate economic impacts on small entities versus large entities for the group of limited entry vessels that are less than 40 ft (12.192 m) in length and have relatively low gross annual receipts. These include 90 limited entry vessels, comprised of 5 trawl vessels and 85 longline and pot vessels. Depending upon the cost of the VMS, some of these smaller vessels would be forced to pay a relatively larger share of their annual expenditures for purchase of the VMS compared to the larger vessels. All vessels that fish in conservation areas would increase their gross receipts by being able to fish in more productive areas, having the effect of increasing profitability and mitigating the cost of the VMS. This mitigation would be less for smaller vessels, due to their smaller catches and, therefore, income from groundfish.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. Public reporting burden for these collections is estimated to average as follows: 4 minutes for a declaration report; 4 hours for installation of a VMS transceiver unit; 4 hours for annual maintenance of a VMS transceiver unit; 5 minutes for an installation/activation report; 5 seconds for each automated hourly position report; and 4 minutes for an exemption report. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attn: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless the collection of information displays a currently valid OMB Control Number.

NMFS issued Biological Opinions (BOs) under the Endangered Species Act on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the groundfish fishery on chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal, Oregon coastal), chum salmon (Hood Canal, Columbia River), sockeye salmon (Snake River, Odette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south-central California, northern California, and southern California). During the 2000 Pacific whiting season, the whiting fisheries exceeded the chinook bycatch amount specified in the Pacific whiting fishery's Biological Opinion's (whiting BO) (December 19, 1999) incidental catch statement estimate of 11,000 fish, by approximately 500 fish. In the 2001 whiting season, however, the whiting fishery's chinook bycatch was about 7,000 fish, which approximates the long-term average. After reviewing data from, and management of, the 2000 and 2001 whiting fisheries (including industry bycatch minimization measures), the status of the affected listed chinook, environmental baseline information, and the incidental catch statement from the 1999 whiting BO, NMFS determined in a letter dated April 25, 2002, that a re-initiation of the 1999 whiting BO was not required. NMFS has concluded that implementation of the FMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat. This action is within the scope of these consultations.

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

Dated: May 15, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF THE WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

Subpart G—West Coast Groundfish Fisheries

2. In § 660.302, add " Address of record", "Groundfish Conservation Area or GCA", "Mobile transceiver unit", "Office for Law Enforcement", and "Vessel monitoring system or VMS", in alphabetical order to read as follows:

§ 660.302 Definitions.

Address of record means the business address of a person, partnership, or corporation used by NMFS to provide notice of actions.

* * * * *

Groundfish Conservation Area or GCA means a geographic area defined by coordinates expressed in degrees latitude and longitude, created and enforced for the purpose of contributing to the rebuilding of overfished West Coast groundfish species. Specific GCAs are referred to or defined at § 660.304(c).

* * * * *

Mobile transceiver unit means a device installed on board a vessel that is used for monitoring a vessel and for transmitting the vessel's position as required by this subpart.

Office for Law Enforcement (OLE) refers to the National Marine Fisheries Service, Office for Law Enforcement, Northwest Division.

* * * * *

Vessel monitoring system or VMS means a vessel monitoring system or mobile transceiver unit as set forth in § 660.359 and approved by NMFS for use on vessels that take (directly or

incidentally) species managed under the Pacific Coast Groundfish FMP, as required by this subpart.

3. Section 660.303 is revised to read as follows:

§ 660.303 Reporting and recordkeeping.

(a) This subpart recognizes that catch and effort data necessary for implementing the PCGFMP are collected by the States of Washington, Oregon, and California under existing state data collection requirements. Telephone surveys of the domestic industry may be conducted by NMFS to determine amounts of whiting that may be available for reallocation under 50 CFR 660.323(a)(4)(vi). No Federal reports are required of fishers or processors, so long as the data collection and reporting systems operated by state agencies continue to provide NMFS with statistical information adequate for management.

(b) Any person who is required to do so by the applicable state law must make and/or file, retain, or make available any and all reports of groundfish landings containing all data, and in the exact manner, required by the applicable state law.

(c) Any person landing groundfish must retain on board the vessel from which groundfish is landed, and provide to an authorized officer upon request, copies of any and all reports of groundfish landings containing all data, and in the exact manner, required by the applicable state law throughout the cumulative limit period during which a landing occurred and for 15 days thereafter.

(d) *Reporting requirements for vessels fishing in conservation areas*—(1) *Declaration reports for trawl vessels intending to fish in a conservation area.* The operator of any vessel registered to a limited entry permit with a trawl endorsement; any vessel using trawl gear, including exempted gear used to take pink shrimp, spot and ridgeback prawns, California halibut and sea cucumber; or any tribal vessel using trawl gear must provide NMFS with a declaration report, as specified at paragraph 660.303(d)(5), of this section to identify the intent to fish within the CCA, as defined at § 660.304, or any trawl RCA, as defined in the groundfish annual management measures that are published in the **Federal Register**.

(2) *Declaration reports for non-trawl vessels intending to fish in a conservation area.* The operator of any vessel registered to a limited entry permit with a longline or pot endorsement must provide NMFS OLE with a declaration report, as specified at paragraph (d)(5) of this section, to identify the intent to fish within the CCA, as defined at § 660.304, or any non-trawl RCA, as defined in the groundfish annual management measures that are published in the **Federal Register**.

(3) *When a declaration report for fishing in a conservation area is required*, as specified in paragraphs (d)(1) and (d)(2) of this section, it must be submitted before the vessel leaves port:

(i) On a trip in which the vessel will be used to fish in a conservation area for the first time during the calendar year;

(ii) On a trip in which the vessel will be used to fish in a conservation area with a gear type that is different from the gear declaration provided on a valid declaration report as defined at paragraph 660.303 (d)(6) of this section; or

(iii) On a trip in which the vessel will be used to fish in a conservation area for the first time after a declaration report to cancel fishing in a conservation area was received by NMFS.

(4) *Declaration report to cancel fishing in a conservation area.* The operator of any vessel that provided NMFS with a declaration report for fishing in a conservation area, as required at paragraphs (d)(1) or (d)(2) of this section, must submit a declaration report to NMFS OLE to cancel the current declaration report before the vessel leaves port on a trip in which the vessel is used to fish with a gear that is not in the same gear category set out in paragraph 660.303 (d)(5)(i) declared by the vessel in the current declaration.

(5) *Declaration reports will include*: the vessel name and/or identification number, and gear declaration (as defined in paragraph 660.303(d)(5)(i)). Upon receipt of a declaration report, NMFS will provide a confirmation code or receipt. Retention of the confirmation code or receipt to verify that the declaration requirement was met is the responsibility of the vessel owner or operator.

(i) One of the following gear types must be declared:

(A) Limited entry fixed gear,

(B) Limited entry midwater trawl,

(C) Limited entry bottom trawl,

(D) Trawl gear including exempted gear used to take pink shrimp, spot and ridgeback prawns, California halibut south of Pt. Arena, CA, and sea cucumber.

(E) Tribal trawl,

(F) Other gear including: gear used to take spot and ridgeback prawns, crab or lobster, Pacific Halibut, Salmon, California halibut, California sheephead, species managed under the Highly Migratory Species Fishery Management Plan, species managed under the Coastal Pelagic Species Fishery Management Plan, and any species in the gillnet complex as managed by the State of California.

(G) Non-trawl gear used to take groundfish.

(ii) Declaration reports must be submitted through the VMS or another method that is approved by NMFS OLE and announced in the **Federal Register**. Other methods may include email, facsimile, or telephone. NMFS OLE will provide, through appropriate media, instructions to the public on submitting declaration reports. Instructions and other information needed to make declarations may be mailed to the limited entry permit owner's address of record. NMFS will bear no responsibility if a notification is sent to the address of record and is not received because the permit owner's actual address has changed without notification to NMFS, as required at § 660.335 (a)(2). Owners of vessels that are not registered to limited entry permits and owners of vessels registered to limited entry permits that did not receive instructions by mail are responsible for contacting NMFS OLE during business hours at least 3 days before the declaration is required to obtain information needed to make declaration reports. NMFS OLE must be contacted during business hours (Monday through Friday between 0800 and 1700 Pacific Time).

(6) *A declaration report will be valid until* a declaration report to revise the existing gear declaration or a declaration report to cancel fishing in a conservation area is received by NMFS OLE. During the period that a vessel has a valid declaration report on file with NMFS, it cannot fish with a gear other than a gear type that is within the gear category (50 CFR 660.303 (d)(5)) declared by the vessel. After a declaration report to cancel fishing in the RCA is received, that vessel must not fish in a conservation area until another declaration report for fishing by that vessel in a conservation area is received by NMFS.

4. Section 660.304 is revised to read as follows:

§ 660.304 Management areas, including conservation areas, and commonly used geographic coordinates.

(a) *Management areas*

(1) *Vancouver.* (i) The northeastern boundary is that part of a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia (at 48°35′75″ N. lat., 124°43′00'' W. long.) south of the International Boundary

between the U.S. and Canada (at 48° 29′37.19'' N. lat., 124°43′33.19'' W. long.), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(ii) The northern and northwestern boundary is a line connecting the following coordinates in the order listed, which is the provisional international boundary of the EEZ as shown on NOAA/NOS Charts #18480 and #18007:

Point	N. lat.	W. long.
1	48°29′37.19″	124°43′33.19″
2	48°30′11″	124°47′13″
3	48°30′22″	124°50′21″
4	48°30′14″	124°54′52″
5	48°29′57″	124°59′14″
6	48°29′44″	125°00′06″
7	48°28′09″	125°05′47″
8	48°27′10″	125°08′25″
9	48°26′47″	125°09′12″
10	48°20′16″	125°22′48″
11	48°18′22″	125°29′58″
12	48°11′05″	125°53′48″
13	47°49′15″	126°40′57″
14	47°36′47″	127°11′58″
15	47°22′00″	127°41′23″
16	46°42′05″	128°51′56″
17	46°31′47″	129°07′39″

(iii) The southern limit is 47°30′ N. lat.

(2) *Columbia.* (i) The northern limit is 47°30′ N. lat.

(ii) The southern limit is 43°00′ N. lat.

(3) *Eureka.* (i) The northern limit is 43°00′ N. lat.

(ii) The southern limit is 40°30′ N. lat.

(4) *Monterey.* (i) The northern limit is 40°30′ N. lat.

(ii) The southern limit is 36°00′ N. lat.

(5) *Conception.* (i) The northern limit is 36°00′ N. lat.

(ii) The southern limit is the U.S.-Mexico International Boundary, which is a line connecting the following coordinates in the order listed:

Point	N. lat.	W. long.
1	32°35′22″	117° 27′49″
2	32°37′37″	117°49′31″
3	31°07′58″	118°36′18″
4	30°32′31″	121°51′58″

(b) *Commonly used geographic coordinates.*

(1) Cape Falcon, OR—45°46′ N. lat.

(2) Cape Lookout, OR——45°20′15'' N. lat.

(3) Cape Blanco, OR—42°50′ N. lat.

(4) Cape Mendocino, CA—40°30′ N. lat.

(5) North/South management line—40°10′ N. lat.

(6) Point Arena, CA—38°57′30'' N. lat.

(7) Point Conception, CA—34°27′ N. lat.

(c) *Groundfish Conservation Areas (GCAs).* In § 660.302, a GCA is defined as ''a geographic area defined by coordinates expressed in latitude and longitude, created and enforced for the purpose of contributing to the rebuilding of overfished West Coast groundfish species.'' Specific GCAs may be defined here in this paragraph, or in the **Federal Register**, within the harvest specifications and management measures process. While some GCAs may be designed with the intent that their shape be determined by ocean bottom depth contours, their shapes are defined in regulation by latitude/longitude coordinates and are enforced by those coordinates. Fishing activity that is prohibited or permitted within a particular GCA is detailed in **Federal Register** documents associated with the harvest specifications and management measures process.

(1) *Rockfish Conservation Areas (RCAs).* RCAs are defined in the **Federal Register** through the harvest specifications and management measures process. RCAs may apply to a single gear type or to a group of gear types, such as ''trawl RCAs'' or ''non-trawl RCAs''.

(2) *Cowcod Conservation Areas (CCAs).* (i) The Western CCA is an area south of Point Conception that is bound by straight lines connecting all of the following points in the order listed:

33°50′ N. lat., 119°30′ W. long.;
33°50′ N. lat., 118°50′ W. long.;
32°20′ N. lat., 118°50′ W. long.;
32°20′ N. lat., 119°37′ W. long.;
33°00′ N. lat., 119°37′ W. long.;
33°00′ N. lat., 119°53′ W. long.;
33°33′ N. lat., 119°53′ W. long.;
33°33′ N. lat., 119°30′ W. long.;
and connecting back to 33°50′ N. lat., 119°30′ W. long.

(2) The Eastern CCA is a smaller area west of San Diego that is bound by straight lines connecting all of the following points in the order listed:

32°42′ N. lat., 118°02 W. long.;
32°42′ N. lat., 117°50 W. long.;
32°36′42'' N. lat., 117°50 W. long.;
32°30′ N. lat., 117°53′30'' W. long.;
32°30′ N. lat., 118°02 W. long.;
and connecting back to 32°42′ N. lat., 118°02′ W. long.

(d) *Yelloweye Rockfish Conservation Area (YRCA).* The YRCA is a C-shaped area off the northern Washington coast that is bound by straight lines connecting all of the following points in the order listed:

48°18′ N. lat., 125°18′ W. long.;
48°18′ N. lat., 124°59′ W. long.;
48°11′ N. lat., 124°59′ W. long.;
48°11′ N. lat., 125°11′ W. long.;
48°04′ N. lat., 125°11′ W. long.;
48°04′ N. lat., 124°59′ W. long.;
48°00′ N. lat., 124°59′ W. long.;
48°00′ N. lat., 125°18′ W. long.;
and connecting back to 48°18′ N. lat., 125°18′ W. long.

(e) *International boundaries.* (1) Any person fishing subject to this subpart is bound by the international boundaries described in this section, notwithstanding any dispute or negotiation between the United States and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are established or recognized by the United States.

(2) The inner boundary of the fishery management area is a line coterminous with the seaward boundaries of the States of Washington, Oregon, and California (the ''3–mile limit'').

(3) The outer boundary of the fishery management area is a line drawn in such a manner that each point on it is 200 nm from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the United States and Canada or Mexico.

* * * * *

5. In § 660.306, new paragraphs (z), (aa) and (bb) are added to read as follows:

§ 660.306 Prohibitions.

* * * * *

(z) *Vessel monitoring systems.* (1) Use any vessel registered to a limited entry permit to operate in the EEZ off the States of Washington, Oregon or California unless that vessel carries a NMFS OLE type-approved mobile transceiver unit and complies with the requirements described at § 660.359.

(2) Fail to install, activate, repair or replace a mobile transceiver unit prior to leaving port as specified at § 660.359.

(3) Fail to operate and maintain a mobile transceiver unit on board the vessel at all times as specified at § 660.359.

(4) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VMS, mobile transceiver unit, or VMS signal required to be installed on or transmitted by a vessel as specified at § 660.359.

(5) Fail to contact NMFS OLE or follow NMFS OLE instructions when automatic position reporting has been interrupted as specified at § 660.359.

(aa) *Fishing in conservation areas.* (1) Fish with any trawl gear, including exempted gear used to take pink shrimp, spot and ridgeback prawns, California halibut south of Pt. Arena, CA, and sea cucumber; or with trawl gear from a tribal vessel or with any gear from a vessel registered to a groundfish limited entry permit in a conservation area

unless the vessel owner or operator has a valid declaration confirmation code or receipt for fishing in conservation area as specified at § 660.303(d)(5).

(bb) Operate any vessel registered to a limited entry permit with a trawl endorsement in a Trawl Rockfish Conservation Area (as defined at 660.302), except for purposes of continuous transiting, provided that all groundfish trawl gear is stowed in accordance with 660.322(b)(8) or as authorized in the annual groundfish management measures published in the **Federal Register**.

6. In § 660.322, new paragraph (b)(7) is added to read as follows:

§ 660.322 Gear restrictions.

(b) * * *

(7) Trawl vessels may transit through the trawl RCA, with or without groundfish on board, provided all groundfish trawl gear is stowed either:

(i) Below deck; or

(ii) If the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing; or

(iii) Remaining on deck uncovered if the trawl doors are hung from their stanchions and the net is disconnected from the doors.

7. Section 660.359 is added to subpart G to read as follows:

§ 660.359 Vessel Monitoring System (VMS) requirements.

(a) *What is a VMS?* A VMS consists of a NMFS OLE type-approved mobile transceiver unit that automatically determines the vessel's position and transmits it to a NMFS OLE type-approved communications service provider. The communications service provider receives the transmission and relays it to NMFS OLE.

(b) *Who is required to have VMS?* A vessel registered for use with a Pacific Coast groundfish limited entry permit that fishes in the EEZ off the States of Washington, Oregon or California is required to install a NMFS OLE type-approved mobile transceiver unit and to arrange for an NMFS OLE type-approved communications service provider to receive and relay transmissions to NMFS OLE, prior to fishing in the EEZ.

(c) *How are mobile transceiver units and communications service providers approved by NMFS OLE?* (1) NMFS OLE will publish type-approval specifications for VMS components in the **Federal Register** or notify the public through other appropriate media.

(2) Mobile transceiver unit manufacturers or communication service providers will submit products or services to NMFS OLE for evaluation based on the published specifications.

(3) NMFS OLE may publish a list of NMFS OLE type-approved mobile transceiver units and communication service providers for the Pacific Coast groundfish fishery in the **Federal Register** or notify the public through other appropriate media. As necessary, NMFS OLE may publish amendments to the list of type-approved mobile transceiver units and communication service providers in the **Federal Register** or through other appropriate media. A list of VMS transceivers that have been type-approved by NMFS OLE may be mailed to the permit owner's address of record. NMFS will bear no responsibility if a notification is sent to the address of record and is not received because the applicant's actual address has changed without notification to NMFS, as required at § 660.335 (a)(2).

(d) *What are the vessel owner's responsibilities?* If you are a vessel owner that must participate in the VMS program, you or the vessel operator must:

(1) Obtain a NMFS OLE type-approved mobile transceiver unit and have it installed on board your vessel in accordance with the instructions provided by NMFS OLE. You may get a copy of the VMS installation and operation instructions from the NMFS OLE Northwest, VMS Program Manager upon Request at 7600 Sand Point Way NE, Seattle, WA 98115–6349, phone: (206)526–6133.

(2) Activate the mobile transceiver unit, submit an activation report, and receive confirmation from NMFS OLE that the VMS transmissions are being received before participating in a fishery requiring the VMS. Instructions for submitting an activation report may be obtained from the NMFS OLE, Northwest VMS Program Manager upon request at 7600 Sand Point Way NE, Seattle, WA 98115–6349, phone: (206)526–6133. An activation report must again be submitted to NMFS OLE following reinstallation of a mobile transceiver unit or change in service provider before the vessel may participate in a fishery requiring the VMS.

(i) *Activation reports.* If you are a vessel owner who must use VMS and you are activating a VMS transceiver unit for the first time or reactivating a VMS transceiver unit following a reinstallation of a mobile transceiver unit or change in service provider, you must fax NMFS OLE an activation report that includes: Vessel name; vessel owner's name, address and telephone number, vessel operator's name, address and telephone number, USCG vessel documentation number/state registration number; if applicable, the groundfish permit number the vessel is registered to; VMS transceiver unit manufacturer; VMS communications service provider; VMS transceiver identification; and a statement signed and dated by the vessel owner confirming compliance with the installation procedures provided by NMFS OLE.

(ii) [Reserved]

(3) Operate the mobile transceiver unit continuously 24 hours a day throughout the calendar year, unless such vessel is exempted under paragraph(d)(4)of this section.

(4) *VMS exemptions.* A vessel that is required to operate the mobile transceiver unit continuously 24 hours a day throughout the calendar year may be exempted from this requirement if a valid exemption report, as described at paragraph (d)(4)(iii) of this section, is received by NMFS OLE and the vessel is in compliance with all conditions and requirements of the VMS exemption identified in this section.

(i) *Haul out exemption.* When it is anticipated that a vessel will be continuously out of the water for more than 7 consecutive days and a valid exemption report has been received by NMFS OLE, electrical power to the VMS mobile transceiver unit may be removed and transmissions may be discontinued. Under this exemption VMS transmissions can be discontinued from the time the vessel is removed from the water until the time that the vessel is placed back in the water.

(ii) *Outside areas exemption.* When the vessel will be operating seaward of the EEZ off Washington, Oregon, or California for more than 7 consecutive days and a valid exemption report has been received by NMFS OLE, the VMS mobile transceiver unit transmissions may be reduced or discontinued from the time the vessel leaves the EEZ off the coasts of Washington, Oregon or California until the time that the vessel re-enters the EEZ off the coasts of Washington, Oregon or California. Under this exemption, the vessel owner or operator can request that NMFS OLE reduce or discontinue the VMS transmissions after receipt of an exemption report, if the vessel is equipped with a VMS transceiver unit that NMFS OLE has approved for this exemption.

(iii) Exemption reports must be submitted through the VMS or another method that is approved by NMFS OLE and announced in the **Federal Register**. Other methods may include email, facsimile, or telephone. NMFS OLE will

provide, through appropriate media, instructions to the public on submitting exemption reports. Instructions and other information needed to make exemption reports may be mailed to the limited entry permit owner's address of record. NMFS will bear no responsibility if a notification is sent to the address of record and is not received because the permit owner's actual address has changed without notification to NMFS, as required at § 660.335 (a)(2). Owners of vessels registered to limited entry permits that did not receive instructions by mail are responsible for contacting NMFS OLE during business hours at least 3 days before the exemption is required to obtain information needed to make exemption reports. NMFS OLE must be contacted during business hours (Monday through Friday between 0800 and 1700 Pacific Standard Time).

(iv) Exemption reports must be received by NMFS at least 2 hours and not more than 24 hours before the exempted activities defined at paragraphs (d)(4)(i) and (ii) of this section occur. An exemption report is valid until NMFS receives a report canceling the exemption. An exemption cancellation must be received at least 2 hours before the vessel re-enters the EEZ following an outside areas exemption or at least 2 hours before the vessel is placed back in the water following a haul out exemption.

(5) When aware that transmission of automatic position reports has been interrupted, or when notified by NMFS OLE that automatic position reports are not being received, contact NMFS OLE at 7600 Sand Point Way NE, Seattle, WA 98115–6349, phone: (206)526–6133 and follow the instructions provided to you. Such instructions may include, but are not limited to, manually communicating to a location designated by NMFS OLE the vessel's position or returning to port until the VMS is operable.

(6) After a fishing trip during which interruption of automatic position reports has occurred, the vessel's owner or operator must replace or repair the mobile transceiver unit prior to the vessel's next fishing trip. Repair or reinstallation of a mobile transceiver unit or installation of a replacement, including change of communications service provider shall be in accordance with the instructions provided by NMFS OLE and require the same certification.

(7) Make the mobile transceiver units available for inspection by NMFS OLE personnel, U.S. Coast Guard personnel, state enforcement personnel or any authorized officer.

(8) Ensure that the mobile transceiver unit is not tampered with, disabled, destroyed or operated improperly.

(9) Pay all charges levied by the communication service provider as necessary to ensure continuous operation of the VMS transceiver units.

[FR Doc. 03–12884 Filed 5–21–03; 8:45 am]

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Notices

Federal Register

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Thursday, May 22, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[03–02–A]

Opportunity for Designation in the Frankfort (IN), Indianapolis (IN), and Virginia Areas, and Request for Comments on the Official Agencies Serving These Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end in December 2003. Grain Inspection, Packers and Stockyards Administration (GIPSA) is asking persons interested in providing official services in the areas served by these agencies to submit an application for designation. GIPSA is also asking for comments on the services provided by these currently designated agencies: Frankfort Grain Inspection, Inc. (Frankfort); Indianapolis Grain Inspection & Weighing Service, Inc. (Indianapolis); and Virginia Department of Agriculture and Consumer Services (Virginia).

DATES: Applications and comments must be postmarked or electronically dated on or before July 1, 2003.

ADDRESSES: Submit applications and comments to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647-S, 1400 Independence Avenue, SW., Washington, DC 20250–3604; FAX 202–690–2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications and comments will be made available for public inspection at Room 1647-S, 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov*.

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act.

1. Current Designations being Announced for Renewal

Official agency	Main office	Designation start	Designation end
Frankfort	Frankfort, IN	3/01/2001	12/31/2003
Indianapolis	Indianapolis, IN	3/01/2001	12/31/2003
Virginia	Richmond, VA	2/01/2001	12/31/2003

a. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Indiana, is assigned to Frankfort.

Bounded on the North by the northern Fulton County line;

Bounded on the East by the eastern Fulton County line south to State Route 19; State Route 19 south to State Route 114; State Route 114 southeast to the eastern Fulton and Miami County lines; the northern Grant County line east to County Highway 900E; County Highway 900E south to State Route 18; State Route 18 east to the Grant County line; the eastern and southern Grant County lines; the eastern Tipton County line; the eastern Hamilton County line south to State Route 32;

Bounded on the South by State Route 32 west to the Boone County line; the eastern and southern Boone County lines; the southern Montgomery County line; and

Bounded on the West by the western and northern Montgomery County lines; the western Clinton County line; the western Carroll County line north to State Route 25; State Route 25 northeast to Cass County; the western Cass and Fulton County lines.

Frankfort's assigned geographic area does not include the following grain elevators inside Frankfort's area which have been and will continue to be serviced by the following official agency: Titus Grain Inspection, Inc.: The Andersons, Delphi, Carroll County; Frick Services, Inc., Leiters Ford, Fulton County; and Cargill, Inc., Linden, Montgomery County.

b. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Indiana, is assigned to Indianapolis.

Bartholomew; Brown; Hamilton, south of State Route 32; Hancock; Hendricks; Johnson; Madison, west of State Route 13 and south of State Route 132; Marion; Monroe; Morgan; and Shelby Counties.

c. Pursuant to Section 7(f)(2) of the Act, the following geographic area, the entire State of Virginia, except those export port locations within the State, is assigned to Virginia.

2. Opportunity for Designation

Interested persons, including Frankfort, Indianapolis, and Virginia, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning January 1, 2004, and ending December 31, 2006. Persons wishing to apply for designation should contact the Compliance Division at the address

listed above for forms and information, or obtain applications at the GIPSA website, *www.usda.gov/gipsa/oversight/parovreg.htm*.

3. Request for Comments

GIPSA also is publishing this notice to provide interested persons the opportunity to present comments on the Frankfort, Indianapolis, and Virginia official agencies. Commenters are encouraged to submit pertinent data concerning these official agencies, including information on the timeliness, cost, quality, and scope of services provided. All comments must be submitted to the Compliance Division at the above address.

Applications, comments, and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: May 19, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–12853 Filed 5–21–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[03–a–s]

Designation for the Mississippi Area

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: Grain Inspection, Packers and Stockyards Administration (GIPSA) announces the designation of Memphis Grain Inspection Service (Memphis) to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: June 1, 2003.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov*.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the January 29, 2003, **Federal Register** (68 FR 4445), GIPSA announced that the Mississippi Department of Agriculture and Commerce was ceasing official inspection services, effective June 30, 2003, and asked persons interested in providing official services in the Mississippi geographic area to submit an application for designation. Applications were due by February 28, 2003. Subsequently, the Mississippi Department of Agriculture and Commerce officials asked GIPSA to move their voluntary cancellation date to May 31, 2003.

Memphis was the sole applicant for designation to provide official services in the area specified in the January 29, 2003, **Federal Register**. GIPSA asked for comments on Memphis in the March 24, 2003, **Federal Register** (68 FR 14179). We received one favorable comment from an official agency manager by the closing date, April 23, 2003.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and, according to Section 7(f)(l)(B), determined that Memphis, main office in Memphis, Tennessee, is able to provide official services in the geographic area specified in the January 29, 2003, **Federal Register**, for which they applied, in addition to the areas they are already designated to serve. The designation is effective June 1, 2003, and ends March 31, 2006, concurrent with their present designation. Interested persons may obtain official services by calling Memphis at 901–942–3216.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: May 19, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–12852 Filed 5–21–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[02–04–S]

Designation for the Kansas (KS), Minot (ND), and Cincinnati (OH) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: Grain Inspection, Packers and Stockyards Administration (GIPSA) announces designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (Act): Kansas Grain Inspection Service, Inc. (Kansas); Minot Grain Inspection, Inc. (Minot); and Tri-State Grain Inspection Service, Inc. (Tri-State).

EFFECTIVE DATE: July 1, 2003.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647-S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov.*

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the November 22, 2002, **Federal Register** (67 FR 70397), GIPSA asked persons interested in providing official services in the geographic areas assigned to the official agencies named above to submit an application for designation. Applications were due by January 2, 2003.

Kansas, Minot, and Tri-State were the sole applicants for designation to provide official services in the entire area currently assigned to them, so GIPSA did not ask for additional comments on them.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and, according to Section 7(f)(l)(B), determined that Kansas, Minot, and Tri-State are able to provide official services in the geographic areas specified in the November 22, 2002, **Federal Register**, for which they applied. Interested persons may obtain official services by calling the telephone numbers listed below.

Official agency	Headquarters location and telephone	Designation start-end
Kansas	Topeka, KS 785–233–7063	07/01/2003–06/30/2006.
	Additional Service Locations: Colby, Concordia, Cummings, Dodge City, Hutchinson, Kansas City, Salina, and Wichita, KS; Commerce City and Haxtun, CO; and Sidney, NE.	
Minot	Minot, ND 701–838–1734	07/01/2003–06/30/2006.
Tri-State	Cincinnnati, OH 513–251–6571	07/01/2003–03/30/2006.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: May 19, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–12851 Filed 5–21–03; 8:45 am]

BILLING CODE 3410–ED–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Advisory Committee Meeting

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice of advisory committee meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App. II), this Constitutes notice of the upcoming meeting of the Grain Inspection Advisory Committee (''the Committee'').

DATES: June 3, 2003, 7:30 a.m. to 5 p.m.; and June 4, 2003, 7:30 a.m. to 12 p.m.

ADDRESSES: The advisory committee meeting will take place at the Embassy Suites Hotel-Kansas City Country Club Plaza, 220 West 43rd Street, Kansas City, MO.

Requests to address the Committee at the meeting or written comments may be sent to: Administrator, GIPSA, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 3601, Washington, DC 20250–3601. Requests and comments may also be Faxed to (202) 205–9237.

FOR FURTHER INFORMATION CONTACT: Ms. Terri Henry, (202) 205–8281 (telephone); (202) 205–9237 (facsimile).

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to provide advice to the Administrator of the Grain Inspection, Packers and Stockyards Administration with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*).

The agenda will include financial status, general program plans, and wheat end-use functionality research.

Public participation will be limited to written statements, unless permission is received from the Committee Chairman to orally address the Committee. The meeting will be open to the public.

Persons with disabilities who require alternative means of communication of program information or related accommodations should contact Terri Henry, at the telephone number listed above.

Dated: May 19, 2003.

Donna Reifschneider,

Administrator.

[FR Doc. 03–12854 Filed 5–21–03; 8:45 am]

BILLING CODE 3410–EN–U

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 July 21, 2003.

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 1738, Rural Broadband Loan and Loan Guarantee

Type of Request: Revision of a currently approved information collection.

Abstract: The Rural Utilities Service (RUS) amended its regulations in order to establish the Rural Broadband Access Loan and Loan Guarantee Program as authorized by the Farm Security and Rural Investment Act of 2002 (Pub. L. 101–171) (2002 Act). Section 6103 of the Farm Security and Rural Investment Act of 2002 amended the Rural Electrification Act of 1936, as amended (RE Act), to add Title VI, Rural Broadband Access, to provide loans and loan guarantees to fund the cost of construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural communities. The rule prescribes the types of loans available, facilities financed, and eligible applicants, as well as minimum credit support requirements to be considered for a loan. In addition, the rule prescribes the process through which RUS will consider applicants under the priority consideration and the state allocations required in Title VI.

This information collection is being revised to include only those hours associated with the pre-loan procedures.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 98 hour per response.

Respondents: Businesses, not-for-profit institutions and others.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: 11.

Estimated Total Annual Burden on Respondents: 28,475 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: May 15, 2003.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 03–12855 Filed 5–21–03; 8:45 am]

BILLING CODE 3410–15–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1276]

Expansion and Reorganization of Foreign-Trade Zone 226 Merced, Madera, Fresno and Tulare Counties, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the County of Merced, California, grantee of Foreign-Trade Zone 226, submitted an application to the Board for authority to expand and reorganize FTZ 226 to relocate Site 2 (251 acres) to the Mid-State 99 Distribution Center, to expand Site 10 to include a temporary area (25 acres) at the Fresno Yosemite International Airport and to delete certain parcels/sites from the zone plan, within and adjacent to the Fresno Customs port of entry area (FTZ Docket 33–2002; filed 8/26/02);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 56984, 9/6/02) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 226 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 14th day of May 2003.

Jeffrey A. May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–12880 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zone Board

[Order No. 1275]

Termination of Foreign-Trade Subzone 25A, Weston, FL

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zone Board Regulations (15 CFR part 400,) the Foreign-Trade Zones Board has adopted the following order:

Whereas, on December 23, 1996, the Foreign-Trade Zones Board issued a grant of authority to the Port Everglades Department of Broward County (the Port), authorizing the establishment of Foreign-Trade Subzone 25A at the Federal Mogul Corporation plant in Weston, Florida (Board Order 860, 62 FR 1314, 1/9/97);

Whereas, the Port advised the Board on July 22, 2002 (FTZ Docket 7–2003), that zone procedures were no longer needed at the facility and requested voluntary termination of Subzone 25A;

Whereas, the request has been reviewed by the FTZ Staff and Customs officials and approval has been recommended;

Now, therefore, the Foreign-Trade Zones Board terminates the subzone status of Subzone 25A, effective this date.

Signed at Washington, DC, this 14th day of May 2003.

Jeffrey A. May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zone Board.

COM048[FR Doc. 03–12879 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1274]

Termination of Foreign-Trade Subzone 9C; Honolulu, HI

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zone Board Regulations (15 CFR part 400,) the Foreign-Trade Zones Board has adopted the following order:

Whereas, on July 26, 1985, the Foreign-Trade Zones Board issued a grant of authority to the State of Hawaii Department of Business, Economic Development & Tourism (the State), authorizing the establishment of Foreign-Trade Subzone 9C at the Dole Packaged Foods Company plant in Honolulu, Hawaii (Board Order 308, 50 FR 31210, August 1, 1985);

Whereas, the State advised the Board on June 18, 2002 (FTZ Docket 5–2003), that zone procedures were no longer needed at the facility and requested voluntary termination of Subzone 9C;

Whereas, the request has been reviewed by the FTZ Staff and Customs officials and approval has been recommended;

Now, therefore, the Foreign-Trade Zones Board terminates the subzone status of Subzone 9C, effective this date.

Signed at Washington, DC, this 14th day of May, 2003.

Jeffrey A. May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–12878 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 24–2003]

Foreign-Trade Zone 43—Battle Creek, MI; Application for Subzone; Perrigo Company (Pharmaceutical Products); Allegan and Muskegon Counties, MI

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Battle Creek, Michigan, grantee of FTZ 43, requesting special-purpose subzone status for the pharmaceutical manufacturing and distribution facilities of Perrigo Company (Perrigo) at locations in Allegan and Muskegon Counties, Michigan. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 13, 2003.

Perrigo's Michigan operation is comprised of five sites in Allegan and Muskegon Counties (Site 5 only): *Site 1* (119,700 sq. ft. on 4.5 acres)—Plant #1, located at 117 Water Street, Allegan; *Site 2* (133 acres)—Eastern Avenue Site, located at Hooker Road and Eastern Avenue in Allegan; including Plant #4 (198,597 sq. ft., with a possible expansion of 100,000 sq. ft., on 4.6 acres), Plant #5 (323,568 sq. ft. with a possible expansion of 100,000 sq. ft., on 7.4 acres), and Plant #7 (402,216, sq. ft. on 9.23 acres); *Site 3* (520,613 sq. ft. on 11.95 acres)—Allegan Logistics Center, located at 900 Industrial Center, Allegan; *Site 4* (123,295 sq. ft., with a possible expansion of 200,000 sq. ft., on 2.8 acres)—Airport Center, located at 1761 Airport Court, Holland; and, *Site 5* (87,048 sq. ft. on 2 acres)—North Labs, located at 8060 Whitbeck Road, Montague, Muskegon County.

The facilities (2,800 employees) produces over-the-counter (OTC) pharmaceutical and nutritional products. Foreign-sourced materials will account for some 14–50 percent of finished product value, and include items from the following general categories: Animal or vegetable oils, chemically pure sugars, protein concentrates, natural magnesium phosphates and carbonates, petroleum jelly, paraffin and waxes, other inorganic acids or compounds of nonmetals, artificial corundum, aluminum oxide, aluminum hydroxide, acyclic hydrocarbons, derivatives of phenols or peroxides, ethers and ether-alcohols, acetals and hemiacetals, aldehydes and derivatives, ketone function compounds, phosphoric esters and their salts, esters of other organic acids, amine function compounds, oxygen function compounds, quaternary ammonium salts, carboxymide function compounds, nitrile compounds, diazo-compounds, organic derivatives of hydrazine, compounds of other nitrogen function, organo-sulfur compounds, heterocyclic compounds, sulfonamides, provitamins, hormones, glycosides, vegetable alkaloids, antibiotics, medicaments in bulk or in measured doses, synthetic coloring matter, color lakes, organic surface active products for use in soap, dextrines and modified starches, chemical products not provided elsewhere, vinyl acetate polymers, acrylic polymers, cellulose, and natural polymers, such as alginic acid.

Zone procedures would exempt Perrigo from Customs duty payments on foreign materials used in production for export. Some two percent of the plant's shipments are currently exported. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (primarily duty-free), rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 10.9 percent). At the outset, zone savings would primarily involve choosing the finished product duty rate on either bulk or dosage packaged pharmaceutical products (HTSUS 3003 and 3004, duty-free), instead of the duty rates on aspirin (HTSUS 2918.22.1000, 6.9%), acetaminophen (HTSUS 2924.29.6210, 6.5%), and ibuprofen (HTSUS 2916.39.1500, 6.5%). Certain aspirin imports from China are subject to anti-dumping/countervailing (AD/CVD) duties. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions Via Express/Package Delivery Services:* Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St., NW., Washington, DC 20005; or

2. *Submissions Via the U.S. Postal Service:* Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is [60 days from date of publication]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 5, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 401 W. Fulton St., Suite 309–C, Grand Rapids, Michigan 49504.

Dated: May 14, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–12877 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1273]

Grant of Authority for Subzone Status Bulova Corporation (Watch and Clock Products), Woodside and Brooklyn, NY

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the City of New York, grantee of Foreign-Trade Zone 1, has made application to the Board for authority to establish special-purpose subzone status at the watch and clock warehousing/distribution/repair facilities of Bulova Corporation, located in Woodside and Brooklyn, New York (FTZ Docket 37–2002, filed 9/23/02);

Whereas, notice inviting public comment has been given in the **Federal Register** (67 FR 61849, 10/2/02)); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the watch and clock products warehousing/distribution/repair facilities of Bulova Corporation, located in Woodside and Brooklyn, New York (Subzone 1B), at the locations described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 14th day of May 2003.

Jeffrey A. May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–12881 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1277]

Expansion of Foreign-Trade Zone 84; Houston, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Port of Houston Authority, grantee of Foreign-Trade Zone 84, submitted an application to the Board for authority to expand FTZ 84 to include the Katoen Natie Gulf Coast site (72 acres) on a permanent basis and to restore FTZ status to the Bulk Materials Handling plant (97 acres) on the Houston Ship Channel, within the Houston-Galveston Customs port of entry area (FTZ Docket 36–2002; filed 9/12/02);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 59250, 9/20/02) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 84 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 14th day of May 2003.

Jeffrey A. May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–12882 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–803]

Fresh Atlantic Salmon From Chile: Amended Final Results of Antidumping Duty Changed Circumstances Review in Accordance With Court Decision

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

SUMMARY: On January 17, 2003, the Department of Commerce (the Department) issued its final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (the Court) in *Marine Harvest (Chile) S.A.* v. *United States,* Slip Op. 02–134 (October 31, 2002). Pursuant to the remand order, the Department refunded any cash deposits paid by Marine Harvest (Chile) S.A. (Marine Harvest) between the preliminary results of the changed circumstances review and the implementation of the instructions to the U.S. Bureau of Customs and Border Protection (Customs) issued after the final results of the changed circumstances review. In addition, the Department determined that the post-merger Marine Harvest was the successor-in-interest to both the pre-merger Marine Harvest and the former Pesquera Mares Australes, Ltda. (Mares Australes).

EFFECTIVE DATE: May 22, 2003.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Carol Henninger, at (202) 482–0631 or (202) 482–3003, respectively; AD/CVD Enforcement, Office 5, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 2000, the Department published in the **Federal Register** the preliminary results of the changed circumstances antidumping duty review with respect to the antidumping duty order on fresh Atlantic salmon from Chile. *See Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Review: Fresh Atlantic Salmon from Chile,* 65 FR 52065 (Aug. 28, 2000) *(Changed Circumstances Preliminary).* In those preliminary results, the Department conducted a successor-in-interest analysis and concluded that the post-merger Marine Harvest was a new entity. The Department assigned the post-merger Marine Harvest a cash deposit rate of 2.23 percent, the cash deposit rate of Mares Australes.

On August 13, 2001, the Department published the final results of the changed circumstances review. *See Notice of Final Results of Changed Circumstances Antidumping Duty Review: Fresh Atlantic Salmon from Chile,* 66 FR 42506 (August 13, 2001) *(Changed Circumstances Final).* In those final results, the Department continued to find that the post-merger Marine Harvest was a new entity. The Department assigned Marine Harvest a zero cash deposit rate, which was the rate calculated for the combined entity of the pre-merger Marine Harvest and the former Mares Australes in the second administrative review. *See Notice of Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile,* 66 FR 42505 (August 13, 2001) *(Salmon II).*

On October 12, 2001, Marine Harvest filed a complaint with the Court challenging certain aspects of the Department's preliminary and final results of the changed circumstances review. In addition, on March 19, 2002, Marine Harvest filed a Motion for Judgment Upon the Agency Record.

On October 31, 2002, the Court issued its remand order, in which it held that the imposition of a cash deposit simultaneously with publication of the initiation and preliminary results in a changed circumstances review, without prior notice, was not in accordance with law, and ordered the Department to refund the cash deposits in a timely manner. In addition, the Court held that the Department's determination that Marine Harvest is a new entity was neither supported by substantial evidence nor in accordance with law, and ordered that, on remand, the Department reassess its successor-in-interest analysis. *See Marine Harvest (Chile) S.A.* v. *United States,* Slip Op. 02–134 (October 31, 2002).

Pursuant to the Court's remand order, the Department issued the final results of redetermination on January 17, 2003. In those results, the Department determined that the post-merger Marine Harvest is the successor-in-interest to both the pre-merger Marine Harvest and to the former Mares Australes and stated that it would refund any deposits paid by Marine Harvest between the *Changed Circumstances Preliminary* and the implementation of the Customs instructions issued after the *Changed Circumstances Final.*

On March 4, 2003, the Court ordered that the Department's January 17, 2003, remand results be sustained in their entirety, and thus dismissed the case. *See Marine Harvest (Chile) S.A.* v. *United States,* Slip Op. 03–22 (March 4, 2003). The Court's ruling constitutes a ''final and conclusive'' decision in this case which is ''not in harmony'' with the Department's original determination. Accordingly, we have prepared these amended final results.

Amended Final Results of Changed Circumstances Review

As a result of the Department's redeterminations on court remand, we have determined that Marine Harvest is the successor-in-interest to the pre-merger Marine Harvest and the former Mares Australes and have refunded any cash deposits paid by Marine Harvest between the *Changed Circumstances Preliminary* and the implementation of Customs instructions issued after the

Changed Circumstances Final. These deposits were paid on entries covered by the third period of review, for which the Department recently published its final results. *See Notice of Final Results of Antidumping Duty Administrative Review, Final Determination to Revoke the Order in Part, and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile,* 68 FR 6878 (February 11, 2003).

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i) of the Tariff Act of 1930, as amended.

Dated: May 15, 2003.

Jeffrey May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–12875 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

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

ACTION: Notice of extension of time limit for the preliminary results of antidumping duty administrative review.

EFFECTIVE DATE: May 22, 2003.

FOR FURTHER INFORMATION CONTACT: Jon Freed, AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–3818.

Background

On June 5, 2002, the Department of Commerce (''Department'') published a notice of opportunity to request an administrative review of the Antidumping Duty Order on Stainless Steel Butt-Weld Pipe Fittings from Taiwan for the period June 1, 2001, through May 31, 2002. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation,* 67 FR 38640 (June 5, 2002). On June 25, 2002, Markovitz Enterprises, Inc. (Flowline Division), Shaw Alloy Piping Products Inc., Gerlin, Inc., and Taylor Forge Stainless, Inc. (''petitioners'') requested an antidumping duty administrative review for the following companies: Ta Chen Stainless Pipe Co., Ltd. (''Ta Chen''), Liang Feng Stainless Steel Fitting Co., Ltd. (''Liang Feng''), and Tru-Flow Industrial Co., Ltd. (''Tru-Flow'') for the period June 1, 2001, through May 31, 2002. On June 28, 2002, Ta Chen requested an administrative review of its sales to the United States during the period of review (''POR''). On July 24, 2002, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review for the period June 1, 2001, through May 31, 2002. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation In Part,* 67 FR 48435 (July 24, 2002). On March 3, 2003, the Department extended the time limit for the preliminary results of this administrative review. *See Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review,* 68 FR 9977 (March 3, 2003). The preliminary results are currently due no later than June 2, 2003.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), states that the administering authority shall make a preliminary determination within 245 days after the last day of the month in which occurs the anniversary of the date of publication of the order, finding, or suspension agreement for which the review under Section 751(a)(1) is requested. If it is not practicable to complete the review within the foregoing time, the administering authority may extend that 245 day period to 365 days. Completion of the preliminary results within the 245 day period is impracticable for the following reasons: (1) This review involves certain complex Constructed Export Price (''CEP'') adjustments including, but not limited to CEP profit and CEP offset; (2) this review involves complex cost issues with respect to subcontractors' costs of production; and (3) this review involves a complex affiliation issue.

Because it is not practicable to complete this review within the time specified under the Act, we are extending the due date for the preliminary results by 28 days until June 30, 2003, in accordance with section 751(a)(3)(A) of the Act. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: May 16, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–12876 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 NAFTA Panel Reviews; Decision of the Panel

AGENCY: NAFTA Secretariat, U.S. Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of NAFTA panel.

SUMMARY: On April 28, 2003 the NAFTA Panel issued its decision on the re-determination on remand in the matter of Pure Magnesium from Canada, Secretariat File No. USA–CDA–00–1904–06.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, U.S. Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was conducted in accordance with these Rules.

Background Information: On October 15, 2002, the Panel issued a remand decision in the matter of Pure Magnesium from Canada, with instructions to the Department of

Commerce to issue a determination on remand consistent with the instructions set forth in the Panel's decision. The Panel instructed the DOC to provide a report within 45 days detailing how it would comply with their instructions and to complete the remand (within 60 days) not later than January 28, 2003.

The Department of Commerce issued its remand determination on January 28, 2003.

Panel Decision: The Panel, in its decision of April 28, 2003, ordered the Department to revoke the antidumping order.

Dated: May 8, 2003.

Caratina L. Alston,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 03–12883 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–GT–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Information Security and Privacy Advisory Board (ISPAB) will meet Tuesday, June 10, 2003, from 8:30 a.m. until 5 p.m., Wednesday, June 11, 2003, from 8:30 a.m. until 5 p.m. and on Thursday, June 12, from 8:30 a.m. until 3 p.m. All sessions will be open to the public. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) and amended by the Federal Information Security Management Act of 2002 (Pub. L. 107–347) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. Details regarding the Board's activities are available at *http://csrc.nist.gov/csspab/.*

DATES: The meeting will be held on June 10, 2003, from 8:30 a.m. until 5 p.m., June 11, 2003, from 8:30 a.m. until 5 p.m., and June 12, 2003, from 8:30 a.m. until 3 p.m.

ADDRESSES: The meeting will take place at the DoubleTree Hotel and Executive Meeting Center, 1750 Rockville Pike, Rockville, Maryland.

Agenda

—Welcome and Overview
—ISPAB Work Plan Updates
—One-Day Panel on e-Authentication:
- Session 1—e-Authentication Systems for Government: Understanding the Benefits and Risks of Existing and Emerging Models
- Session 2—Security and Privacy Issues in e-Authentication

—Panel Discussion on Accuracy Requirements for the FBI's National Crime Information Center (NCIC)
—Briefing on Activities of the National Science Foundation's Trusted Computing Program
—Briefing on Information Security Professionals Certification Programs
—Agenda Development for September 2003 ISPAB Meeting
—Wrap-Up

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters.

Public Participation: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. It would be appreciated if 35 copies of written material were submitted for distribution to the Board and attendees no later than June 9, 2003. Approximately 15 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Hash, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–3357.

Dated: May 15, 2003.

Arden L. Bement, Jr.,

Director.

[FR Doc. 03–12786 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Announcement of Intent To Initiate the Process To Consider Marine Reserves in the Channel Islands National Marine Sanctuary; Intent To Prepare a Draft Environmental Impact Statement

AGENCY: Marine Sanctuaries Division (MSD), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: In accordance with the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C. 1431 et seq.), NOAA's National Marine Sanctuary Program (NMSP) is considering the establishment of a network of marine reserves within the Channel Islands National Marine Sanctuary (CINMS or Sanctuary) to maintain the natural biological communities, and to protect, and, where appropriate, restore and enhance natural habitats, populations, and ecological processes.

Marine reserves are one of a variety of resource management tools used to manage and protect marine resources. This action is being considered to complement the State of California's recent establishment of a network of marine reserves and protected areas within the State waters of the CINMS.

The NMSP will prepare an environmental impact statement which will examine a range of management and regulatory alternatives associated with consideration of marine reserves within the Sanctuary. The NMSP will conduct three public scoping meetings during the scoping period to gather information and other comments from individuals, organizations, and government agencies on the scope, types and significance of issues related to consideration of marine reserves in the Sanctuary. The dates and locations of the public scoping meetings are listed below.

DATES: Written comments must be received on or before July 23, 2003.

ADDRESSES: Written comments may be sent to the Channel Islands National Marine Sanctuary, attn. Sean Hastings, 113 Harbor Way, Suite 150, Santa Barbara, California 93109, by fax to (805) 568–1582, or by electronic mail to *reservesprocess@noaa.gov.* Comments will be available for public review at the same address.

FOR FURTHER INFORMATION CONTACT: Sean Hastings, (805) 966–7107, Ext. 472.

SUPPLEMENTARY INFORMATION: The Sanctuary was designated in September 1980, and consists of 1,252 square nautical miles of open ocean and near shore habitat approximately 25 miles off the coast of Santa Barbara, California, encompassing the waters surrounding San Miguel, Santa Rosa, Santa Cruz, Anacapa and Santa Barbara Islands from mean high tide to six nautical miles offshore. The NMSP's primary goal is the protection of the Sanctuary's natural and cultural resources contained within its boundaries. The NMSP uses a variety of non-regulatory and regulatory management measures to protect its resources. The Sanctuary is an area of national significance because of its exceptional natural beauty and marine and cultural resources.

In April 1999, the Sanctuary and the California Department of Fish and Game (CDFG) developed a joint Federal and State partnership to consider establishing marine reserves within the Sanctuary. Marine reserves are one of a variety of resource management tools used to manage and protect marine resources. The Channel Islands Marine Reserves Process was initiated in July of 1999, when the Sanctuary Advisory Council (SAC) created a multi-stakeholder Marine Reserves Working Group (MRWG) to seek agreement on the potential establishment of marine reserves within the Sanctuary. Included in the Channel Islands Marine Reserves Process were a SAC designated Science Advisory Panel and a NOAA led Socio-economic Team made up of blue ribbon scientists, academics and practitioners. Extensive scientific and socioeconomic data were collected in support of the reserves process. From July 1999 to May 2001, the MRWG met monthly to receive, weigh, and integrate advice from technical advisors and the public and to develop a recommendation for the SAC. In May 2001, the results of the Channel Islands Marine Reserves Process were forwarded to the SAC, including the MRWG consensus agreements, areas of disagreement, Science Panel advice and socio-economic analysis. A composite map with two reserve network options ranging from 12 to 29 percent of the Sanctuary was also forwarded. In June 2001, the SAC transmitted the full public record of the MRWG and the SAC to the CINMS and CDFG, and charged the agencies with crafting a final recommendation for the California Fish and Game Commission (FGC).

Sanctuary and CDFG staff continued to work with stakeholders in crafting a recommendation. On August 24, 2001 the Sanctuary and CDFG forwarded the results of the Channel Islands Reserves Process and recommended to the FGC a network of reserves and protected areas that would include approximately 25% of the Sanctuary.

The CDFG prepared environmental review documents pursuant to the California Environmental Quality Act (CEQA), which included an analysis of a range of alternative reserves networks, including identifying the Sanctuary and CDFG recommended option as the preferred alternative. On October 23, 2002, the FGC approved the preferred alternative and the establishment of a network of marine reserves and protected areas within State waters of the Sanctuary (approximately 10%). The FGC decision was made based on the culmination of the Channel Islands Marine Reserves Process and the CDFG and NOAA supported alternative for a network of marine reserves in the Sanctuary. The State's network went into effect on April 9, 2003.

The NMSP is initiating a process to consider the establishment of marine reserves within the Sanctuary to complement the State's network of reserves and protected areas. This review process will build upon the nearly four years of work to date on this matter, including the information and analyses contained in the State's CEQA environmental documents. The NMSP anticipates completion of the environmental review process and concomitant documents will require approximately eighteen to twenty-four months.

The NMSP will prepare an environmental impact statement, proposed regulations, and any proposed modifications to the Sanctuary's designation document, as warranted. The environmental impact statement will examine a range of management and regulatory alternatives associated with consideration of marine reserves within the Sanctuary. Any change to the Sanctuary's terms of designation will be pursuant to the requirements of the National Marine Sanctuaries Act, including necessary consultations with Federal and State agencies, the Pacific Fishery Management Council (PFMC), and others, and submission of the environmental impact statement, proposed regulations and any proposed changes to the designation document to Congress, the Governor of the State of California, and the public for comment. Further, the PFMC will be provided the opportunity to prepare draft Sanctuary fishing regulations for the Exclusive Economic Zone portion of the Sanctuary for any marine reserve proposal. Finally, any change to a term of designation would not apply to State waters if the Governor objects during the requisite review period.

For a complete history of the Channel Islands Marine Reserves Process and the State's Environmental Documents please see *http://www.dfg.ca.gov/mrd/channel_islands/* and/or *http://www.cinms.nos.noaa.gov/marineres/main.html.* The same information can also be obtained by contacting John Ugoretz with California Department of Fish and Game, (805) 560–6758 and/or the contact information below.

The Sanctuary is also revising its 1983 Management Plan. A Final EIS and Management Plan are expected by the end of 2003. Please see *http://www.cinms.nos.noaa.gov/marineres/manplan.html* for more information on this independent process.

Public Scoping Meetings: Dates and Locations

The NMSP will conduct three public scoping meetings to gather information and other oral or written comments from individuals, organizations, and government agencies on the scope, types and significance of issues related to consideration of marine reserves in the Sanctuary. These meetings will be conducted in a format to maximize the opportunity for all attendees to provide public comment. The dates, times and location of the meetings are as follows:

(1) Thursday, June 5, 2003, 6:30–9 p.m., Orvene S. Carpenter Community Center, 550 Park Avenue Pt. Hueneme, CA.

(2) Thursday, June 12, 2003, 6:30–9 p.m., Santa Barbara Public Library, Faulkner Gallery, 40 E. Anapamu Street, Santa Barbara, CA.

(3) Friday, July 18, 2003, 1:30–4 p.m., Four Points by Sheraton, 1050 Schooner Drive, Ventura, CA. This meeting will be held with the Sanctuary Advisory Council.

Dated: May 16, 2003.

Jamison S. Hawkins,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 03–12815 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050903A]

Marine Mammals; File No. 369–1440–01

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Dr. Bruce R. Mate, Oregon State University, Newport, Oregon 97365–5296, has been issued an amendment to Permit No. 369–1440–01 to take various species of large whales and opportunistically take by Level B harassment other species of marine mammals, for purposes of scientific research.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Assistant Regional Administrator for Protected Resources, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (508)281–9346; fax (508)281–9371; and

Assistant Regional Administrator for Protected Resources, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (813)570–5301; fax (813)570–5517.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson 301/713–2289.

SUPPLEMENTARY INFORMATION: On January 28, 2003, notice was published in the **Federal Register** (68 FR 4178) that an amendment of Permit No. 369–1440–01, issued April 19, 1999 (64 FR 19135), had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of threatened and endangered fish and wildlife (50 CFR 222.226).

The amendment authorizes the applicant to tag and biopsy sample fin whales in international water in the Mediterranean Sea and extends the expiration date through October 2004.

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 13, 2003.

Stephen L. Leathery,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–12886 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Technology Administration

[Docket No.: 030423100–3100–01]

The United States-Greek Initiative for Technology Cooperation With the Balkans (ITCB)'s Joint Science and Technology Cooperation Advisory Council

AGENCY: Technology Administration, Department of Commerce.

ACTION: Notice; request for nominations for joint council member.

SUMMARY: The Technology Administration invites nominations of individuals for appointment to a vacancy on the Joint Science and Technology Cooperation Advisory Council established under a Memorandum of Understanding between the United States Department of Commerce and the Greek Ministry of National Economy concerning technology cooperation with the Balkans. The Technology Administration also invites nominations for appointment of three alternate Joint Council members. The Technology Administration will consider all nominations received in response to this notice.

DATES: Nominations must be received at the address below by no later than June 30, 2003.

ADDRESSES: Please submit nominations to Ken Ferguson, ITCB Program Officer, Office of Technology Policy, Technology Administration, U.S. Department of Commerce, Room 4411, 14th and Constitution Avenues, NW., Washington, DC 20230. Nominations may also be submitted by fax or e-mail to Ken Ferguson, ITCB Program Officer at 202–219–3310 or *kferguson@ta.doc.gov* if followed up with a hard copy sent by mail or courier.

FOR FURTHER INFORMATION CONTACT: Ken Ferguson, ITCB Program Officer, telephone: 202–482–0150; fax: 202–219–3310, e-mail: *kferguson@ta.doc.gov.*

Goals of the Memorandum of Understanding

On January 17, 1998, the United States Department of Commerce and the Greek Ministry of National Economy (hereinafter known as the ''Participants'') entered into a Memorandum of Understanding (MOU) concerning technology cooperation with the Balkans, to be known as ''The United States-Greek Initiative for Technology Cooperation with the Balkans'' (ITCB). A Joint Science and Technology Cooperation Advisory Council (hereinafter ''the Joint Council'') operates under the MOU.

The Participants recognize that working together to foster collaborative and mutually beneficial technology cooperation with countries in the Balkan region will provide economic benefits to the Balkan region, the United States and Greece. The goal of the Participants is to foster collaboration among public and private entities in the Participants' countries with public and private entities in the Balkan region in order to enhance scientific and technological capabilities in the Balkan region, enhance the relationship between U.S. and Greek public and private sector entities, and promote the development of stable, free market economies in the Balkan region. Emphasis is placed on both the fostering of the exchange of scientific and technical knowledge and personnel, and on building private sector technology capacities of Balkan ITCB member states through partnership with U.S. and Greek business. For the purposes of the MOU, countries in the Balkan region that are currently members of the ITCB are: Albania, Bulgaria, Romania and the Former Yugoslavian Republic of Macedonia. Membership may expand to other countries in the region that the Participants may mutually agree to include.

Cooperative Activities

Cooperative activities under this MOU include: Coordinated and joint research and technology projects, studies, and investigations; joint technological courses, workshops, conferences and symposia; exchanges of science and technology information and documentation in the context of cooperative activities; exchanges of scientists, specialists, and researchers; exchanges or sharing of equipment or materials; and other forms of scientific and technological cooperation that may be deemed appropriate. One of the goals is to create three-way partnerships between private and public technology companies, non-governmental organizations and other institutions from Greece, the United States and Balkan member states of the ITCB. Cooperative activities should reflect technological strengths in the Unites

States and Greece, be responsive to scientific and technological needs in the Balkan member states, and should be structured to provide an appropriate collaborative role for three way partnerships.

Information on the Joint Council

For the purposes of implementing this MOU, the Participants have established a Joint Science and Technology Cooperation Advisory Council consisting of six members—three designated by, and serving at the pleasure of the Government of Greece, and three designated by and serving at the pleasure of the U.S. Department of Commerce. Each participant may designate alternate members. The Greek Secretariat for the ITCB is located at the Technology Park in Thessaloniki, Greece. The U.S. Secretariat for the ITCB is administered by Ashford Associates of Cambridge, Massachusetts.

Responsibilities of Joint Council Members and Alternates

The members of the Joint Council carry out the following functions:

1. Recommend to the Participants overall policies under the MOU.
2. Identify fields and forms of cooperation in accordance with the goals and objectives of the MOU.
3. Review, assess and make specific recommendations concerning cooperative activities.
4. Prepare periodic reports concerning the Joint Council and cooperative activities undertaken under the MOU for submission to the Participants.
5. Undertake such further functions as may appropriately be approved by the Participants.
6. The Participants may designate alternates to substitute for permanent council members at particular meetings or events, or to work on specific projects and initiatives.
7. When appropriate, alternates shall cast votes in lieu of permanent members. Respondents to this notice should indicate whether they are willing to serve as alternates, as permanent members, or as either to the ITCB Joint Council.

Meetings of the Joint Council

The Council meets every three to four months, usually in Thessaloniki or Athens, Greece, or as determined by the Participants. U.S. Council member's travel and living expenses associated with attending these meetings may be provided by a fund administered by the U.S. Secretariat for the ITCB.

Length of Service

A U.S. member's length of service on the Joint Council is not stipulated in the MOU and is discretionary with the U.S. Department of Commerce. Individuals chosen for membership will serve a term that best fits the needs and objectives of the Joint Council although the term's duration is normally two-three years. Upon the completion of a U.S. member's term, the U.S. Department of Commerce will either repeat this recruitment and selection process or extend the member's term as long as the member proves to work effectively on the Joint Council and his/her expertise is still needed.

Membership Criteria and Requirements

The U.S. members of the Joint Council are eminent leaders, broadly representative of industry, academia or government, who have experience in science and technology development, technology diffusion, or international technology collaboration. They shall be U.S. citizens. They shall be familiar with the business climate and the status of technology and economic development in Greece and the Balkans, with Greek and Balkan industry, and/or with Greek and Balkan academic institutions. Members of the Joint Council shall serve without compensation.

The U.S. Department of Commerce is committed to equal opportunity in the workplace, and seeks a broad-based and diverse Joint Council membership.

Conflict of Interest

Nominees will be evaluated for their ability to contribute to the goals and objectives of the MOU. Nominees will be vetted in accordance with processes established by the U.S. Department of Commerce in February 1997, as soon as possible following tentative selection. The vetting system has three components: (1) An internal review for possible appearance of conflict problems; (2) an external review for possible appearance of problems; and (3) a recusal/ethics agreement review.

Dated: May 19, 2003.

Christian Israel,

Deputy Assistant Secretary for Technology Policy.

[FR Doc. 03–12833 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–GN–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Commercial Availability Request under the United States - Andean Trade Promotion and Drug Eradication Act (ATPDEA)

May 16, 2003.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Denial of the request alleging that certain cotton corduroy fabrics, for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the ATPDEA.

SUMMARY: On March 17, 2003 the Chairman of CITA received a petition from Breaker Jeanswear/ARC International alleging that certain dyed cotton corduroy fabrics (see Annex I for product specifications), classified in subheading 5801.22.90 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles including men's and boys' jackets and pants, women's and girls' jackets, dresses, skirts, shorts, and pants, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested that apparel of such fabrics be eligible for preferential treatment under the ATPDEA. Based on currently available information, CITA has determined that these subject fabrics can be supplied by the domestic industry in commercial quantities in a timely manner and therefore denies the request.

EFFECTIVE DATE: May 22, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 (b)(3)(B)(ii) of the ATPDEA, Presidential Proclamation 7616 of October 31, 2002, Executive Order 13277 of November 19, 2002, and the United States Trade Representative's Notice of Further Assignment of Functions of November 25, 2002 (67 FR 71606).

BACKGROUND:

The ATPDEA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The ATPDEA also provides for quota- and duty-free

treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabric or yarn that is not formed in the United States or a beneficiary country, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. Pursuant to Executive Order No. 13277 (67 FR 70305) and the United States Trade Representative's Notice of Redelegation of Authority and Further Assignment of Functions (67 FR 71606), the President's authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the ATPDEA is exercised by CITA.

On March 17, 2003, the Chairman of CITA received a petition from Breaker Jeanswear/ARC International of Miami, Florida, alleging that certain dyed cotton corduroy fabrics, (see Annex I for product specifications), classified in subheading 5801.22.90 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles including men's and boys' jackets and pants, women's and girls' jackets, dresses, skirts, shorts, and pants, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the ATPDEA for apparel articles that are both cut and sewn in one or more ATPDEA beneficiary countries from such fabrics.

On March 24, 2003, CITA solicited public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. On April 10, 2003, CITA and the Office of the U.S. Trade Representative offered to hold consultations with the relevant Congressional committees. We also requested the advice of the U.S. International Trade Commission and the relevant Industry Sector Advisory Committees.

CITA has determined that certain dyed cotton corduroy fabrics, classified in subheading 5801.22.90 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles including men's and boys' jackets and pants, women's and girls' jackets, dresses, skirts, shorts, and pants, can be supplied by the domestic industry in commercial quantities in a timely manner. Breaker Jeanswear/ARC International's request is denied.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Annex I

Product Specifications:

1. Dyed Corduroy Fabric:

Fiber Composition:	100 % cotton
Fabric weight:	271 g/m2 (grams per square meter)
Construction:	Woven 20 x 45, 16s x 16s 6 - 8 wales per centimeter

2. Dyed Corduroy Fabric:

Fiber Composition(s):	98% cotton, 2% spandex 97% cotton, 3% spandex
Fabric weight:	271g/m2 (grams per square meter)
Construction:	Woven 20 x 45, 16s x 16s plus 70 denier (spandex) 6-8 wales per centimeter

[FR Doc. 03–12897 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF ENERGY

[Number DE–PS36–03GO93012]

Million Solar Roofs Initiative Small Grant Program for State and Local Partnerships

AGENCY: Golden Field Office, U.S. Department of Energy.

ACTION: Notice of issuance of solicitation for financial assistance applications.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.8, is announcing its intention to solicit applications from State and Local Partnerships under the Million Solar Roofs (MSR) Program. DOE's Office of Energy Efficiency and Renewable Energy will consider proposals from interested State and Local Partnerships to help fund their MSR program development and implementation activities.

DATES: The solicitation will be issued early May 2003.

ADDRESSES: A copy of the solicitation will be accessible through the Golden Field Office Home Page at *http://www.go.doe.gov/businessopportunities.html* under ''Solicitations.'' The Golden Home Page will provide direct access to the solicitation and provide instructions on using the DOE Industry Interactive Procurement System (IIPS) Web site. The solicitation can also be obtained directly through IIPS at *http://e-center.doe.gov/* by browsing opportunities by Program Office for those solicitations issued by the Golden Field Office. DOE will not issue hard copies of the solicitation.

FOR FURTHER INFORMATION CONTACT: James McDermott, Contacting Officer, at 215–656–6976 or electronically at *james.mcdermott@ee.doe.gov.* Responses to questions will be posted on the DOE IIPS website.

SUPPLEMENTARY INFORMATION: The Department of Energy's MSR Initiative is an initiative to support State and Local Partnerships who agree to install solar energy systems on one million buildings in the United States (U.S.) by 2010. This effort includes two types of solar energy technology: (1) Solar electric (photovoltaic) systems that produce electricity from sunlight, and (2) solar thermal systems panels that produce heat for domestic hot water, for space heating or for heating swimming pools. The Partnerships bring together business, government and community organizations at the regional level with a commitment to install a pre-determined number (at least 500) of solar energy systems.

A complete description of partnerships and their representative activities can be found on the MSR Web site at *http://www.MillionSolarRoofs.org.*

Applications under the solicitation must further the work of State and Local Partnerships, including partners in the building industry, state and local governments, utilities, the solar energy industry, financial institutions and non-governmental organizations, to remove market barriers to solar energy use and to develop and strengthen local demand for solar energy products and applications.

There are two types of grants available: Phase 1—New Partnership grants, and Phase 2—Meeting the Commitment grants. Only one application may be submitted per partnership in one or the other of the categories, but not both. Partnerships that have been awarded prior MSR partnership grants in the past may not apply for a Phase 1—New Partnership grant. Newly formed or existing partnerships that have not received prior MSR grants may apply for a Phase 1—New Partnership grant. Any partnership with the prerequisites may apply for a Phase 2—Meeting the Commitment grant.

The project or activity must be conducted in a designated MSR State and Local Partnership area. There is no cost sharing requirement for these

grants, although cost sharing will be one of the criteria considered. Subject to the availability of funds, multiple awards for a total of $1,500,000 (DOE funding) in Fiscal Year 2003 are anticipated as a result of this Solicitation. The selected applicants will receive financial assistance under a grant. DOE will fund up to $50,000 per project. DOE anticipates funding approximately 30 to 40 grants in the amount of $10,000 to $50,000 each.

Solicitation number DE–PS36–03GO93012 will include complete information on the program, including technical aspects, funding, application preparation instructions, application evaluation criteria, and other factors that will be considered when selecting applications for funding. No pre-application conference is planned. Issuance of the solicitation is planned for early May 2003, with applications due 45 days after the solicitation has been issued.

Issued in Golden, Colorado, on May 6, 2003.

Jerry L. Zimmer,

Director, Office of Acquisition and Financial Assistance.

[FR Doc. 03–12872 Filed 5–21–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–99–001]

CenterPoint Energy Gas Transmission Company; Notice of Compliance Filing

May 15, 2003.

Take notice that on May 12, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 681, with an effective date of May 12, 2003.

CEGT states that the filing is being made in compliance with the Commission's order issued April 25, 2003 in Docket No. RP03–99–000.

CEGT states that copies of the filing have been mailed to each of CEGT's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: May 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12829 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–262–004]

The New PJM Companies: American Electric Power Service Corporation, On Behalf of its Operating Companies: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company; Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.; The Dayton Power and Light Company; Virginia Electric and Power Company and PJM Interconnection, L.L.C.; Notice Amending Prior Notices

May 15, 2003.

On May 1, 2003, American Electric Power Service Corporation, Commonwealth Edison Company, Dayton Power and Light Company, Virginia Electric and Power Company, and PJM Interconnection, LLC (collectively, New PJM Companies) filed a compliance filing in the above-docketed proceeding. This compliance filing was noticed by the Commission on May 8, 2003 and established a May 22, 2003 comment deadline. On May 6, 2003 and May 7, 2003, the New PJM Companies filed erratas to their original compliance filing. The Commission issued a notice on May 13, 2003, establishing a May 28, 2003, deadline for filing comments on the second errata filing. This notice amends the prior notices issued in these dockets and establishes a new date for filing comments.

Notice is hereby given that comments, protests and motions in response to the original compliance filing and the two erratas filed in this subdocket on May 6 and May 7, 2003, should be filed on or before June 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12825 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–329–001]

ANR Pipeline Company; Notice of Compliance Filing

May 15, 2003.

Take notice that on May 9, 2003, ANR Pipeline Company (ANR), tendered for filing for as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, with an effective date of May 1, 2003:

Substitute Second Revised Sheet No. 101A
Substitute Original Sheet No. 101B

ANR states that the tariff sheets are being filed in compliance with the Commission's April 30, 2003 order accepting ANR's proposal of certain changes to ANR's Rate Schedule FSS in order to provide more flexibility to its current firm storage service, primarily by modifying the timeframe within which storage and transportation services can be sold.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC

Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: May 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12828 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–052]

Columbia Gas Transmission Corporation; Notice of Filing

May 15, 2003.

Take notice that on May 9, 2003, Columbia Gas Transmission Corporation (Columbia) tendered for filing its report on the sharing with its customers of a portion of the profits from the sale of certain base gas as provided in Columbia's Docket No. RP95–408 rate case settlement. *See* Stipulation II, Article IV, Sections A through E, in Docket No. RP95–408 approved at Columbia Gas Transmission Corp., 79 FERC 61,044 (1997). Columbia states that sales of base gas have generated additional profits of $9,064,557 (above a $41.5 million threshold) requiring a sharing of 50 percent of the excess profits with customers in accordance with Stipulation II, Article IV, Section C.

Columbia states that $4,593,505, inclusive of interest, has been allocated to affected customers and credited to their March invoices.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: May 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12830 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–843–000]

Entergy Services, Inc.; Notice of Filing

May 15, 2003.

Take notice that on May 13, 2003, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., formerly Arkansas Power & Light Company (APL), tendered for filing a Notice of Termination of Contract between APL and the United States of America, represented by the Secretary of Energy, acting by and through the Administrator, Southwestern Power Administration, an Administration within the Department of Energy.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: June 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12826 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–290–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

May 15, 2003.

Take notice that on May 5, 2003, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP03–290–000 a request pursuant to Sections 157.205 and 157.208 of the Federal Energy Regulatory Commission's regulations (18 CFR Sections 157.205 and 157.208) under the Natural Gas Act (NGA) for authorization to construct and operate approximately 3.3 miles of 26-inch replacement pipeline (five segments) and a new 26-inch mainline valve near Machias in Snohomish County, Washington, under Northwest's blanket certificate issued in Docket No. CP82–433–000, pursuant to Section 7 of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Northwest states that as a result of housing development in the vicinity of Northwest's mainline near Machias,

Washington, five segments of its existing 26-inch Ignacio to Sumas mainline have had a class location change under Department of Transportation's regulations from a Class 2 to a Class 3 location. Accordingly, Northwest proposes to replace these five segments of pipeline totaling approximately 3.3 miles, with thicker walled pipe (from 26-inch 0.281″ wall thickness Grade X–52 to 26-inch 0.312″ wall thickness Grade X–70) and to install a new 26-inch mainline valve at milepost 1411.32 to meet the spacing requirements for Class 3 areas. Northwest states that approximately 865 feet of the replaced segments of pipeline will be abandoned in place, purged, packed with nitrogen and capped and the remainder will be removed. Northwest states that the new replacement pipeline will be installed within its existing 75-foot permanent right-of-way, but a wider construction right-of-way will be required in certain areas, along with additional temporary construction workspace.

According to Northwest, the proposed like-size replacement of segments of pipeline will not change the existing daily design capacity, daily maximum capacity or operating pressures on its system. Northwest states that the total estimated cost for this proposed pipeline replacement project is approximately $9.1 million, including the approximately $380,000 cost of removing replaced segments of pipeline.

Any questions concerning this request may be directed to Gary K. Kotter, Manager, Certificates and Tariffs—3F3, Northwest Pipeline Corporation, PO Box 58900, Salt Lake City, Utah 84158–0900, at (801) 584–7117 or fax (801) 584–7764 or *garold.k.kotter@williams.com*.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12821 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR03–4–000]

Plantation Pipe Line Company, Complainant, v. Colonial Pipeline Company, Respondent; Notice of Complaint

May 16, 2003.

Take notice that on May 15, 2003, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206) and the Procedural Rules Applicable to Oil Pipeline Procedures (18 CFR 343.1(a)), Plantation Pipe Line Company (Plantation) filed a complaint in the captioned proceeding. Plantation alleges that Colonial Pipeline Company (Colonial) has violated and continues to violate the Interstate Commerce Act, 49 U.S.C. App.1 *et seq.*, by refusing to permit an interconnection with Plantation's pipeline at Greensboro, North Carolina as more fully set forth in the complaint.

Plantation requests that the Commission: (1) Direct Colonial to cooperate in the installation of the requested interconnection; and (2) establish through routes for volumes received from Plantation through the interconnection to Colonial destinations downstream of Greensboro.

Plantation states that it has served the complaint on Colonial.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date below. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: June 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12916 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–294–000]

Portland Natural Gas Transmission System; Notice of Request Under Blanket Authorization

May 15, 2003.

Take notice that on May 8, 2003, Portland Natural Gas Transmission System (PNGTS) filed a prior notice request pursuant to Sections 157.205 and 157.211(a)(2) of the Federal Energy Regulatory Commission's Regulations under the Natural Gas Act, and PNGTS's blanket certificate issued in Docket No. CP96–238 *et al.*, for authorization to construct and operate new metering and related facilities in Westbrook, Maine.

PNGTS states that it is proposing to construct the facilities in compliance with Section 4.3 of its rate settlement approved by the Commission in Docket No. RP02–13–000 on January 14, 2003, which requires PNGTS to construct facilities to allow for the bi-directional flow of gas on its system north of its Westbrook interconnect. PNGTS states that the proposed facilities consist of a pipeline meter, meter runs, and various valves, which will enable PNGTS to receive gas from the Maritimes & Northeast Pipeline, L.L.C. (Maritimes) system. PNGTS states that the proposed facilities will be constructed and reside entirely within the existing meter station site where PNGTS and Maritimes interconnect. PNGTS estimates the cost of constructing the proposed facilities is $539,000.

Any questions regarding this filing should be directed to David B. Morgan, Director, Marketing and Rates, Portland Natural Gas Transmission System, One Harbour Place, Suite 375, Portsmouth, New Hampshire 13801; or by telephone at (603) 559–5503 or FAX at (603) 427–2807.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12822 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–121]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate

May 15, 2003.

Take notice that on May 1, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee states that its filing requests that the Commission approve a March 25, 2003, negotiated rate arrangement between Tennessee and Nicor Gas Company. Tennessee requests that the Commission accept and approve the negotiated rate arrangement as soon as possible but no later than June 15, 2003, to be effective November 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12831 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–123]

Tennessee Gas Pipeline Company; Notice of Negotiated Rates

May 15, 2003.

Take notice that on May 7, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Agreement Amendment Filing.

Tennessee states that its filing requests that the Commission approve its Negotiated Rate Agreement Amendment to its FT–A Service Agreement dated March 17, 2003 between Tennessee and Kerr McGee Corporation. Tennessee requests that the Commission grant such approval effective May 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 19, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12832 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–167–000, et al.]

The Empire District Electric Company, et al.; Electric Rate and Corporate Filings

May 14, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification:

1. The Empire District Electric Company

[Docket No. ER03–167–001]

Take notice that on May 12, 2003, pursuant to the January 10, 2003 Letter Order in Docket No. ER03–167–000, The Empire District Electric Company submitted for filing a version of the Attachment A Form of Service Agreement for Ancillary Services that includes designations as required by Order No. 614.

Comment Date: June 2, 2003.

2. Illinois Power Company

[Docket No. ER03–249–003]

Take notice that on May 12, 2003, Illinois Power Company (Illinois Power) filed an unexecuted First Revised Interconnection and Operating Agreement with Franklin County Power of Illinois, LLC. Illinois Power states that the purpose of the filing is to comply with the Commission's Order issued on April 10, 2003, ''Order Conditionally Accepting Interconnection and Operating Agreement for Filing'' in Docket No. ER03–249–000 and ER03–249–001.

Illinois Power requests an effective date of November 17, 2002 for the Agreement. Illinois Power states that it has served a copy of the filing on Franklin County Power of Illinois, LLC and each person designated on the official service list.

Comment Date: June 2, 2003.

3. Entergy Services, Inc.

[Docket Nos. ER03–583–001, ER03–681–001, ER03–682–002 and ER03–744–001]

Take notice that on May 12, 2003, Entergy Services, Inc.(ESI),as supplemented on May 14, 2003, on behalf of the Entergy Operating Companies, filed information as directed by the May 2, 2003 letter order issued by the Director, Division of Tariffs and Market Development—South in the above-referenced proceedings.

ESI states that copies of this filing were served on the affected state utility commissions, and on each person designated on the official service list compiled by the Secretary in the above-referenced proceedings.

Comment Date: May 23, 2003.

4. New York Independent System Operator, Inc.

[Docket No. ER03–836–000]

Take notice that on May 9, 2003, the New York Independent System Operator, Inc. (NYISO), filed proposed revisions to the NYISO's Market Administration and Control Area Services Tariff (Services Tariff). NYISO states that the proposed revisions would remove the current bid cap on 10-minute non-spinning reserves, and make certain related changes in the Services Tariff. The NYISO has requested that the Commission make the filing effective on July 8, 2003.

The NYISO states it has mailed a copy of the filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, to the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: May 30, 2003.

5. Avista Corporation

[Docket No. ER03–837–000

Take notice that on May 9, 2003, Avista Corporation (Avista) submitted a Notice of Cancellation of Rate Schedule No. 263 which is a netting agreement with Mirant Americas Energy Marketing, LP, (formerly Southern Company Energy Marketing, LP). Rate Schedule No. 263. Avista seeks all waivers necessary to allow the cancellation to be effective as of April 30, 2003.

Avista states that copies of the filing has been provided to Mirant Americas Energy Marketing, LP.

Comment Date: May 30, 2003.

6. Power Contract Financing, L.L.C.

[Docket No. ER03–838–000]

Take notice that on May 9, 2003, Power Contract Financing, L.L.C., filed a Notice of Succession to adopt CES Marketing, LLC's market-based rate authorizations.*Comment Date:* May 30, 2003.

7. Carolina Power & Light Company

[Docket No. ER03–839–000]

Take notice that on May 9, 2003, Carolina Power & Light Company, d/b/a Progress Energy Carolinas, Inc. (CP&L) amended a Power Supply Agreement dated November 2, 1998, between North Carolina Electric Membership Corporation (NCEMC) and CP&L, Rate Schedule FERC No. 134. CP&L respectfully requests waiver of the Commission's notice of filing requirements to allow the amendment to become effective on January 1, 2001.

CP&L states that copies of the filing were served upon NCEMC, the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment Date: May 30, 2003.

8. El Paso Electric Company, Public Service Company of New Mexico, Texas-New Mexico Power Company

[Docket No. ER03–840–000]

Take notice that on May 9, 2003, El Paso Electric Company, Public Service Company of New Mexico, and Texas-New Mexico Power Company (collectively, Utilities) jointly tendered for filing under their respective Open Access Transmission Tariffs First Revised Interconnection Agreement (Agreement) between the Utilities and Duke Energy Luna, LLC. The Utilities seek an effective date for the Agreement of April 30, 2003.

Comment Date: May 30, 2003.

9. Duke Energy Power Marketing, LLC

[Docket No. ER03–841–000]

Take notice that on May 12, 2003, Duke Energy Power Marketing, LLC (DEPM) filed revisions to its FERC Electric Tariff, Original Volume No. 1 (Tariff), specifically (1) enumerating ancillary service products sold into the ancillary service markets operated by independent system operators, (2) providing for the resale of firm transmission rights and other similar congestion contracts, and (3) reflecting the Commission's current language preferences with respect to (a) use of an Internet site with respect to the provision of certain ancillary services and (b) obtaining Commission approval for certain affiliate transactions. No other changes were made to the Tariff, which was accepted for filing by the Commission in Docket No. ER01–1129–000.

Comment Date: June 2, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The

Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12824 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–86–000, et al.]

Electric Rate and Corporate Regulation Filings

May 15, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Calpine California Equipment Finance Company, LLC

[Docket No. EC03–86–000]Company, LLC

Creed Energy Center, LLC
Goose Haven Energy Center, LLC
Lambie Energy Center, LLC
Gilroy Energy Center, LLC
King City Energy Center, LLC
Feather River Energy Center, LLC
Yuba City Energy Center, LLC
Wolfskill Energy Center, LLC
Riverview Energy Center, LLC

Take notice that on May 6, 2003, Calpine California Equipment Finance Company, LLC, Creed Energy Center, LLC, Goose Haven Energy Center, LLC, Lambie Energy Center, LLC, Gilroy Energy Center, LLC, King City Energy Center, LLC, Feather River Energy Center, LLC, Yuba City Energy Center, LLC, Wolfskill Energy Center, LLC and Riverview Energy Center, LLC (Applicants) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application under section 203 of the Federal Power Act for approval of the disposition of jurisdictional facilities and the acquisition of securities of a public utility in connection with the financing of certain generation facilities in the State of California.

Comment Date: May 27, 2003.

2. UGI Utilities, Inc.

[Docket No. EC03–87–000]

Take notice that on May 8, 2003, UGI Utilities, Inc. (UGI Utilities) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application, pursuant to Section 203 of the Federal Power Act, requesting authorization to transfer its interests in UGI Development Company, UGI Hunlock Development Company, and Hunlock Creek Energy Ventures, to its affiliate UGI Enterprises, Inc., as part of UGI Corporation's corporate restructuring plan.

Comment Date: May 29, 2003.

3. Mesquite Power, LLC, Sempra Energy Resources

[Docket No. EC03–88–000]

Take notice that on May 12, 2003, Mesquite Power, LLC (Mesquite) and Sempra Energy Resources (SER) (together, Applicants) tendered for filing an application, pursuant to Section 203 of the Federal Power Act, for authorization of a disposition of jurisdiction facilities whereby a synthetic lease facility would be assigned by SER to Mesquite. Applicants state that the proposed transaction is intended to effectuate an intra-corporate transaction that will have no effect on competition, rates or regulation.

Comment Date: May 27, 2003.

4. Midwest Independent Transmission System Operator, Inc.

[Docket Nos. ER98–1438–019 and ER02–111–009]

Take notice that on May 13, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission), a supplement to its compliance filing in this proceeding. The Midwest ISO states that it submitted proposed revisions to further modify the definition of ''Load Serving Entity'' in the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc. (Transmission Owners Agreement) in compliance with the Commission's Order (Order) in Midwest Independent Transmission System Operator Inc., 103 FERC ¶ 61,038 (2003). The Midwest ISO has requested an effective date of April 1, 2003, consistent with the Order.

The Midwest ISO has also requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at www.midwestiso.org under the heading ''Filings to FERC'' for other interested parties in this matter, and that they will provide hard copies to any interested parties upon request.

Comment Date: June 3, 2003.

5. Southern Company Services, Inc.

[Docket No. ER02–851–008]

Take notice that on May 1, 2003, Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively, Southern Companies), tendered for filing with the Federal Energy Regulatory Commission (Commission), an informational filing. Southern Companies states that the purpose of this informational filing is to update the data inputs to the formula rate adopted by Southern Companies in this proceeding and thereby establish updated charges for the use of their bulk transmission facilities under their Open Access Transmission Tariff (FERC Electric Tariff, Fourth Revised Volume No. 5).

Comment Date: May 29, 2003.

6. Southwest Power Pool, Inc.

[Docket No. ER03–547–001]

Take notice that on May 12, 2003, Southwest Power Pool, Inc. (SPP) submitted for filing with the Federal Energy Regulatory Commission (Commission), revisions of Attachment L to its open access transmission tariff, in compliance with the Commission's April 10, 2003 Order (April 10 Order) in the above-referenced docket, 103 FERC ¶ 61,027 (2003). SPP states that Attachment L now incorporates the agreement submitted by SPP and the participating SPP Transmission Owners to upgrade the 345 kV LaCygne-Stilwell transmission line. SPP further states that it has also made the revisions required by the Commission's April 10 Order to the body of the agreement.

SPP states that a copy of this filing has been served on the SPP Transmission Owners and all of the parties on the official service list compiled by the Secretary in this docket.

Comment Date: June 2, 2003.

7. Southwest Reserve Sharing Group

[Docket No. ER03–842–000]

Take notice that on May 13, 2003, Tucson Electric Power Company tendered for filing on behalf of the members of the Southwest Reserve Sharing Group an amendment to the Southwest Reserve Sharing Group Participation Agreement.

Comment Date: June 3, 2003.

8. Entergy Services, Inc.

[Docket No. ER03–843–000]

Take notice that on May 13, 2003, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., formerly Arkansas Power & Light Company (APL), tendered for filing a Notice of Termination of Contract between APL and the United States of America, represented by the Secretary of Energy, acting by and through the Administrator, Southwestern Power Administration, an Administration within the Department of Energy.

Comment Date: June 3, 2003.

9. Northern Indiana Public Service Company

[Docket No. ER03–844–000]

Take notice that on May 13, 2003, Northern Indiana Public Service Company (Northern Indiana) filed a Service Agreement pursuant to its Wholesale Market-Based Rate Tariff with ConocoPhillips Company (ConocoPhillips). Northern Indiana has requested an effective date of May 13, 2003.

Northern Indiana states that copies of this filing have been sent to ConocoPhillips, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment Date: June 3, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12915 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2105–089]

Pacific Gas and Electric Company, P–233–081–CA; Notice of Extension of Time To Provide Comments on Draft Environmental Impact Statement

May 16, 2003.

On March 14, 2003, Commission staff made available to the public its draft Environmental Impact Statement (DEIS) on the proposed relicensing of the Pit 3, 4, 5 Hydroelectric Project, located in the Pit River Basin in Shasta County, California. The deadline for providing comments on the DEIS was established as May 21, 2003.

Notice is hereby given that the deadline for providing comments on the DEIS is extended to June 20, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12917 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6514–009]

Notice of Application Tendered for Filing with the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

May 15, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 6514–009.

c. *Date Filed:* May 2, 2003.

d. *Applicant:* City of Marshall, Michigan.

e. *Name of Project:* City of Marshall Hydroelectric Project.

f. *Location:* On the Kalamazoo River near the City of Marshall, in Calhoun County, Michigan. The project does not affect federal lands.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C.791(a)-825(r).

h. *Applicant Contact:* Keith Zienert, Power Plant Superintendent, City of Marshall, 906 S. Marshall, Marshall, MI 49068, (269) 781–8631; or John Fisher, Chairman, Lawson-Fisher Associates P.C., 525 West Washington Avenue, South Bend, IN 46601, (574)234–3167.

i. *FERC Contact:* Peter Leitzke, (202) 502–6059 or *peter.leitzke@ferc.gov*.

j. *Cooperating agencies*: We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status*: July 2, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426. Please include the project number (P–6514) on any documents filed.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing.*See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. After logging into the e-Filing system, select ''Comment on Filing'' from the Filing Type Selection screen and continue with the filing process.''

m. This application is not ready for environmental analysis at this time.

n. The existing City of Marshall Hydroelectric Project consists of the following existing facilities: (1) The 12-foot-high, 215-foot-long Perrin No. 1 Dam; (2) the 12-foot-high, 90-foot-long Perrin No. 2 Dam; (3) a 130-acre reservoir with a normal pool elevation of 899 feet msl; (4) a 140-foot-long canal-type forebay; (5) a powerhouse containing three generating units with a total installed capacity of 463 kW; and (6) other appurtenances.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. A copy is also available for inspection and reproduction at the address in item h above.

p. With this notice, we are initiating consultation with the Michigan State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments*: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance or Deficiency Letter—October 2003

Issue Scoping Document—November 2003

Notice that application is ready for environmental analysis—February 2004

Notice of the availability of the EA July 2004

Ready for Commission decision on the application—September 2004

Unless substantial comments are received in response to the EA, staff intends to prepare a single EA in this case. If substantial comments are received in response to the EA, a final EA will be prepared with the following modifications to the schedule.

Notice of the availability of the final EA—October 2004

Ready for Commission's decision on the application—November 2004

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Register online at *http://www.ferc.gov*/esubscribenow.htm to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12827 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–2001–000 and RM01–8–000]

Electric Quarterly Reports, Revised Public Utility Filing Requirements; Notice of Extension of Time

May 15, 2003.

On April 25, 2002, the Commission issued Order No. 2001,[1] a final rule which requires public utilities to file Electric Quarterly Reports (EQR). Order 2001–C, issued December 18, 2002, instructs all public utilities to file these reports using Electric Quarterly Report Submission Software, beginning with the report due on or before January 31, 2003 (extended to February 21, 2003). On March 28, 2003, the Commission issued Order 2001–D, requiring public utilities to review their fourth quarter 2002 EQR submissions to ensure that the data filed was correct. Utilities were directed to re-submit their corrected data by April 11, 2003, which was extended to April 18, 2003.

On April 23, 2003, FERC staff discovered a problem in the ''Copy Forward'' feature of the EQR submission software. Although the feature has been fixed, filers who used this feature before it was fixed may have to re-enter some data that was previously manually entered into the software. The Commission is committed to ensuring that high quality in the data be filed in the EQRs and subsequently extended the filing deadline for first quarter 2003 EQRs to May 15, 2003.

Several companies have requested further extensions to the filing deadlines to resolve problems they experienced with their EQR filings. We would like to allow these utilities the time needed to ensure that they can successfully file high quality data. Notice is hereby given that the time to file corrections to the fourth quarter 2002 EQR as required by Order 2001–D is extended to the date listed for each company identified in the attachment to this notice.

Magalie R. Salas,

Secretary.

ATTACHMENT

Utility	Quarters requested	Date of requested extension
The ANP Companies[2]	2nd, 3rd, and 4th Quarters 2002 and 1st Quarter 2003.	May 16, 2003.
Capital Energy, Inc	2nd, 3rd, and 4th Quarter 2002	April 25, 2003.
California Independent System Operator Corporation	4th Quarter Revisions	May 30, 2003.
California Independent System Operator Corporation	1st Quarter 2003	June 10, 2003.
Dominion Resources Services and Affiliates	4th Quarter 2002	May 16, 2003.
Exelon[3]	4th Quarter 2003 and 1st Quarter 2003	May 30, 2003.
Indeck-Olean and Indeck-Oswego	4th Quarter 2002 and 1st Quarter 2003	May 15, 2003.
Sempra Energy Trading Corp	4th Quarter 2002	May 29, 2003.

[1] Revised Public Utility Filing Requirements, Order No. 2001, 67 FR 31043, FERC Stats. & Regs. ¶ 31,127 (April 25, 2002); reh'g denied, Order No. 2001–A, 100 FERC ¶ 61,074, reconsideration and clarification denied, Order No.2001–B, 100 FERC ¶ 61,342 (2002).

[2] The ANP Companies includes the following companies: ANP Funding I, LLC, ANP Marketing Company, ANP Bellingham Energy Company, LLC, ANP Blackstone Energy Company, LLC and Milford Power Limited Partnership.

[3] Exelon includes the following companies: Exelon Generation Company, LLC, Exelon Energy Company, AmerGen Energy Company, LLC, Southeast Chicago Energy Project, LLC and Exelon New England Power Marketing, LP.

ATTACHMENT—Continued

Utility	Quarters requested	Date of requested extension
Southern California Edison Company	1st Quarter 2003	June 3, 2003

[FR Doc. 03–12823 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7502–5]

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 (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. 1891.03; NESHAP for Publicly Owned Treatment Works (POTW) Facilities; was approved 05/01/2003; in 40 CFR part 63, subpart VVV; OMB Number 2060–0428; expires 05/31/2006.

EPA ICR No. 1894.03; NESHAP for Secondary Aluminum Production (Final Rule); was approved 05/01/2003; in 40 CFR part 63, subpart RRR; OMB Number 2060–0433; expires 07/31/2003.

EPA ICR No. 1954.02; NESHAP for Surface Coating of Large Household and Commercial Appliances (Final Rule); was approved 05/01/2003; in 40 CFR part 63, subpart NNNN; OMB Number 2060–0457; expires 05/31/2006.

EPA ICR No. 2034.02; NESHAP for the Wood Building Products Surface Coating Industry (Final Rule); was approved 05/01/2003; in 40 CFR part 63, subpart QQQQ; OMB Number 2060–0510; expires 05/31/2006.

EPA ICR No. 1773.06; NESHAP for Hazardous Waste Combustors; was approved 05/01/2003; in 40 CFR part 63, subpart EEE; OMB Number 2050–0171; expires 05/31/2006.

EPA ICR No. 1541.07; NESHAP: Benzene Waste Operations; was approved 05/01/2003; in 40 CFR part 61, subpart FF; OMB Number 2060–0183; expires 05/31/2006.

Correction

This is to correct expiration date for EPA ICR No. 0663.08, NSPS for Beverage Can Surface Coating; in 40 CFR part 60, subpart WW; from 04/20/2003 to 04/30/2006.

Dated: May 13, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–12867 Filed 5–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2002–0094; FRL–7502–6]

Agency Information Collection Activities; Proposed Collection; Comment Request; (EPA ICR No. 2100.01)

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: Reporting Requirements Under EPA's Climate Leaders Program, (EPA ICR No. 2100.01). This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before June 23, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Tom Kerr, Climate Protection Partnerships Division, Office of Atmospheric Programs, Office of Air and Radiation, Mailcode 6202J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–0047; fax number: 202–565–2134; e-mail address: *kerr.tom@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 18, 2002 (67 FR 117), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received 2 comments and has addressed them in the program design.

EPA has established a public docket for this ICR under Docket ID No. OAR–2002–0094, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epamail.epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 6202J, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA,

725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Reporting Requirements Under EPA's Climate Leaders Program (EPA ICR Number 2100.01). This is a request for a new collection.

Abstract: Climate Leaders is an EPA-sponsored, voluntary program that encourages companies to undertake greenhouse gas (GHG) reduction goals and to develop a corporate GHG inventory to demonstrate progress towards that goal. It is run through EPA's Climate Protection Partnerships Division (CPPD) in the Office of Air & Radiation. Companies report their GHG inventories to EPA on an annual basis to demonstrate their progress toward their GHG reduction goal. This reporting allows EPA to offer highly credible public recognition to companies that have demonstrated leadership by meeting or exceeding their goals.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 73 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: large companies/private entities.

Estimated Number of Respondents: 70.

Frequency of Response: annual.

Estimated Total Annual Hour Burden: 5,114 hours.

Estimated Total Annual Cost: $433,390, includes $5,810 annualized capital or O&M costs.

Changes in the Estimates: This is a new information collection, and as such, this section is not applicable.

Dated: May 8, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–12868 Filed 5–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7502–2]

Gulf of Mexico Program Citizens Advisory Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act (Public Law 92–463), EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Citizens Advisory Committee (CAC).

DATES: The meeting will be held on Tuesday, June 24, 2003, from 1 p.m. to 5 p.m. and on Thursday, June 26, 2003, from 1 p.m. to 2:30 p.m.

ADDRESSES: The meeting will be held at the Embassy Suites Hotel, 315 Julia Street, New Orleans, LA 70130 (504–525–1993).

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Mail Code EPA/GMPO, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: Proposed agenda is attached.

The meeting is open to the public.

Dated: May 9, 2003.

Gloria D. Car,

Designated Federal Officer.

Gulf of Mexico Program; Citizens Advisory Committee Meeting

Embassy Suites, New Orleans, Louisiana, June 24–26, 2003

Tuesday, June 24

1–1:30 p.m., Opening Remarks/Introductions, Brian Grantham, Chair and Robert Crowe, Vice-Chair

- Updates on resignations, new members
- Follow-up on Louisiana Resolution
- MC, PRB overview

1:30–1:45 p.m., Expectations for CAC Activities and Measures Discussion, Jim Kachtick, former CAC Chair

1:45–2:30 p.m., GMP Director's Report, Bryon Griffith, GMPO Acting Director

- Update of the Executive Order

2:30–3:15 p.m., Hypoxia Action Plan, Bill Franz, Upper Mississippi River Coordinator, EPA Region 5

3:15–3:30 p.m., Break

3:30–4:15 p.m., Nutrient Enrichment—Lower MS River Sub Basin Committee, Doug Daigle, Mississippi River Basin Alliance

4:15–5 p.m., Pipeline Presentation, Al Taylor, Gulfstream

5 p.m., Wrap-up

Thursday, June 26

1–1:30 p.m., Recap of focus team/committee meetings from previous days

1:30–2 p.m., Marine Debris Presentation, Charles Barr, Ocean Conservancy

2–2:30 p.m. Citizens Advisory Committee Wrap-up

- Discussion and Recommendations
- Collect Questionnaires

2:30 p.m., Adjourn

[FR Doc. 03–12869 Filed 5–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7502–3]

Clean Air Act Advisory Committee Notice of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990, to provide

independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical scientific, and enforcement policy issues.

Open Meeting Notice: Pursuant to 5 U.S.C. App. 2 section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on Thursday, June 12, 2003, from approximately 8:30 a.m. to 2:30 p.m. at the Sheraton Crystal City Hotel, 1880 Jefferson Davis Highway, Arlington, Virginia. Seating will be available on a first come, first served basis. Three of the CAAC's Subcommittees (the Linking Energy, Land Use, Transportation, and Air Quality Concerns Subcommittee; the Permits/NSR/Toxics Subcommittee; and the Economics Incentives and Regulatory Innovations Subcommittee) will hold meetings on Wednesday, June 11, 2003 from approximately 1 p.m. to 7 p.m. at the Sheraton Crystal City Hotel, the same location as the full Committee. The schedule for the three Subcommittees meetings is: Linking Energy, Land Use, Transportation, and Air Quality—1 p.m. to 3 p.m.; Permits/NSR/Toxics—3 p.m. to 5 p.m.; and Economics Incentives and Regulatory Innovations—5 p.m. to 7 p.m.

Inspection of Committee Documents: The Committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with CAAC meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket item A–94–34 (CAAAC). The Docket office can be reached by telephoning 202–260–7548; FAX 202–260–4400.

FOR FURTHER INFORMATION CONTACT: For further information concerning this meeting of the full CAAAC, please contact Paul Rasmussen, Office of Air and Radiation, U.S. EPA (202) 564–1306, FAX (202) 564–1352 or by mail at U.S. EPA, Office of Air and Radiation (Mail code 6102 A), 1200 Pennsylvania Avenue, NW., Washington, DC 20004. For information on the Subcommittee meetings, please contact the following individuals: (1) Linking Transportation, Land Use and Air Quality Concerns—Robert Larson, 734–214–4277; Debbie Stackhouse, 919–541–4354; and (2) Economic Incentives and Regulatory Innovations—Paul Rasmussen, 202–564–1306. Additional information on these meetings and the CAAAC and its Subcommittees can be found on the CAAAC Web site: *http://www.epa.gov/oar/caaac/*.

Dated: May 13, 2002.

Robert D. Brenner,

Principal Deputy Assistant Administrator for Air and Radiation.

[FR Doc. 03–12866 Filed 5–21–03; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0023; FRL–7309–1]

Approval of Test Marketing Exemption for a Certain New Chemical

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–03–0001. The test marketing conditions are described in the TME application and in this notice.

DATES: Approval of this TME is effective May 9, 2003. Comments, identified by docket ID number OPPT–2003–0023 and the TME number, must be received on or before June 6, 2003.

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: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

For technical information contact: Miriam Wiggins-Lewis, Chemical Control Division, (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–9373; e-mail address: *Wigginslewis.Miriam@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed in particular to the chemical manufacturer and/or importer who submitted the TME to EPA. This action may, however, be of interest to the public in general. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical 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 OPPT–2003–0023. 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 EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

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.

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?

The notice of receipt was published late in the 45–day review period; however, an opportunity to submit comments is being offered at this time.

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and the TME 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 OPPT–2003–0023. 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 *oppt.ncic@epa.gov,* Attention: Docket ID Number OPPT–2003–0023 and the TME number. 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: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0023 and the TME number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

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 technical 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 or collection activity.
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 and the TME number in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What is the Agency's Authority for Taking this Action?

Section 5(h)(1) of TSCA and 40 CFR 720.38 authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes, if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

III. What Action is the Agency Taking?

EPA has approved the above-referenced TME. EPA has determined that test marketing the new chemical substance, under the conditions set out in the TME application and in this notice, will not present any unreasonable risk of injury to health or the environment.

IV. What Restrictions Apply to this TME?

The test market time period, production volume, number of customers, and use must not exceed specifications in the application and this notice. All other conditions and restrictions described in the application and in this notice must also be met.

TME–03–0001.

Date of Receipt: March 17, 2003.

Notice of Receipt: April 21, 2003 (68 FR 19532).

Applicant: PPG Industries, Inc.

Chemical: Modified Polyol.

Use: Component of coating with open use.

Production Volume: 4,000 Kiligram/year.

Number of Customers: One.

Test Marketing Period: 270 to 365 days, commencing on first day of commerical manufacture.

The following additional restrictions apply to this TME. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

V. What was EPA's Risk Assessment for this TME?

EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

VI. Can EPA Change Its Decision on this TME in the Future?

Yes. The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: May 9, 2003.

Miriam Wiggins-Lewis,

Acting Chief, New Chemicals Prenotice Management Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 03–12870 Filed 5–21–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL ELECTION COMMISSION

[Notice 2003–11]

Filing Dates for the Texas Special Election in the 19th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Texas has scheduled a special runoff election on June 3, 2003, to fill the U.S. House of Representatives seat in the Nineteenth Congressional District vacated by Representative Larry Combest. On May 3, 2003, a Special General Election was held, with no candidate achieving a majority vote. Under Texas law, a Special Runoff Election will now be held with the two top vote-getters participating.

Committees participating in the Texas Special Runoff Election are required to file pre- and post-election reports.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates participating in the Texas Special Runoff Election shall file a 12-day Pre-Runoff Report on May 22, 2003; and a 30-day Post-Runoff Report on July 3, 2003. (See chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees that file on a semiannual basis in 2003 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Texas Special Runoff Election by the close of books for the applicable report(s). (See chart below for the closing date for each report).

Committees filing monthly that support candidates in the Texas Special Runoff Election should continue to file according to the monthly reporting schedule.

CALENDAR OF REPORTING DATES FOR TEXAS SPECIAL ELECTION COMMITTEES INVOLVED IN THE SPECIAL RUNOFF (06/03/03) MUST FILE

Report	Close of books [1]	Reg./Cert. mailing date [2]	Filing date
Pre-Runoff	05/14/03	05/19/03	05/22/03
Post-Runoff	06/23/03	07/03/03	07/03/03

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

[2] Pre- and Post-Runoff Reports sent registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date. Committees should keep the mailing receipt with its postmark as proof of filing.

Dated: May 16, 2003.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 03–12790 Filed 5–21–03; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: 10 a.m.—May 28, 2003.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Fact Finding Investigation No. 25—Practices of Transpacific Stabilization Agreement Members Covering the 2002–2003 Service Contract Season.

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–12990 Filed 5–20–03; 11:46 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site 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 June 16, 2003.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Afin, Ltd., and Anvest, Inc., both of Cleburne, Texas; to become bank holding companies by acquiring 85.42 percent of the voting shares of Grandview Bancshares, Inc., Grandview, Texas, and thereby indirectly acquire voting shares of First State Bank, Grandview, Texas.

Board of Governors of the Federal Reserve System, May 16, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–12811 Filed 5–21–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 5, 2003.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Inwood Bancshares, Inc. Dallas, Texas; to engage *de novo* through its subsidiary, Inwood Asset Management, Inc., Dallas, Texas, in financial and investment advisory activities pursuant to section 225.28(b)(6)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, June 16, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc.03–12810 Filed 5–21–03; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0278]

National Contact Center; Customer Evaluation Survey

AGENCY: Citizen Services and Communications, Federal Citizen Information Center, (GSA).

ACTION: Notice of a new one-time collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration, Office of Citizen Services and Communications (OSCS), Federal Citizen Information Center, National Contact Center (NCC) has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Customer Evaluation Survey. A request for public comments was published at 68 FR 5293, February 3, 2003. No comments were received.

This information collection will be used to assess the public's satisfaction with the NCC service, to assist in increasing the efficiency in responding to the public's need for Federal information, and to assess the effectiveness of marketing efforts. The respondents include users of the NCC.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of the functions of the agency including whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected, including through the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before: June 23, 2003.

FOR FURTHER INFORMATION CONTACT: Tonya Beres, Office of Citizens Services and Communications, at (202) 501–1803.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to General Services Administration, Regulatory and Federal Assistance Publications Division (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control Number 3090–0278.

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection will be used to assess the public's satisfaction with the NCC service, to assist in increasing the efficiency in responding to the public's need for Federal information, and to assess the effectiveness of marketing efforts.

B. Annual Reporting Burden

Respondents: 2,250.
Responses Per Respondent: 1.
Total Responses: 2,250.
Hours Per Response: .05 (3 minutes).
Total Burden Hours: 112.5.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory and Federal Assistance Publications Division (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312, or by faxing your request to (202) 501–4067. Please cite 3090–0278, National Contact Center Customer Evaluation Survey in all correspondence.

Dated: May 15, 2003.

Michael W. Carleton,

Chief Information Officer (I).

[FR Doc. 03–12894 Filed 5–21–03; 8:45 am]

BILLING CODE 6820–CX–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Research on the Impact of Law on Public Health, Program Announcement #03049 Correction

ACTION: Notice; correction.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Research on the Impact of Law on Public Health, Program Announcement #03049.

Times and Dates: 3 p.m.–3:30 p.m., May 27, 2003 (open). 3:30 p.m.–7 p.m., May 27, 2003 (closed). 8 a.m.–5 p.m., May 28, 2003 (closed).

Place: Marriott Perimeter Center, 246 Perimeter Center Parkway, NE., Atlanta, GA 30346, Telephone 770.270.0422.

Correction

In the **Federal Register** of May 8, 2003, volume 68, number 89, notice, page 24746 ''Date and Time'' should read: May 27, 2003, through May 28, 2003.

Contact Person for More Information: Joan Karr, Ph.D., Scientific Review Administrator, Public Health Program Practice Office, CDC, 4770 Buford Highway, NE., MS–K–38, Atlanta, GA 30341, Telephone 770.488.2597.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 14, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–12707 Filed 5–21–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee (INEELHES)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

NAME: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: INEELHES.

TIMES AND DATES: 8:30 a.m.–4 p.m., July 1, 2003.

8:30 a.m.–10:45 a.m., July 2, 2003.

PLACE: The Grove Hotel, A WestCoast Grand Hotel, 245 South Capitol Boulevard, Boise, Idaho 83702, telephone 208–333–8000, fax 208–333–8800.

STATUS: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

BACKGROUND: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, and replaced by MOUs signed in 1996 and 2000, the Department of Health and Human Services (HHS) was given the

responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in 1992, 1996, and 2000, between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

PURPOSE: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community interaction and to serve as a vehicle for community concerns to be expressed as advice and recommendations to CDC and ATSDR.

MATTERS TO BE DISCUSSED: Agenda items include a presentation on Concentrations of Pollutants in the Aquifer over a Long Period of Time; Status Report on Dose Reconstruction; DOE Low-Level Radiation Research Program; and a presentation by ATSDR on the Public Comment Draft of the Public Health Assessment. Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Natasha Friday, Executive Secretary, INEELHES, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 1600 Clifton Road, NE., (E–39), Atlanta, Georgia 30333, telephone 404–498–1800, fax 404–498–1811.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: May 15, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–12837 Filed 5–21–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–240]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Prospective Payments for Hospital Outpatient Services and Supporting Regulations in 42 CFR 413.24, 413.65, and 419.42; *Form No.:* CMS–R–240 (OMB# 0938–0798); *Use:* As required by sections 4521, 4522, and 4523 of the Balanced Budget Act of 1997, CMS–1005FC eliminates the formula driven overpayment for certain outpatient hospital services, extends reductions in payment for costs of hospital outpatient services, and establishes in regulations a prospective payment system for hospital outpatient services. The rule also establishes in regulations the requirements for designating certain entities as provider-based or as a department of a hospital; *Frequency:* Other—as needed; *Affected Public:* Business or other for-profit, and not-for-profit institutions; *Number of Respondents:* 750; *Total Annual Responses:* 2,272; *Total Annual Hours:* 41,063.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503. Fax Number: (202) 395–6974.

Dated: May 15, 2003.

Dawn Willinghan,

CMS Reports Clearance Officer, Division of Regulations Development and Issuances, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 03–12800 Filed 5–21–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–684A–I, CMS–685, and CMS–10084]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (CMS)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden

estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* End-Stage Renal Disease (ESRD) Network Business Proposal Forms and Supporting Regulations in 42 CFR 405.2110 and 405.2112; *Form No.:* CMS–684A–I (OMB# 0938–0658); *Use:* The submission of business proposal information by current ESRD networks and other bidders, according to the business proposal instructions, meets CMS's need for meaningful, consistent, and verifiable data when evaluating contract proposals; *Frequency:* Other: every 3 years; *Affected Public:* Not-for-profit institutions; *Number of Respondents:* 18; *Total Annual Responses:* 36; *Total Annual Hours:* 1,080.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* End-Stage Renal Disease (ESRD) Network Semi-Annual Cost Report Forms and Supporting Regulations in 42 CFR 405.2110 and 405.2112; *Form No.:* CMS–685 (OMB# 0938–0657); *Use:* Submission of semi-annual cost reports allows CMS to review, compare, and project ESRD network costs. The reports are used as an early warning system to determine whether the networks are in danger of exceeding the total cost of the contract. Additionally, CMS can analyze line item costs to identify any significant aberrations; *Frequency:* Semi-annually; *Affected Public:* Not-for-profit institutions; *Number of Respondents:* 18; *Total Annual Responses:* 36; *Total Annual Hours:* 108.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Design and Implementation of a Targeted Beneficiary Survey on Access to Physician Services Among Medicare Beneficiaries; *Form No.:* CMS–10084 (OMB# 0938–0890); *Use:* This survey of Medicare beneficiaries in targeted communities will be used to obtain information on whether they are experiencing problems accessing physician services. CMS will use data collected to determine if access problems exist at all, where and why problems may arise, whom they affect, and what the consequences are for Medicare beneficiaries. CMS will also learn the extent to which physician access problems are Medicare-specific.; *Frequency:* One-time; *Affected Public:* Individuals or Households; *Number of Respondents:* 4,000; *Total Annual Responses:* 4,000; *Total Annual Hours:* 958.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room: C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 15, 2003.

Dawn Willinghan,

CMS Reports Clearance Officer, Division of Regulations Development and Issuances, Office of Strategic Operations and Strategic Affairs.

[FR Doc. 03–12801 Filed 5–21–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Request for Public Comment on the Improvement of the Adoption and Foster Care Analysis and Reporting System (AFCARS)

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Correction to notice of request for public comment.

SUMMARY: On April 28, 2003, ACF published a notice of request for comments on the Adoption and Foster Care Analysis and Reporting System (AFCARS). There is an error in the mailbox address set up to receive e-mail written comments on AFCARS. The correct address is *AFCARS_Project@acf.hhs.gov* (there is an underscore between ''AFCARS'' and ''Project''). Likewise, the section regarding further information should reflect the corrected e-mail address: *AFCARS_Project@acf.hhs.gov.*

FOR FURTHER INFORMATION: Questions regarding this correction may be submitted to and will be answered by e-mail at the *AFCARS_Project@acf.hhs.gov* or via the Children's Bureau address, 330 ''C'' St., SW., Washington, DC 20447, Attention: Penelope L. Maza.

Dated: May 16, 2003.

Frank Fuentes,

Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 03–12797 Filed 5–21–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95F–0221]

DuCoa L.P. ; Filing of Food Additive Petition (Animal Use); Natamycin; Change of Petitioner's Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has been notified by the petitioner, DuCoa L.P., that it has changed its name to Arkion Life Sciences, doing business at the same address. On September 20, 1995 (60 FR 48715), a **Federal Register** notice announced that a food additive petition (FAP 2234) had been filed by DuCoa L.P. proposing the use of natamycin as a mold retardent in broiler chicken feed.

FOR FURTHER INFORMATION CONTACT: Karen Ekelman, Center for Veterinary Medicine (HFV–228), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6653, e-mail: *kekelman@cvm.fda.gov*.

Dated: May 14, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–12784 Filed 5–21–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4818–N–06]

Notice of Proposed Information Collection for Public Comment: Notice of Funding Availability for the Alaskan Native/Native Hawaiian Institutions Assisting Communities (AN/NHIAC) Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* July 21, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8228, Washington, DC 20410–6000.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, 202–708–3061, ext. 3852 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed extension of information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Notice of Funding Availability for the Alaskan Native/Native Hawaiian Institutions Assisting Communities (AN/NHIAC) Program.

OMB Control Number: 2528–0206 (exp. 05/31/03).

Description of the Need for the Information and Proposed Use: The information is being collected to select applicants for award in this statutorily created competitive grant program and too monitor performance of grantees to ensure they meet statutory and program goals and requirements.

Agency Form Numbers: HUD 424, HUD 424B, HUD–424C, HUD–424–CB, SFLLL, HUD 2880, HUD 2991, HUD 2990, HUD 2993, and HUD 2994.

Members of the Affected Public: Alaskan Native Institutions (ANI) and Native Hawaiian Institutions (NHI) of higher education that meet the statutory definition established in title III, part A, section 317 of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1998 (Pub. L. 105–244; enacted October 7, 1998).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information pursuant to grant award will be submitted once a year. The following chart details the respondent burden on an annual and semi-annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Applicants	20	20	40	800
Semi-Annual Reports	10	20	6	120
Final Reports	10	10	8	80
Recordkeeping	10	10	5	50
Total			59	1050

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: May 15, 2003.

Christopher D. Lord,

Deputy Assistant, Secretary for Policy Development.

[FR Doc. 03–12799 Filed 5–21–03; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

EXXON VALDEZ Oil Spill Trustee Council; Invitation for Proposals

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice.

SUMMARY: The EXXON VALDEZ Oil Spill Trustee Council is asking the public, private organizations, and government agencies to submit proposals for implementation of the Gulf Ecosystem Monitoring and Research Program. The Invitation to Submit Restoration Proposals for Federal Fiscal Year 2004 is available on the Trustee Council Internet site.

DATES: Proposals are due June 16, 2003.

ADDRESSES: EXXON VALDEZ Oil Spill Trustee Council, 441 West 5th Avenue, Suite 500, Anchorage, Alaska 99501.

FOR FURTHER INFORMATION CONTACT: The Trustee Council Office, 907–278–8012 or toll free at 800–478–7745 (in Alaska) or 800–283–7745 (outside Alaska) or via Internet at *http://www.oilspill.state.ak.us.*

SUPPLEMENTARY INFORMATION: Following the EXXON VALDEZ oil spill in March 1989, a Trustee Council of three state and three federal trustees, including the Secretary of the Interior, was formed. The Trustee Council prepared a restoration plan for the injured resources and services within the oil spill area. The restoration plan called for annual work plans identifying projects to accomplish restoration. An

extension of the Restoration Plan, the Gulf Ecosystem Monitoring and Research Program, also requires implementation through annual work plans. Each year proposals for restoration, monitoring, and research projects are solicited from a variety of organizations, including the public.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 03–12850 Filed 5–21–03; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–025–03–1430–EU: G–3–0142]

Realty Action: Sale of Public Land in Harney County, OR

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action.

SUMMARY: The following described parcels of public land in Harney County, Oregon, have been found suitable for sale under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended, (90 Stat. 2750, 43 U.S.C. 1713 and 1719) at not less than their respective appraised market value. All parcels proposed for sale are identified for disposal in the Three Rivers Resource Management Plan. All of the land described is within the Willamette Meridian.

Parcel No.	Legal description	Acres	Market value/minimum bid	Bidding procedures	Designated bidders
OR–57461	T. 20S., R. 35E., sec. 7, E½SE¼; sec. 8, W½SW¼.	160	$24,800	Competitive	None.
OR–57462	T. 21S., R. 31E., sec. 5, lots 5, 6, 7 and 8	109.42	15,900	Competitive	None.
OR–57463	T. 22S., R. 29E., sec. 28, W½SW¼	80	12,800	Competitive	None.
OR–57464	T. 22S., R. 33E., sec. 22, NW¼NW¼	40	3,000	Modified Competitive	Temple and Temple, Lost Springs Ranch, LLC.
OR–57465	T. 22S., R. 33E., sec. 22, SW¼SW¼	40	3,000	Modified Competitive	Temple and Temple, Lost Springs Ranch, LLC, Bailey and Barton.
OR–57466	T. 26S., R. 24E., sec. 34, NW¼NE¼	40	2,600	Competitive	None.
OR–57467	T. 25S., R. 32E., sec. 29, NE¼	160	16,600	Competitive	None.
OR–57468	T. 26S., R. 31E. (North of Malheur Lake), sec. 1, NE¼.	160	11,600	Modified Competitive	Tyler Brothers, Ralph Tice c/o Wallace M. Tice.
OR–57469	T. 26S., R. 32E. (North of Malheur Lake), sec. 6, lot 3.	40.62	3,050	Modified Competitive	Tyler Brothers, Ralph Tice c/o Wallace M. Tice, Bethany Evangelical Free Church c/o Jamie Porter.
OR–57470	T. 26S., R. 32E. (North of Malheur Lake), sec. 6, N½SE¼.	80	5,800	Modified Competitive	Tyler Brothers, Ralph Tice c/o Wallace M. Tice, William D. Cramer c/o Daniel L. Cronin.
OR–57471	T. 26S., R. 30E., (North of Harney Lake), sec. 12, SW¼SW¼; sec. 13, NW¼NW¼.	80	6,000	Competitive	None.
OR–57472	T. 26S., R. 30E., (North of Harney Lake), sec. 15, S½SE¼; sec. 22, NW¼NE¼.	120	8,400	Competitive	None.
OR–57473	T. 26S., R. 30E., (North of Harney Lake), sec. 24, NE¼SE¼.	40	3,000	Competitive	None.
OR–57474	T. 26S., R. 31E. (North of Malheur Lake), sec. 18, lot 4.	39.18	3,150	Competitive	None.
OR–57475	T. 26S., R. 34E sec. 27, N½SW¼; sec. 28, NE¼SE¼.	120	8,400	Modified Competitive	Zachary O. Sword, Nevin and Shirley Thompson, Trustees.
OR–57476	T. 26S., R. 34E., sec. 29, NE¼NE¼	40	3,200	Modified Competitive	Zachary O. Sword, Nevin and Shirley Thompson, Trustees.

Parcel No.	Legal description	Acres	Market value/minimum bid	Bidding procedures	Designated bidders
OR–57477 ...	T. 26S., R. 34E., sec. 29, SW¼NE¼	40	3,200	Modified Competitive	Zachary O. Sword, Nevin and Shirley Thompson, Trustees.

The 17 parcels described above contain 1,389.22 acres in Harney County, Oregon.

The following parcels were originally offered in 2001 and 2002 under Notices of Realty Action published in the **Federal Register** on November 16, 2000 and May 1, 2002. No bids were received and these parcels were subsequently declared unsold under the provisions of those notices. They have been reappraised and are being reoffered competitively.

Parcel No.	Legal description	Acres	Market value/Minimum bid	Bidding procedures	Designated bidders
OR–55323 ...	T. 25S., R. 31E., sec. 1, lots 1 and 2	79.79	$5,600	Competitive	None.
OR–56574 ...	T. 22S., R. 33E., sec. 28, E½	320	40,000	Competitive	None.
OR–56575 ...	T. 27S., R. 34E., sec. 6, lots 3, 4, 5, SE¼NW¼	145.56	21,100	Competitive	None.
OR–56576 ...	T. 27S., R. 34E., sec. 9, SW¼SW¼	40	3,600	Competitive	None.
OR–56577 ...	T. 27S., R. 34E., sec. 21, NE¼SE¼	40	3,200	Competitive	None.
OR–56579 ...	T. 27S., R. 34E., sec. 23, S½SW¼; sec. 26, N½NW¼	160	11,200	Competitive	None.

The six parcels described above contain 785.35 acres in Harney County, Oregon. The total area of these six parcels plus the preceding 17 parcels amount to 2,174.57 acres. The following rights, reservations, and conditions will be included in the conveyances of the land:

All parcels—A reservation for a right-of-way for ditches and canals constructed thereon by the authority of United States.

OR–56574—The sale of this parcel would be subject to a right-of-way for electric distribution line purposes granted to Harney Electric Cooperative (ORE–05183); a right-of-way for electric transmission line purposes granted to Idaho Power Company (ORE–012080); a right-of-way for buried communication cable purposes (OR–54600) and buried fiber optics facilities (OR–54915) granted to CenturyTel; a right-of-way for highway purposes granted to Oregon Department of Transportation (TD–030389); and a right-of-way for buried fiber optics facilities granted to Williams Communications, LLC (OR–54252).

OR–56575—The conveyance document for this parcel would contain a wetland/riparian covenant pursuant to the authority contained in Section (4) of Executive Order 11990 of May 24, 1977. The sale of this parcel would be subject to a right-of-way for public road purposes granted to Harney County (OR–56834).

OR–56576—The sale of this parcel would be subject to a right-of-way for power transmission and distribution line purposes granted to Harney Electric Cooperative (ORE–05183) and a right-of-way for telephone line purposes held by CenturyTel (ORE–018562).

OR–57461—The sale of this parcel would be subject to a right-of-way for electric power transmission and distribution purposes granted to Idaho Power (ORE–0874); a right-of-way for county road purposes granted to Oregon Department of Transportation, on behalf of Harney County (ORE–03347); a right-of-way for buried communication cable purposes granted to CenturyTel of Oregon, Inc. (OR–55250); a right-of-way for road purposes granted to Richard D. Boatwright, Jr. (OR–57058), and a right-of-way for road purposes granted to Charles Dunten (OR–58413).

OR–57462—The sale of this parcel would be subject to a right-of-way for electric power transmission purposes granted to Oregon Trail Electric Cooperative (ORE–016812).

OR–57463—The sale of this parcel would be subject to a right-of-way for road purposes held by Harney County (OR–20557).

OR–57467—The conveyance document for this parcel would contain a wetland/riparian covenant pursuant to the authority contained in Section (4) of Executive Order 11990 of May 24, 1977 and a floodplain covenant pursuant to the authority contained in Section 3(d) of Executive Order 11988 of May 24, 1977.

OR–57468—The conveyance document for this parcel would contain a floodplain covenant pursuant to the authority contained in Section 3(d) of Executive Order 11988 of May 24, 1977.

OR–57469—The conveyance document for this parcel would contain a floodplain covenant pursuant to the authority contained in Section 3(d) of Executive Order 11988 of May 24, 1977.

OR–57470—The conveyance document for this parcel would contain a floodplain covenant pursuant to the authority contained in Section 3(d) of Executive Order 11988 of May 24, 1977.

Access will not be guaranteed to any of the parcels that may be sold, nor will any warranty be made as to the title or use of the property in violation of applicable land use laws and regulations. Each parcel will be sold in ''as is'' condition. Before submitting a bid, prospective purchasers should check with the appropriate city or county planning department to verify approved uses. All persons, other than the successful bidders, claiming to own unauthorized improvements on the land are allowed 60 days from the date of sale to remove the improvements.

Each of the above described parcels is hereby segregated from appropriation under the public land laws, including the mining laws, until conveyance of the land pending disposition of this action, or until February 17, 2004, whichever occurs first.

Bidding Procedures

Competitive Procedures

The Federal Land Policy and Management Act and its implementing sale regulations (43 CFR part 2710) provide that competitive bidding will be

the general method of selling land supported by factors such as competitive interest, accessibility, and usability of the parcel, regardless of adjacent ownership.

Under competitive procedures the land will be sold to any qualified bidder submitting the highest bid. Bidding will be by sealed bid followed by an oral auction to be held at 2 p.m. PST on Wednesday, August 13, 2003, at the Burns District Office, Bureau of Land Management, 28910 Hwy 20 West, Hines, Oregon.

To qualify for the oral auction bidders must submit a sealed bid meeting the requirements as stated below. The highest valid sealed bid will become the starting bid for the oral auction. Bidding in the oral auction will be in minimum increments of $100. The highest bidder from the oral auction will be declared the prospective purchaser.

If no valid bids are received, the parcel will be declared unsold and offered by unsold competitive procedures on a continuing basis until sold or withdrawn from sale.

Modified Competitive Procedures

Modified competitive procedures are allowed by the regulations (43 CFR 2710.0–6(c)(3)(ii)) to provide exceptions to competitive bidding to assure compatibility with existing and potential land uses.

Under modified competitive procedures the designated bidders identified in the table above will be given the opportunity to match or exceed the apparent high bid.

The apparent high bid will be established by the highest valid sealed bid received in an initial round of public bidding. If two or more valid sealed bids of the same amount are received for the same parcel, that amount shall be determined to be the apparent high bid. The designated bidders are required to submit a valid bid in the initial round of public bidding to maintain their preference consideration. The bid deposit for the apparent high bid(s) and the designated bidders will be retained and all others will be returned.

The designated bidders will be notified by certified mail of the apparent high bid. Where there are two or more designated bidders for a single parcel, they will be allowed 30 days to provide the authorized officer with an agreement as to the division of the property or, if agreement cannot be reached, sealed bids for not less than the apparent high bid. Failure to submit an agreement or a bid shall be considered a waiver of the option to divide the property equitably and forfeiture of the preference consideration. Failure to act by all of the designated bidders will result in the parcel being offered to the apparent high bidder or being declared unsold, if no bids were received in the initial round of bidding.

Unsold Competitive Procedures

Unsold competitive procedures will be used after a parcel has been unsuccessfully offered for sale by competitive or modified competitive procedures.

Unsold parcels will be offered competitively on a continuous basis until sold. Under competitive procedures for unsold parcels the person making the highest valid bid received during the preceding month, and not less than the appraised market value at the time, will be declared the purchaser. Sealed bids will be accepted and held until the second Wednesday of each month at 2 p.m. PST when they will be opened. Bid openings will take place every month until the parcels are sold or withdrawn from sale.

All sealed bids must be submitted to the Burns District Office, no later 2 p.m. PST on Wednesday, August 13, 2003, at the time of the bid opening and oral auction. The outside of bid envelopes must be clearly marked with ''BLM Land Sale,'' the parcel number and the bid opening date. Bids must be for not less than the appraised market value (minimum bid). Separate bids must be submitted for each parcel. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Department of the Interior—BLM for not less than 20 percent of the amount bid. The bid envelope must also contain a statement showing the total amount bid and the name, mailing address, and phone number of the entity making the bid. A successful bidder for competitive parcels shall make an additional deposit at the close of the auction to bring the total bid deposit up to the required 20 percent of the high bid. Personal checks or cash will be acceptable for this additional deposit only.

Federal law requires that public land may be sold only to either (1) Citizens of the United States 18 years of age or older; (2) corporations subject to the laws of any State or of the United States; (3) other entities such as an association or a partnership capable of holding land or interests therein under the laws of the State within which the land is located; or (4) a State, State instrumentality or political subdivision authorized to hold property. Certifications and evidence to this effect will be required of the purchaser prior to issuance of a patent.

Prospective purchasers will be allowed 180 days to submit the balance of the purchase price. Failure to meet this timeframe shall cause the deposit to be forfeited to the BLM. The parcel will then be offered to the next lowest qualified bidder, or if no other bids were received, the parcel will be declared unsold.

The BLM has determined that each of the above described parcels have no known mineral values, as defined in 43 CFR 2720.0–5(b). A successful bid on a parcel constitutes an application for conveyance of these mineral interests, pertaining to that parcel, under the authority of section 209(b) of the Federal Land Policy and Management Act of 1976. In addition to the full purchase price for each parcel, a nonrefundable fee of $50 will be required from the prospective purchaser in conjunction with the purchase of the mineral interests to be conveyed simultaneously with the purchase and sale of the surface estate.

DATES: On or before July 7, 2003, any person may submit written comments regarding the proposed sale to the Three Rivers Resource Area Field Manager at the address described below. Comments or protests must reference a specific parcel and be identified with the appropriate serial number. In the absence of any objections, this proposal will become the determination of the Department of the Interior.

ADDRESSES: Comments, bids, and inquiries should be submitted to the Three Rivers Resource Area Field Manager, Bureau of Land Management, 28910 Hwy 20 West, Hines, Oregon 97738.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this public land sale is available on the Internet at <*http://www.or.blm.gov/Burns*> or may be obtained from Joan Suther, Field Manager; Skip Renchler or Holly LaChapelle, Realty Specialists, Three Rivers Resource Area at the above address, phone (541) 573–4400.

Dated: April 8, 2003.

Joan M. Suther,

Three Rivers Resource Area Field Manager.

[FR Doc. 03–12910 Filed 5–19–03; 3:15 pm]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1120–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management to meet certain administrative needs of the Bureau of Land Management. The lands we surveyed are:

The plat representing the dependent resurvey of portions of the west boundary and subdivisional lines, the subdivision of section 30, the metes-and-bounds survey of the center line of a strip of land in section 30, and the metes-and-bounds survey of Parcels A, C, and D in section 30, T. 3 N., R. 4 E., Boise Meridian, Idaho, was accepted November 13, 2001.

The plat representing the dependent resurvey of a portion of the subdivision of section 20, and the survey of the 2001 meanders of Crow Island and two unnamed islands in the Snake River, T. 7 N., R. 5 W., Boise Meridian, Idaho, was accepted December 7, 2001.

The plat representing the entire survey record of the dependent resurvey of a portion of the 1910 meander lines of the right bank of the South Fork of the Payette River, and the metes-and-bounds survey of lot 10, in section 20, T. 9 N., R. 4 E., Boise Meridian, Idaho, was accepted June 14, 2002.

The plats constituting the entire survey record of the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 26, and the metes-and-bounds survey of Parcel A and two easements in section 26, in T. 5 N., R. 1 E., Boise Meridian, Idaho, was accepted February 4, 2003.

The plats representing the dependent resurvey of a portion of the Idaho-Washington State Boundary, a portion of the subdivisional lines, and the subdivision of section 24, in T. 46 N., R. 6 W., Boise Meridian, Idaho, were accepted April 1, 2003.

The plat constituting the entire survey record of the dependent resurvey of a portion of the south and west boundaries and a portion of the subdivisional lines, designed to restore the corners in their true original locations according to the best available evidence, and a metes-and-bounds survey of a portion of the Craters of the Moon National Monument in sections 30 and 31, in T. 6 S., R. 27 E., Boise Meridian, Idaho, was accepted April 3, 2003.

The plat representing the dependent resurvey and metes-and-bounds survey of a portion of lot 13, section 31, in T. 2 N., R. 4 W., Boise Meridian, Idaho, was accepted April 14, 2003.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the 1879 meander lines of the left bank of the Snake River in section 7, and the survey of a fixed and limiting boundary in sections 7 and 18, and the survey of the 2002 meander lines of the left bank of the Snake River in sections 7 and 18, in T. 5 N., R. 38 E., Boise Meridian, Idaho, was accepted April 17, 2003.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, 30 days from the date of publication in the **Federal Register**.

The plat representing the dependent resurvey of portions of the 5½ Standard Parallel North, on the south boundary of Township 26 North, Range 1 East, the subdivisional lines, the boundaries of certain mineral and segregation surveys in sections 11, 12, and 14, the record meanders of the Salmon River in sections 2 and 11, and the subdivision of section 11, and the further subdivision of section 11, and subdivision of section 2, and survey of a portion of the 2000 meanders of the Salmon River in sections 2 and 11, and the Salmon River Scenic Easement boundary line through the S½ of the SE¼ of the NW¼ of section 2, T. 25 N., R. 1 E., Boise Meridian, Idaho, was accepted May 14, 2003.

Dated: May 16, 2003.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 03–12835 Filed 5–21–03; 8:45 am]

BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–013]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: May 29, 2003 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1033 (Preliminary) (Hydraulic Magnetic Circuit Breakers from South Africa)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on May 29, 2003; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before June 5, 2003.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: May 20, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–13052 Filed 5–20–03; 2:14 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Pursuant to 28 CFR 50.7, notice is hereby given that on April 23, 2003, a proposed Consent Decree in *United States and State of Arizona* v. *Arizona Public Service Company,* Civil Action Number 03–0767–PHX–PGR, was lodged with the United States District Court for the District of Arizona.

In the civil action, the United States and the State of Arizona alleged claims against Arizona Public Service Company (''APS'') under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607, for the recovery of costs incurred in responding to a release or threatened release of hazardous substances at and from the South Indian Bend Wash Superfund Site in Tempe, Arizona (the ''Site''). The proposed Consent Decree requires APS to pay the United States $2,320,000 and to pay the Arizona Department of Environmental Quality (''ADEQ'') $400,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the 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 and State of Arizona v. *Arizona Public Service Company,* DOJ Ref. # 90–11–2–413/3.

The Consent Decree may be examined at the Office of the United States Attorney, Two Renaissance Square, 40 N. Central, Suite 1200, Phoenix, Arizona and at U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* 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 or e-mailing a request to Tonia Fleetwood, *tonia.fleetwood@usdoj.gov,* Fax No. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–12788 Filed 5–21–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Under Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2) and 28 CFR 50.7, notice is hereby given that on May 7, 2003, a proposed consent decree in *United States* v. *Tecumseh Products Company,* Civil Action No. 03–C–0401, was lodged with the United States District Court for the Eastern District of Wisconsin.

In this action, the United States sought the implementation of response action and reimbursement of response costs pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, *et seq.,* (''CERCLA''), for costs incurred by the United States in responding to a release or threat of release of hazardous substances in the Upper River section of the Sheboygan River and Harbor Superfund Site in Sheboygan County, Wisconsin (the ''Site''). The United States alleges that Tecumseh Products Company (''Tecumseh'') arranged for disposal of hazardous substances in the Upper River portion of the Site and is liable for costs incurred by the United States in responding to releases of hazardous substances at the Site pursuant to Section 107(a)(1) of CERCLA. The Consent Decree requires Tecumseh to implement the remedial action for the Upper River portion of the Site selected by the U.S. Environmental Protection Agency in a Record of Decision dated May 12, 2000, and to reimburse the United States at least $2,100,000.00 for response costs incurred in connection with the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Tecumseh Products Company,* DOJ Ref. #90–11–2–06440. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003 of RCRA, 42 U.S.C. § 6973(d).

The proposed consent decree may be examined at the office of the United States Attorney, 517 E. Wisconsin Avenue, Suite 530, Milwaukee, Wisconsin 53202, and the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604. During the public comment period, the proposed consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed 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 or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $51.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–12787 Filed 5–21–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of the ''VEPCO'' Proposed Consent Decree Under the Clean Air Act

Notice is hereby given that on April 21, 2003, a proposed Consent Decree (''proposed Decree'') in *United States* v. *Virginia Electric and Power Co. (''VEPCO''),* Civil Action No. 03–517–A, was lodged with the United States District Court for the Eastern District of Virginia.

In this civil enforcement action under the federal Clean Air Act (''Act''), the United States alleges that VEPCO—an electric utility—failed to comply with certain requirements of the Act intended to prevent deterioration of air quality. The complaint alleges that for some of the units at two of its coal-fired, energy generation stations—Mount Storm (located in northeastern West Virginia) and Chesterfield (located in Chesterfield County, Virginia)—VEPCO failed to seek permits prior to making major modifications to units at those stations and also failed to install appropriate pollution control devices to reduce emissions of air pollutants from units at those stations. The complaint seeks both injunctive relief and civil penalty.

The proposed Decree lodged with the Court addresses units at the Mount Storm and Chesterfield Stations as well as units at these other energy generation stations owned or operated by VEPCO: Bremo Power Station (in Fluvanna County, Virginia), Chesapeake Energy Center (near Chesapeake, Virginia), Clover Power Station (in Halifax County, Virginia), North Branch Power Station (in northeastern West Virginia), Possum Point Power Station (about 25 miles south of Washington, D.C.), and Yorktown Power Station (in Yorktown, Virginia).

The proposed Decree requires installation, upgrading, and operation of pollution control devices on a number of the units at these various VEPCO generation stations on a schedule running through 2012. Some of the control and emission requirements and conditions specified by the proposed Decree cover particular units while others address the aggregate performance of the units subject to the proposed Decree.

VEPCO also will carry out under the Decree a series of environmental mitigation projects. They are described in the proposed Decree and are valued at about $13.9 million. VEPCO also will pay the United States a civil penalty of $5.3 million.

Joining in the proposed Decree as co-plaintiffs are the States of New York,

New Jersey, Connecticut, and West Virginia, as well as the Commonwealth of Virginia.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed 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. *Virginia Electric and Power Co.,* D.J. Ref. 90–5–2–1–07122.

The proposed Decree may be examined at the offices of the United States Attorney, Eastern Division of Virginia, 2100 Jamieson Avenue, Alexandria, Virginia, and at the offices of U.S. EPA, Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029.

During the public comment period, the proposed Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed 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 or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $29.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas A. Mariani, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–12789 Filed 5–21–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day Notice of Information Collection Under Review: Extension of a currently approved collection, Bioterrorism Preparedness Act: Entity/Individual Information.

The Department of Justice, Federal Bureau of Investigation has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 42, page 10268 on March 4, 2003, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 23, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulation Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Bioterrorism Preparedness Act: Entity/Individual Information.

(3) The agency form number, if any, and the applicable component of the department sponsoring the collection: FD–961 (2–24–03), Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary: Individuals or households. Other. Business or other for profit; Not-for-profit institutions; State, Local or Tribal Government. The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 is designed to prevent bioterrorism and other public health emergencies. The law requires entities and persons possessing agents or toxins deemed to be a severe threat to human, animal or plant health, or to animal or plant products, to be registered with the Secretary of Agriculture or Secretary of Health and Human Resources. Under the act the Attorney General has the responsibility to determine whether any individual is a restricted person, as that term is defined in 18 U.S.C. 175b(d) or is reasonably suspected by any Federal law enforcement or intelligence agency of committing a Federal crime of terrorism, or having knowing involvement with an organization that engages in domestic or international terrorism, or with any other organization that engages in intentional crimes of violence; or an agent of a foreign power. The Attorney General delegated this responsibility to the Federal Bureau of Investigation (FBI). The collection of this information is necessary for the FBI to make the required determination.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply. It is estimated 20,000 entities/individuals will complete the information in approximately 30 minutes.

(6) An estimate of the total public burden (in hours) associated with the collection: The estimated public burden associated with this application is 10,000 hours.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: May 14, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03–12782 Filed 5–21–03; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11004, et al.]

Proposed Exemptions; Deutsche Bank AG (DB)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the notice of proposed exemption, within 45 days from the date of publication of this **Federal Register** notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each notice of proposed exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *''moffitt.betty@dol.gov'',* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Deutsche Bank AG (DB), located in Germany, with affiliates in New York, New York and other locations; and JPMorgan Chase Bank, located in New York, New York; (collectively, with their Affiliates, the Applicants). (Application Nos. D–11004 and D–11106).

Proposed Exemption

Under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990), the Department is considering amending the following individual prohibited transaction exemptions (PTEs) and authorization made pursuant to PTE 96–62 (61 FR 39988, July 31, 1996—referred to herein as ''EXPRO''): PTE 2000–25 (65 FR 35129, June 1, 2000), issued to Morgan Guaranty Trust Company of New York and J.P. Morgan Investment Management, Inc., and PTE 2000–27, issued to the Chase Manhattan Bank (65 FR 35129, June 1, 2000), and Final Authorization Number (FAN) 2001–19E, issued to DB and its Affiliates (June 23, 2001).[1]

Section I—Transactions

If the proposed exemption is granted, the restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the purchase of any securities by the Asset Manager on behalf of employee benefit plans (Client Plans), including Client Plans investing in a pooled fund (Pooled Fund), for which the Asset Manager acts as a fiduciary, from any person other than the Asset Manager or an affiliate thereof, during the existence of an underwriting or selling syndicate with respect to such securities, where the Affiliated Broker-Dealer is a manager or member of such syndicate (an ''affiliated underwriter transaction'' (AUT)), and/or where an Affiliated Trustee serves as trustee of a trust that issued the securities (whether or not debt securities) or serves as indenture trustee of securities that are debt securities (an ''affiliated trustee transaction'' (ATT)), provided that the following conditions are satisfied:

(a) The securities to be purchased are—

(1) Either:

(i) Part of an issue registered under the Securities Act of 1933 (the 1933 Act) (15 U.S.C. 77a *et. seq.*) or, if exempt from such registration requirement, are (A) issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States, (B) issued by a bank, (C) exempt from such registration requirement pursuant to a Federal statute other than the 1933 Act, or (D) are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 781), and the issuer of which has been subject to the reporting requirements of section 13 of that Act (15 U.S.C. 78m) for a period of at least 90 days immediately preceding the sale of securities and has filed all

[1] *See also* PTE 2000–26 (65 FR 35129, June 1, 2000), issued to Goldman, Sachs & Co., and its Affiliates; PTE 2000–29 (65 FR 35129, June 1, 2000), issued to Morgan Stanley Dean Witter & Co. and its Affiliates; FAN 2001–24E (October 6, 2001), issued to Barclays Global Investors N.A., Barclays Capital, Inc. and their Affiliates; and FAN 2002–09E (September 14, 2002), issued to The TCW Group, Inc., and its Affiliates. The Department will separately consider similar amendments to those exemptions and authorizations upon the receipt of applications or submissions relating thereto from such entities.

reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding 12 months; or

(ii) Part of an issue that is an ''Eligible Rule 144A Offering,'' as defined in SEC rule 10f–3 (17 CFR 270.10f–3(a)(4)). Where the Eligible Rule 144A Offering is of equity securities, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum;

(2) Purchased prior to the end of the first day on which any sales are made, at a price that is not more than the price paid by each other purchaser of securities in that offering or in any concurrent offering of the securities, except that —

(i) If such securities are offered for subscription upon exercise of rights, they may be purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(ii) If such securities are debt securities, they may be purchased at a price that is not more than the price paid by each other purchaser of securities in that offering or in any concurrent offering of the securities and may be purchased on a day subsequent to the end of the first day on which any sales are made, provided that the interest rates on comparable debt securities offered to the public subsequent to the first day and prior to the purchase are less than the interest rate of the debt securities being purchased; and

(3) Offered pursuant to an underwriting or selling agreement under which the members of the syndicate are committed to purchase all of the securities being offered, except if—

(i) Such securities are purchased by others pursuant to a rights offering; or

(ii) Such securities are offered pursuant to an over-allotment option.

(b) The issuer of such securities has been in continuous operation for not less than three years, including the operation of any predecessors, unless —

(1) Such securities are non-convertible debt securities rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization, *i.e.*, Standard & Poor's Rating Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors (collectively, the Rating Organizations); or

(2) Such securities are issued or fully guaranteed by a person described in paragraph (a)(1)(i)(A) of this exemption; or

(3) Such securities are fully guaranteed by a person who has issued securities described in (a)(1)(i)(B), (C), or (D), and who has been in continuous operation for not less than three years, including the operation of any predecessors.

(c) The amount of such securities to be purchased by the Asset Manager on behalf of a Client Plan does not exceed three percent of the total amount of the securities being offered. Notwithstanding the foregoing, the aggregate amount of any securities purchased with assets of all Client Plans (including Pooled Funds) managed by the Asset Manager (or with respect to which the Asset Manager renders investment advice within the meaning of 29 CFR 2510.3–21(c)) does not exceed:

(1) 10 percent of the total amount of any equity securities being offered;

(2) 35 percent of the total amount of any debt securities being offered that are rated in one of the four highest rating categories by at least one of the Rating Organizations; or

(3) 25 percent of the total amount of any debt securities being offered that are rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations; and

(4) If purchased in an Eligible Rule 144A Offering, the total amount of the securities being offered for purposes of determining the percentages for (1)-(3) above is the total of:

(i) The principal amount of the offering of such class sold by underwriters or members of the selling syndicate to ''qualified institutional buyers'' (QIBs), as defined in SEC rule 144A (17 CFR 230.144A(a)(1)); plus

(ii) The principal amount of the offering of such class in any concurrent public offering.

(d) The consideration to be paid by the Client Plan in purchasing such securities does not exceed three percent of the fair market value of the total net assets of the Client Plan, as of the last day of the most recent fiscal quarter of the Client Plan prior to such transaction.

(e) The transaction is not part of an agreement, arrangement, or understanding designed to benefit the Asset Manager or an affiliate.

(f) If the transaction is an AUT, the Affiliated Broker-Dealer does not receive, either directly, indirectly, or through designation, any selling concession or other consideration that is based upon the amount of securities purchased by Client Plans pursuant to this exemption. In this regard, the Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation that is attributable to the fixed designations generated by purchases of securities by the Asset Manager on behalf of its Client Plans.

(g) If the transaction is an AUT,

(1) The amount the Affiliated Broker-Dealer receives in management, underwriting or other compensation is not increased through an agreement, arrangement, or understanding for the purpose of compensating the Affiliated Broker-Dealer for foregoing any selling concessions for those securities sold pursuant to this exemption. Except as described above, nothing in this paragraph shall be construed as precluding the Affiliated Broker-Dealer from receiving management fees for serving as manager of the underwriting or selling syndicate, underwriting fees for assuming the responsibilities of an underwriter in the underwriting or selling syndicate, or other consideration that is not based upon the amount of securities purchased by the Asset Manager on behalf of Client Plans pursuant to this exemption; and

(2) The Affiliated Broker-Dealer shall provide to the Asset Manager a written certification, signed by an officer of the Affiliated Broker-Dealer, stating the amount that the Affiliated Broker-Dealer received in compensation during the past quarter, in connection with any offerings covered by this exemption, was not adjusted in a manner inconsistent with section I, paragraphs (e), (f), or (g), of this exemption.

(h) In the case of a single Client Plan, the covered transaction is performed under a written authorization executed in advance by an independent fiduciary (Independent Fiduciary) of the Client Plan.

(i) Prior to the execution of the written authorization described in paragraph (h) above, the following information and materials (which may be provided electronically) must be provided by the Asset Manager to the Independent Fiduciary of each single Client Plan:

(1) A copy of the notice of proposed exemption and of the final exemption, if granted, as published in the **Federal Register**; and

(2) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests.

(j) Subsequent to an Independent Fiduciary's initial authorization permitting the Asset Manager to engage in the covered transactions on behalf of a single Client Plan, the Asset Manager will continue to be subject to the requirement to provide any reasonably available information regarding the covered transactions that the Independent Fiduciary requests.

(k) In the case of existing plan investors in a Pooled Fund, such Pooled Fund may not engage in any covered

transactions pursuant to this exemption, unless the Asset Manager has provided the written information described below to the Independent Fiduciary of each plan participating in the Pooled Fund. The following information and materials (which may be provided electronically) shall be provided not less than 45 days prior to the Asset Manager's engaging in the covered transactions on behalf of the Pooled Fund pursuant to the exemption:

(1) A notice of the Pooled Fund's intent to purchase securities pursuant to this exemption and a copy of the notice of proposed exemption and of the final exemption, if granted, as published in the **Federal Register**;

(2) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests; and

(3) A termination form expressly providing an election for the Independent Fiduciary to terminate the plan's investment in the Pooled Fund without penalty to the plan. Such form shall include instructions specifying how to use the form. Specifically, the instructions will explain that the plan has an opportunity to withdraw its assets from the Pooled Fund for a period at least 30 days after the plan's receipt of the initial notice described in subparagraph (1) above and that the failure of the Independent Fiduciary to return the termination form by the specified date shall be deemed to be an approval by the plan of its participation in covered transactions as a Pooled Fund investor. Further, the instructions will identify the Asset Manager and its Affiliated Broker-Dealer and/or Affiliated Trustee and state that this exemption may be unavailable unless the Independent Fiduciary is, in fact, independent of those persons. Such fiduciary must advise the Asset Manager, in writing, if it is not an ''independent Fiduciary,'' as that term is defined in section II(g) of this exemption.

For purposes of this paragraph, the requirement that the authorizing fiduciary be independent of the Asset Manager shall not apply in the case of an in-house plan sponsored by the Applicants or an affiliate thereof. However, in-house plans must notify the Asset Manager, as provided above.

(l) In the case of a plan whose assets are proposed to be invested in a Pooled Fund subsequent to implementation of the procedures to engage in the covered transactions, the plan's investment in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary, following the receipt by the Independent Fiduciary of the materials described in subparagraphs (1) and (2) of paragraph (k). For purposes of this paragraph, the requirement that the authorizing fiduciary be independent of the Asset Manager shall not apply in the case of an in-house plan sponsored by the Applicants or an affiliate thereof.

(m) Subsequent to an Independent Fiduciary's initial authorization of a plan's investment in a Pooled Fund that engages in the covered transactions, the Asset Manager will continue to be subject to the requirement to provide any reasonably available information regarding the covered transactions that the Independent Fiduciary requests.

(n) At least once every three months, and not later than 45 days following the period to which such information relates, the Asset Manager shall:

(1) Furnish the Independent Fiduciary of each single Client Plan, and of each plan investing in a Pooled Fund, with a report (which may be provided electronically) disclosing all securities purchased on behalf of that Client Plan or Pooled Fund pursuant to the exemption during the period to which such report relates, and the terms of the transactions, including:

(i) The type of security (including the rating of any debt security);

(ii) The price at which the securities were purchased;

(iii) The first day on which any sale was made during this offering;

(iv) The size of the issue;

(v) The number of securities purchased by the Asset Manager for the specific Client Plan or Pooled Fund;

(vi) The identity of the underwriter from whom the securities were purchased;

(vii) In the case of an AUT, the spread on the underwriting;

(viii) In the case of an ATT, the basis upon which the Affiliated Trustee is compensated;

(ix) The price at which any such securities purchased during the period were sold; and

(x) The market value at the end of such period of each security purchased during the period and not sold;

(2) Provide to the Independent Fiduciary in the quarterly report (i) in the case of AUTs, a representation that the Asset Manager has received a written certification signed by an officer of the Affiliated Broker-Dealer, as described in paragraph (g)(2), affirming that, as to each AUT covered by this exemption during the past quarter, the Affiliated Broker-Dealer acted in compliance with section I, paragraphs (e), (f), and (g) of this exemption, and that copies of such certifications will be provided to the Independent Fiduciary upon request, and (ii) in the case of ATTs, a representation of the Asset Manager affirming that, as to each ATT, the transaction was not part of an agreement, arrangement or understanding designed to benefit the Affiliated Trustee;

(3) Disclose to the Independent Fiduciary that, upon request, any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests will be provided, including, but not limited to:

(i) The date on which the securities were purchased on behalf of the plan;

(ii) The percentage of the offering purchased on behalf of all Client Plans and Pooled Funds; and

(iii) The identity of all members of the underwriting syndicate;

(4) Disclose to the Independent Fiduciary in the quarterly report, any instance during the past quarter where the Asset Manager was precluded for any period of time from selling a security purchased under this exemption in that quarter because of its status as an affiliate of the Affiliated Broker-Dealer or of an Affiliated Trustee and the reason for this restriction;

(5) Provide explicit notification, prominently displayed in each quarterly report, to the Independent Fiduciary of a single Client Plan, that the authorization to engage in the covered transactions may be terminated, without penalty, by the Independent Fiduciary on no more than five days' notice by contacting an identified person; and

(6) Provide explicit notification, prominently displayed in each quarterly report, to the Independent Fiduciary of a Client Plan investing in a Pooled Fund, that the Independent Fiduciary may terminate investment in the Pooled Fund, without penalty, by contacting an identified person.

(o) Each single Client Plan shall have total net assets with a value of at least $50 million. In addition, in the case of a transaction involving an Eligible Rule 144A Offering on behalf of a single Client Plan, each such Client Plan shall have at least $100 million in securities, as determined pursuant to SEC rule 144A (17 CFR 230.144A).[2] In the case of

[2] SEC rule 10f-3(a)(4), 17 CFR 270.10f-3(a)(4), states that the term ''Eligible Rule 144A Offering'' means an offering of securities that meets the following conditions:

(i) The securities are offered or sold in transactions exempt from registration under section 4(2) of the Securities Act of 1933 (15 U.S.C. 77d(d)), rule 144A thereunder (§ 230.144A of this chapter), or rules 501–508 thereunder (§§ 230.501–230–508 of this chapter);

(ii) The securities are sold to persons that the seller and any person acting on behalf of the seller reasonably believe to include qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter; and

a Pooled Fund, the $50 million requirement will be met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by plans having total net assets with a value of at least $50 million. For purchases involving an Eligible Rule 144A Offering on behalf of a Pooled Fund, the $100 million requirement will be met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by plans having at least $100 million in assets and the Pooled Fund itself qualifies as a QIB, as determined pursuant to SEC rule 144A (17 CFR 230.144A(a)(F)).

For purposes of the net asset tests described above, where a group of Client Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $50 million net asset requirement or the $100 million net asset requirement may be met by aggregating the assets of such Client Plans, if the assets are pooled for investment purposes in a single master trust.

(p) The Asset Manager qualifies as a ''qualified professional asset manager'' (QPAM), as that term is defined under part V(a) of Prohibited Transaction Exemption 84–14 (49 FR 9494, 9506, March 13, 1984) and, in addition, has, as of the last day of its most recent fiscal year, total client assets under its management and control in excess of $5 billion and shareholders' or partners' equity in excess of $1 million.

(q) No more than 20 percent of the assets of a Pooled Fund, at the time of a covered transaction, are comprised of assets of employee benefit plans maintained by the Asset Manager, the Affiliated Broker-Dealer, the Affiliated Trustee or an affiliate thereof for their own employees, for which the Asset Manager, the Affiliated Broker-Dealer, or an affiliate exercises investment discretion.

(r) The Asset Manager, and the Affiliated Broker-Dealer, as applicable, maintain, or cause to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in paragraph (s) of this proposed exemption to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to a Client Plan, other than the Asset Manager and the Affiliated Broker-Dealer or Affiliated Trustee, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required by paragraph (s); and

(2) This record-keeping condition shall not be deemed to have been violated if, due to circumstances beyond the control of the Asset Manager or the Affiliated Broker-Dealer, or Affiliated Trustee, as applicable, such records are lost or destroyed prior to the end of the six-year period.

(s)(1) Except as provided in subparagraph (2) of this paragraph (s) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (r) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the SEC; or

(ii) Any fiduciary of a Client Plan, or any duly authorized employee or representative of such fiduciary; or

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Client Plan, or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of a Client Plan, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraphs (s)(1)(ii)—(iv) shall be authorized to examine trade secrets of the Asset Manager or the Affiliated Broker-Dealer, or the Affiliated Trustee or commercial or financial information which is privileged or confidential; and

(3) Should the Asset Manager or the Affiliated Broker-Dealer or the Affiliated Trustee refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (s)(2) above, the Asset Manager shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

(t) An indenture trustee whose affiliate has, within the prior 12 months, underwritten any securities for an obligor of the indenture securities will resign as indenture trustee if a default occurs upon the indenture securities.

Section II—Definitions

(a) The term ''Asset Manager'' means any asset management affiliate of the Applicants (as ''affiliate'' is defined in paragraph (c)) that meets the requirements of this proposed exemption.

(b) The term ''Affiliated Broker-Dealer'' means any broker-dealer affiliate of the Applicants (as ''affiliate'' is defined in paragraph (c)) that meets the requirements of this exemption. Such Affiliated Broker-Dealer may participate in an underwriting or selling syndicate as a manager or member. The term ''manager'' means any member of an underwriting or selling syndicate who, either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the securities being offered, or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

(c) The term ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such person;

(2) Any officer, director, partner, employee, or relative (as defined in section 3(15) of the Act) of such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(d) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) The term ''Client Plan'' means an employee benefit plan that is subject to the fiduciary responsibility provisions of the Act and whose assets are under the management of the Asset Manager, including a plan investing in a Pooled Fund (as ''Pooled Fund'' is defined in paragraph (f) below).

(f) The term ''Pooled Fund'' means a common or collective trust fund or pooled investment fund maintained by the Asset Manager.

(g)(1) The term ''Independent Fiduciary'' means a fiduciary of a Client Plan who is unrelated to, and independent of, the Asset Manager, the Affiliated Broker-Dealer and the Affiliated Trustee. For purposes of this exemption, a Client Plan fiduciary will be deemed to be unrelated to, and independent of, the Asset Manager, the Affiliated Broker-Dealer and the Affiliated Trustee if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for transactions described in section I, is an officer, director, or

(iii) The seller and any person acting on behalf of the seller reasonably believe that the securities are eligible for resale to other qualified institutional buyers pursuant to § 230.144A of this chapter.

highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Asset Manager, the Affiliated Broker-Dealer or the Affiliated Trustee and represents that such fiduciary shall advise the Asset Manager if those facts change.

(2) Notwithstanding anything to the contrary in this section II(g), a fiduciary is not independent if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Asset Manager, the Affiliated Broker-Dealer or the Affiliated Trustee;

(ii) Such fiduciary directly or indirectly receives any compensation or other consideration from the Asset Manager, the Affiliated Broker-Dealer or the Affiliated Trustee for his or her own personal account in connection with any transaction described in this exemption;

(iii) Any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Asset Manager, responsible for the transactions described in section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Client Plan sponsor or of the fiduciary responsible for the decision to authorize or terminate authorization for transactions described in section I. However, if such individual is a director of the Client Plan sponsor or of the responsible fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's investment manager/adviser and (B) the decision to authorize or terminate authorization for transactions described in section I, then section II (g)(2)(iii) shall not apply.

(3) The term ''officer'' means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

(4) In the case of existing Client Plans in a Pooled Fund, at the time the Asset Manager provides such Client Plans with initial notice pursuant to this exemption, the Asset Manager will notify the fiduciaries of such Client Plans that they must advise the Asset Manager, in writing, if they are not independent, within the meaning of this section II (g).

(h) The term ''security'' shall have the same meaning as defined in section 2(36) of the Investment Company Act of 1940 (the 1940 Act), as amended (15 U.S.C. 80a–2(36)(1996)). For purposes of this exemption, mortgage-backed or other asset-backed securities rated by a Rating Organization will be treated as debt securities.

(i) The term ''Eligible Rule 144A Offering'' shall have the same meaning as defined in SEC rule 10f–3(a)(4) (17 CFR 270.10f–3(a)(4)) under the 1940 Act.

(j) The term ''qualified institutional buyer'' or ''QIB'' shall have the same meaning as defined in SEC rule 144A (17 CFR 230.144A(a)(1)) under the 1933 Act.

(k) The term ''Rating Organizations'' means Standard & Poor's Rating Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors.

(l) The term ''Affiliated Trustee'' means the Applicants and any bank or trust company affiliate of the Applicants (as ''affiliate'' is defined in paragraph (c)(1)) that serves as trustee of a trust that issues securities which are asset-backed securities or as indenture trustee of securities which are either asset-backed securities or other debt securities that meet the requirements of this proposed exemption. For purposes of this proposed exemption, other than section I(t), performing services as custodian, paying agent, registrar or in similar ministerial capacities is also considered serving as trustee or indenture trustee.

Preamble

This document contains a notice of pendency before the Department of a proposed individual exemption which, if granted, would amend: PTE 2000–25, issued to Morgan Guaranty Trust Company of New York and J.P. Morgan Investment Management, Inc. (65 FR 35129, June 1, 2000), PTE 2000–27, issued to the Chase Manhattan Bank (65 FR 35129, June 1, 2000), and FAN 2001–19E, issued to DB and its Affiliates (June 23, 2001), pursuant to EXPRO. The exemptions, and EXPRO authorization, respectively, permit purchases of securities by the Applicants' asset management affiliate on behalf of employee benefit plans for which such asset management affiliate is a fiduciary, from underwriting or selling syndicates where the Applicants' broker-dealer affiliate participates as a manager or syndicate member. If granted, this proposed amendment would permit a plan's asset manager to acquire securities, on behalf of the plan, in an initial public offering (IPO) when it or its affiliate is the trustee, indenture trustee or a similar functionary for the trust which issued the securities. Thus, the relief requested is designed to cover acquisitions of asset-backed securities by plans where the plans' asset manager is affiliated with such a trustee for an issuing trust, as described herein. If adopted, this proposed amendment would affect the participants and beneficiaries of the plans involved in such transactions and the fiduciaries with respect to such plans.

Summary of Facts and Representations

The facts and representations contained in the applications are summarized below. Interested persons are referred to the applications on file with the Department (*see* D–11004 and D–11106) for the complete representations of the Applicants.

1. DB is a German banking corporation and a leading commercial bank, with total assets of 928,994 million euros and shareholders equity of 43,683 million euros, as of 2001. DB and its Affiliates (including the New York Branch of Deutsche Bank (DBNY)) provide a wide range of banking, fiduciary, record keeping, custodial, brokerage and investment services to corporations, institutions, governments, employee benefit plans, governmental retirement plans and private investors worldwide. DB is regulated by the Bundesanstalt fuer Finanzdienstleistungsaufsicht (the ''BAFin'') in Germany.

2. Deutsche Bank Trust Company Americas (''DBTCA'') is a New York banking corporation and member bank of the U.S. Federal Reserve System. Deutsche Asset Management, Inc. (''DeAM Inc.'') is an investment adviser registered under the Investment Advisors Act of 1940. Both DBTCA and DeAM Inc. are indirect wholly-owned subsidiaries of DB. DBTCA and DeAM Inc., among other DB Affiliates, provide investment management and investment advisory services to plans covered by the Act. Hereinafter, DB, DBTCA, and DeAM Inc., and their other current and future asset management affiliates, shall be collectively referred to as the ''Asset Manager'' when discussing DB's activities relating to investment management or investment advisory services. Collectively, assets under management by DB and its Affiliates through collective trusts, separately managed accounts, and mutual funds currently exceed $585 billion.

3. Deutsche Banc Securities, Inc., a wholly-owned subsidiary of DB, is a registered broker-dealer (hereinafter, collectively with any other current and future broker-dealer affiliates, the ''Affiliated Broker-Dealer'') and regulated by the United States Securities & Exchange Commission (''SEC'') under Section 15 of the Securities Exchange Act of 1934. The Affiliated Broker-Dealer serves, and engages in

transactions with, plans covered by the Act.

4. J.P. Morgan Chase & Co. (''J.P. Morgan Chase'') is a financial holding company incorporated under Delaware law in 1968 and headquartered in New York, New York. As of December 31, 2001, after giving effect to the merger referred to below, J.P. Morgan Chase was the second largest banking institution in the United States, with approximately $694 billion in assets and approximately $41 billion in stockholders' equity. On December 31, 2000, J.P. Morgan & Co. Incorporated merged with and into The Chase Manhattan Corporation. Upon completion of the merger, The Chase Manhattan Corporation changed its name to ''J.P. Morgan Chase & Co.''

J.P. Morgan Chase is a global financial services firm with operations in over 60 countries, and has as its principal bank subsidiaries: JPMorgan Chase Bank, a New York banking corporation headquartered in New York City, which was formed in November 2001 by the merger of The Chase Manhattan Bank and Morgan Guaranty Trust Company of New York; and Chase Manhattan Bank USA, National Association, headquartered in Delaware.

The principal non-bank subsidiary of J.P. Morgan Chase is its investment bank subsidiary, J.P. Morgan Securities Inc. (''J.P. Morgan Securities''). J.P. Morgan Investment Management Inc. (''JPMIM'') is a wholly-owned subsidiary of J.P. Morgan Chase. J.P. Morgan Fleming Asset Management (USA) Inc. (JPMFAM), which was formerly known as Chase Asset Management, Inc., is a wholly-owned subsidiary of JPMorgan Chase Bank.

The activities of J.P. Morgan Chase are internally organized, for management reporting purposes, into five major businesses:

- Investment Banking, which includes securities underwriting and financial advisory, trading, mergers and acquisitions advisory, and corporate lending and syndication businesses;
- Investment Management and Private Banking, which includes an asset management business, including mutual funds; institutional money management and cash management businesses; and a private bank, which provides wealth management solutions for a global client base of individuals and families;
- Treasury & Securities Services, which provides information and transaction processing services, and moves securities and cash daily for its wholesale clients. Treasury & Securities Services includes custody, cash management, investor and institutional trust service businesses;
- J.P. Morgan Partners, a large and diversified private equity investment firm, with total funds under management in excess of $30 billion; and
- Retail and Middle Market Financial Services, which serves over 30 million consumers, small business and middle-market customers nationwide. Retail and Middle Market Financial Services offers a wide variety of financial products and services, including consumer banking, credit cards, mortgage services and consumer finance services, through a diverse array of distribution channels, including the internet and branch and ATM networks.

Requested Exemption

5. The Applicants seek to amend existing individual exemptions (*i.e.*, PTE 2000–25 (JP Morgan); PTE 2000–27 (Chase)) and an authorization made pursuant to PTE 96–62 a/k/a/ EXPRO (*i.e.*, FAN 2001–19E (DB)) that deal with the situation where an Asset Manager seeks to purchase securities for an employee benefit plan, in an initial offering, where the Asset Manager's Affiliate is a manager or member of the underwriting syndicate for such securities. Such a transaction is described herein as an Affiliated Underwriter Transaction or ''AUT''. The amendment proposed by the Applicants would add relief for two other transactions: (i) Where the Asset Manager is related to the trustee of the trust that issued the securities being underwritten or the indenture trustee of securities that are debt securities but its Affiliated Broker-Dealer is not part of the underwriting syndicate (*i.e.*, an Affiliated Trustee Transaction or ''ATT''); and (ii) where the Asset Manager is related both to the trustee and to a member or manager of the underwriting syndicate (*i.e.*, both an ''AUT'' and an ''ATT'' at the same time).

Therefore, the Applicants represent that the exemption, if granted, could be used in any of the following circumstances:

(i) Where an Asset Manager seeks to purchase securities (equities, debt, or asset-backed securities, regardless of whether the latter are treated for tax purposes as equity or debt) in an initial offering where an Affiliate of the Asset Manager is a manager or member of the underwriting syndicate but where, in the case of a debt security or an asset-backed security, the trustee or indenture trustee is an unaffiliated entity;

(ii) Where an Asset Manager seeks to purchase securities (debt or asset-backed securities, regardless of whether the latter are treated for tax purposes as equity or debt) in an initial offering where an Affiliate of the Asset Manager is the trustee or indenture trustee but where no member or manager of the underwriting syndicate is an Affiliate of the Asset Manager; or

(iii) Where an Asset Manager seeks to purchase securities (debt or asset-backed securities, regardless of whether the latter are treated for tax purposes as equity or debt) in an initial offering where an Affiliate of the Asset Manager is both the trustee or indenture trustee and a manager or member of the underwriting syndicate.

In such instances involving an ''AUT'', the exemption (if granted) would permit an Asset Manager to purchase for its Client Plans, or Pooled Funds, securities in an initial public offering (*i.e.*, an IPO) from underwriting or selling syndicates in which the Affiliated Broker-Dealer participates as a manager or member. In such instances involving an ''ATT'', DB or JPMorgan Chase Bank or an Affiliate of either, will act as a trustee, indenture trustee, or similar functionary (collectively, a ''Trustee'') with respect to the issuer of the securities (*i.e.*, a trust). The Applicants state that all such purchases of securities, whether in an ''AUT'' or ''ATT'' or both, would be made from an underwriter or broker-dealer other than the Affiliated Broker-Dealer and that the Affiliated Broker-Dealer would not receive any selling concessions with respect to the securities sold to Client Plans. Thus, the proposed exemption would not cover any purchases of securities for a plan by an Asset Manager directly from the Asset Manager's Affiliate.[3]

6. The Applicants represent that where the Affiliated Broker-Dealer is a member of an underwriting or selling syndicate, the Asset Manager generally makes purchases of securities for its Client Plans in compliance with part III of PTE 75–1, 40 FR 50845 (October 31, 1975). PTE 75–1, part III, provides a class exemption, under certain conditions, for a plan fiduciary to purchase securities from an underwriting or selling syndicate of which the fiduciary or an affiliate is a member. However, relief under PTE 75–1 is unavailable if the fiduciary or its affiliate is a manager of the underwriting or selling syndicate.

7. PTE 2000–25, PTE 2000–27 and FAN 2001–19E expanded the relief

[3] With respect to possible acquisitions of asset-backed securities that could be made by plans in the secondary market, where the plans' asset manager has an affiliate that acts as a sub-servicer for the issuing trust, *see* DOL Adv. Op. 99–03A (January 25, 1999).

afforded under PTE 75–1 to, among other things, situations where the Affiliated Broker-Dealer is a manager of the underwriting or selling syndicate. However, neither PTE 75–1, PTE 2000–25, PTE 2000–27 nor FAN 2001–19E currently addresses the situation where the fiduciary or its affiliate serves as Trustee with respect to a trust that is the issuer of the securities. Such trusts are normally associated with so-called asset-backed securities (ABS). ABS are usually issued as certificates representing an undivided interest in a trust which holds a portfolio of assets (*e.g.*, secured consumer receivables or credit instruments that bear interest).[4]

With respect to the types of Trustees that would be covered by the proposed exemption, the Applicants state that in asset-backed securities, which are structured as pass-through securities, there is generally a trustee of the pool of assets. In certain transactions, such as offerings of collateralized bond obligations (CBOs), there may also be an indenture trustee to hold the debt obligation of the obligor. In more traditional public debt offerings, there is generally only an indenture trustee, who holds the debt obligation of the obligor, holds any assets pledged as collateral to secure payment of the debt obligation, makes required payments and keeps records, and in the event of a default, acts for the note holders. The Applicants represent that the functions and obligations of an indenture trustee are aligned with the interests of the note holders because such a trustee is generally appointed only to perform such ministerial functions (*i.e.*, hold collateral, maintain records, and make payments when due). In this regard, the proposed exemption would also cover situations where an Asset Manager's Affiliate serves as a custodian, paying agent, registrar or other similar ministerial capacities (see Definition of ''Affiliated Trustee'' in section II(l) above).

8. The Applicants state that the Affiliated Broker-Dealer is frequently involved in offerings of ABS and other securities where the Asset Manager or its Affiliate serves as a Trustee for the trust which issues such securities. The inability of the Asset Manager to purchase ABS or other securities for its Client Plans in such cases can be detrimental to those accounts because the accounts can lose important fixed-income investment opportunities that are relatively less expensive or qualitatively better than other available opportunities in such securities.

9. The Applicants represent that the frequency of such offerings of ABS or other securities results from consolidation in the banking industry and the attendant reduction in the number of banks participating in the corporate trust business. Many factors that have made participation in the trust business less attractive to banks have contributed to this trend. On the income side, these factors include competitive pressure on pricing corporate trust services and loss of transactional fees and traditional ''float'' income due to the growth in book entry securities. On the expense side, the Applicants represent that the cost of entry into the corporate trust business and the cost of remaining competitive in the business have increased dramatically. This increase includes both technological and personnel costs which are necessary to remain competitive. The cost increase is particularly acute in the structured finance sector of the corporate trust business, where both systems and staff need to have the capability of supporting increasingly complex transactions.

10. The Applicants represent that equally significant are the changes in the securities underwriting business, including increased participation by banks and bank affiliates, and consolidation within the industry. In 1990, Morgan Guaranty was the only bank in the corporate trust business that also had a significant underwriting affiliate. By 2000, four of the top ten underwriters for structured finance transactions, such as ABS, had affiliated corporate trust businesses. Eight of the top ten trustees of trusts issuing ABS, a group with a combined market share of over 76 percent in 2000, were affiliates of underwriters active in the structured finance sector.[5]

11. The Applicants represent that currently most providers of corporate trust and related services in the structured finance marketplace are large banks that have the requisite staff and systems resources to efficiently serve the various types of ABS that are common to this marketplace. Most of these same banks, particularly those that are profitable and well capitalized, have expanded into the securities underwriting business, including underwriting of structured finance transactions. The Applicants represent that not only will plan investors be disadvantaged if banks and their affiliates that underwrite securities continue to be precluded from providing trustee services, but, further, it is clearly not in the best interest of plan investors to eliminate those banks—often the most competent in the servicing of structured finance transactions—from the pool of available corporate trust service providers.

12. The Applicants state that the Trustee in a structured finance transaction for ABS, while involved in complex calculations and reporting, typically does not perform any discretionary functions. Such a Trustee operates as a stakeholder and strictly in accordance with the explicit terms of the governing agreements, so that the intent of the crafters of the transaction may be carried out. These functions are essentially ministerial and include establishing accounts, receiving funds, making payments, and issuing reports, all in a predetermined manner. Unlike trustees for corporate or municipal debt, Trustees in structured finance transactions for ABS need not assume discretionary functions to protect the interests of debt holders in the event of default or bankruptcy because structured finance entities are designed to be bankruptcy remote vehicles. The Applicants represent that there is no

[4] For a discussion of prohibited transactions under the Act and exemptions relating to a plan's acquisition and holding of ABS, interested persons should review PTE 2002–41 (67 FR 54487, August 22, 2002) and the so-called ''Underwriter Exemptions'' listed therein, as well as PTE 2002–19 (67 FR 14979, March 28, 2002), which amended three of the Underwriter Exemptions granted to J.P. Morgan Chase and certain Affiliates prior to the general amendment to the other Underwriter Exemptions provided by PTE 2002–41.

Thus, the proposed exemption, if granted, would provide relief for prohibited transactions relating to a plan's acquisition and holding of ABS where a Plan's Asset Manager is affiliated with the Trustee of an issuing trust for a series of ABS (*i.e.*, an ATT). However, other prohibited transactions that may be involved with the plan's investment in ABS would have to be covered by an existing Underwriter Exemption (absent any other applicable exemption), including amendments relating thereto as described in PTEs 2002–19 and 2002–41. Interested persons should also review the Department's regulations defining ''plan assets'' for purposes of plan investments (*see* 29 CFR 2510.3–101, Definition of ''plan assets''—plan investments).

The Department notes that a fiduciary or other party in interest desiring relief afforded by one or the other of these exemptions would have to ensure that the applicable conditions of the appropriate exemption are met. Thus, for example, if the securities sold in an underwriting are asset-backed securities, both the proposed exemption and the existing exemptions involving asset-backed securities referred to above may be relevant for the contemplated transactions. However, it should be noted that the party seeking the relief offered by a particular exemption must ensure that the conditions of the exemption have been met.

[5] Under the Gramm-Leach-Bliley Act, signed into law by the President on November 12, 1999, certain provisions of the Glass-Steagall Act and the Bank Holding Company Act of 1956, as amended, are repealed. The Department notes that the effect of such law will likely be further consolidation of the financial services industry. The new law will facilitate cross-ownership and control among bank holding companies and securities firms through the creation of ''financial holding companies'' that will be permitted to engage in a broad range of financial and related activities, including underwriting and dealing activities.

''issuer'' outside the structured transaction to pursue for repayment of the debt. The Trustee's role is defined by a contract-explicit structure that spells out the actions to be taken upon the happening of specified events. The Applicants state that there is no opportunity (or incentive) for the Trustee in a structured finance transaction, by reason of its affiliation with an underwriter, asset manager, or otherwise, to take or not to take actions that might benefit the underwriter or asset manager to the detriment of plan investors.

With respect to offerings of more traditional public debt securities that are not part of a structured finance transaction, the Applicants state that an indenture trustee may have more discretion when the issuer of the securities is not bankruptcy remote.[6] In such instances, indenture trustees generally exercise meaningful discretion only in the context of a default, at which time the indenture trustee has the duty to act for the bondholders, in a manner consistent with the interests of investing plans (and other investors) and not with the interests of the issuer. In such situations, an indenture trustee may be an affiliate of an underwriter for the securities. In the event of a default, the duty of an indenture trustee in pursuing the bondholders' rights against the issuer might conflict with the indenture trustee's other business interests. However, the Applicants represent that under the Trust Indenture Act of 1939 (the Trust Indenture Act), an indenture trustee whose affiliate has, within the prior 12 months, underwritten any securities for an obligor of the indenture securities generally must resign as indenture trustee if a default occurs upon the indenture securities. Thus, the Applicants maintain that this requirement and other provisions of the Trust Indenture Act are designed to protect bondholders from conflicts of interest to which an indenture trustee may be subject.[7]

13. According to the Applicants, the role of the underwriter in a structured financing for a series of ABS involves, among other things, assisting the sponsor or originator of the applicable receivables or other assets in structuring the contemplated transaction. The Trustee becomes involved later in the process, after the principal parties have agreed on the essential components, to review the proposed transaction from the limited standpoints of technical workability and potential Trustee liability. After the issuance of securities to plan investors in a structured financing, while the Trustee performs its role as Trustee over the life of the transaction, the underwriter of the securities has no further role in the transaction. In addition, the Trustee has no opportunity to take or not take action, or to use information in ways that might advantage the underwriter to the detriment of plan investors. The Applicants state that an underwriter, in order to protect its reputation, clearly wants the transaction to succeed as it was structured, which includes the Trustee performing in a manner independent of the underwriter.

14. The Applicants represent that, in many offerings of ABS or other securities, the Trustee's fee is a fixed dollar amount that does not depend on the size of the offering. In such cases, the Asset Manager has no conflict of interest in an ATT because it cannot increase the Trustee's fee by causing Client Plans to participate in the offering. Where the Trustee's fee in an ATT is a portion of the principal amount of outstanding securities to be offered, the Asset Manager could conceivably cause Client Plans to participate to affect the size of the offering and thus the Trustee's fee.[8] The Applicants further represent that the protective conditions of the requested exemption (*e.g.*, the requirement of advance approval by an independent fiduciary and reporting of the basis for the Trustee's fee) render this possibility remote.

In this regard, the Applicants state that the present conditions of the proposed exemption, which are based on the prior individual exemptions granted by the Department for an ''AUT'', impose adequate safeguards as well for an ''ATT'' in order to prevent possible abuse. First, there are significant limitations on the quantity of securities that the Asset Manager may acquire for a Client Plan, meaning not only that there will be significant limitations on the ability of the Asset Manager to affect the fees of its Affiliate, but also insuring that significant numbers of independent investors also decided that the securities were an appropriate purchase. Second, the Asset Manager must obtain the consent of an independent fiduciary to engage in these transactions. Third, regular reporting of the subject transactions to an independent fiduciary will take place. Fourth, an independent fiduciary must be provided information on how securities purchased under the proposed exemption actually performed. Finally, the consent of the independent fiduciary may be revoked if it suspects that purchases by the Asset Manager have been motivated by a desire to generate fees for its Affiliated Trustee.

Investments in Offered Securities

15. The Applicants represent that the Asset Manager makes investment decisions on behalf of, or renders investment advice to, its Client Plans in accordance with the governing document of the particular Client Plan or Pooled Fund and the guidelines and objectives established in the investment management or advisory agreement. Since the Client Plans are covered by Title I of the Act, such investment decisions are also subject to the fiduciary responsibility provisions of the Act.[9]

[6] The amount of discretion possessed by an indenture trustee will depend on the terms of the particular indenture, and factual issues, such as whether a default has occurred.

[7] The Applicants submit that the Trust Indenture Act addresses analogous circumstances and is thus instructive regarding potential conflicts of interest. DB represents that the Trust Indenture Act was amended in 1990 to correct unnecessarily restrictive provisions that deemed a conflict of interest to exist where an indenture trustee or its affiliate simultaneously acts in other capacities (*e.g.*, underwriter) for the issuer of the debt securities. The Applicants state that the U.S. Congress, at the SEC's instigation, determined that an indenture trustee and its affiliates could act in multiple capacities (including as trustee and underwriter for the issuer) absent a default under the governing trust indenture. According to the Applicants, the premise for this change was that until such a default occurs, there is no risk that the trustee could or would act in any way that might conflict with the interests of security holders (*i.e.*, certificate holders of ABS). One of the reasons for the amendments to the Trust Indenture Act was the recognition of the alternative: withdrawal from the corporate trust business of the largest and best service providers, whose management would undoubtedly be attracted to the greater profitability of underwriting as opposed to the steady, but smaller profits from acting as an indenture trustee. According to the Applicants, the amendment to the Trust Indenture Act has in fact proved to be a benefit to the public in encouraging the best providers of trustee services to continue to provide such services.

[8] The Applicants note that this theoretical conflict is directly addressed by the protective conditions in the Underwriter Exemptions and in this proposed exemption. In this regard, the Applicants state that the exemption (if granted) will apply only to firm commitment underwritings, where, by definition, the entire issue of securities will be purchased, either by the public or the underwriters (*see* section I(a)(3) above). Thus, where the trustee's fee would be a fixed percentage of the total dollar amount of the securities issued in the offering, the amount of the trustee's fee would be, in fact, a fixed dollar amount that would be known to plan investors as part of disclosures made relating to the offering (*e.g.*, the prospectus or private placement memorandum). The Department notes that plan fiduciaries would have a duty to adequately review, and effectively monitor, all fees paid to service-providers, including those paid to parties affiliated with an Asset Manager.

[9] By proposing this exemption, the Department is not expressing an opinion regarding whether any investment decisions or other actions taken by an

Continued

16. The Applicants state that a decision by an Asset Manager for a Client Plan to invest in particular securities is made on the basis of price, value, and the particular Client Plan's investment criteria, not on whether the Trustee with respect to the securities is, or is affiliated with, the Asset Manager. The Applicants further assert that the Asset Manager has little incentive to make purchases for Client Plans in IPOs involving an ATT that are not in the interests of the Client Plans because the Asset Manager's compensation for its services is generally based upon total assets under its management. If the assets under its management do not perform well, the Asset Manager will receive less compensation and could lose the Client Plan's future business.

According to the Applicants, the proposed exemption would be in the interest of a Client Plan's participants and beneficiaries because it will increase investment opportunities for such plans in ABS or other securities. Failure to grant the exemption will unnecessarily restrict the investment opportunities available to Client Plans in fixed-income securities.

17. In summary, the Applicants represent that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Client Plans will gain access to desirable investment opportunities;

(b) In each offering, the Asset Manager will purchase the securities for its Client Plans from an underwriter or broker-dealer other than the Affiliated Broker-Dealer;

(c) Conditions similar to those of PTE 75–1, part III, will restrict the types of securities that may be purchased, the types of underwriting or selling syndicates and issuers involved, and the price and timing of the purchases;

(d) The amount of securities that the Asset Manager may purchase on behalf of Client Plans will be subject to percentage limitations;

(e) The Affiliated Broker-Dealer will not be permitted to receive, either directly, indirectly, or through designation, any selling concessions with respect to the securities sold to the Asset Manager;

(f) Prior to any purchase of securities, the Asset Manager will make the required disclosures to an Independent Fiduciary of each Client Plan and obtain written authorization for such transaction (*i.e.*, an ATT);

(g) The Asset Manager will provide regular reporting to an Independent Fiduciary of each Client Plan with respect to all securities purchased pursuant to the exemption, if granted, including all ATTs;

(h) Each Client Plan participating in these transactions will be subject to a minimum size requirement of at least $50 million ($100 million for ''Eligible Rule 144A Offerings''), with certain exceptions for Pooled Funds;

(i) The Asset Manager must have total assets under management in excess of $5 billion and shareholders' or partners' equity in excess of $1 million; and

(j) The Trustee will be unable to subordinate the interests of the investing Client Plans to those of the Asset Manager.

For a complete discussion of the facts and representations supporting the Department's decision to grant the original exemptions for JPMorgan Chase Bank and its Affiliates (*i.e.*, PTEs 2000–25 and 2000–27) for AUTs, interested persons should review the notice of proposed exemption for Morgan Guaranty Trust of New York, *et al.*, published in the **Federal Register** on February 8, 2000 (65 FR 6229).

Copies of all documents relating thereto are available for public inspection and may be obtained by interested persons from the Public Documents Room, Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Interested persons should request File Numbers D–10119 and D–10120, and D–10779 with respect to the application for JPMorgan Chase Bank (formerly, Morgan Guaranty Trust of New York and The Chase Manhattan Bank). With regard to FAN 2001–19E for DB and its Affiliates, interested persons should request File Number E–00226.

Notice to Interested Persons: The Applicants represent that because those potentially interested Client Plans that may invest in securities, involving either an AUT or an ATT (or both), cannot all be identified, the only practical means of notifying such Client Plans of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number). IBEW Local No. 1 Health and Welfare Fund, (the Welfare Fund) and IBEW Local No. 1, Apprenticeship and Training Fund, (the Training Fund; collectively, the Funds or the Applicants), located in St. Louis, MO. (Application Nos. L–11155 and L–11156, respectively.)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act shall not apply to the lease of certain classroom space and supplemental facilities (the Lease) by the Welfare Fund to the Training Fund, a party in interest with respect to the Welfare Fund.

The proposed exemption is subject to the following conditions:

(1) The terms of the Lease are at least favorable to the Welfare Fund and the Training Fund as those obtainable in an arm's length transaction with an unrelated party.

(2) Qualified, independent appraisers have determined the initial amount of the Lease payments.

(3) A qualified, independent fiduciary, The Philip Company (TPC), has approved the Lease and has agreed to monitor the terms of the exemption, at all times, on behalf of the Welfare Fund.

(4) The independent fiduciary agrees to take whatever actions are necessary and proper to enforce the Welfare Fund's rights under the Lease and to protect the participants and beneficiaries of the Welfare Fund.

(5) The rental payments under the Lease are adjusted once every five years by the independent fiduciary to ensure that such Lease payments are not greater than or less than the fair market rental value of the leased space.

(6) The fair market rental amount for the leased space, at no time, will exceed 25 percent of the assets of either Fund, including any improvements that are constructed thereon.

(7) The independent fiduciary and the Board of Trustees of the Welfare Fund (the Welfare Fund Trustees) have determined that the Lease is an appropriate investment for the Welfare Fund and is in the best interest of the Welfare Fund's participants and beneficiaries.

Asset Manager regarding the acquisition and holding of ABS or other securities in an ATT would be consistent with its fiduciary obligations under part 4 of title I of the Act. In this regard, section 404 of the Act requires, among other things, that a plan fiduciary act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making decisions on behalf of a plan.

(8) The Board of Trustees of the Training Fund (the Training Fund Trustees) has determined that the Lease transaction is an appropriate investment for the Training Fund and is in the best interest of the Training Fund's participants and beneficiaries.

Summary of Facts and Representations

1. The Welfare Fund, which operates under a formal Trust Agreement, is a collectively-bargained, multiemployer joint welfare plan. The Welfare Fund provides medical and related benefits to union electricians and their families. The Welfare Fund was established by Local 1, of the International Brotherhood of Electrical Workers, AFL–CIO (Local 1), a labor organization, and the St. Louis Chapter, of the National Electrical Contractors Association (St. Louis Chapter, NECA), an employer association.

The benefits provided by the Welfare Fund are funded by contributions made by the employers pursuant to collective bargaining agreements between Local 1 and the St. Louis Chapter, NECA. As of December 31, 2001, the Welfare Fund had net assets available for benefits of $87,890,891 based upon audited financial statements.[10] As of April 30, 2003, the Welfare Fund had 4,782 participants. The Welfare Fund's operations are located at 3260 Hampton Avenue, St. Louis, Missouri.

2. The Training Fund, which is administered under a formal Trust Agreement, is a collectively-bargained, multiemployer joint apprenticeship training plan. The Training Fund was established by Local 1 and the St. Louis Chapter, NECA. The Training Fund provides training and educational benefits to electrical apprentices and journeymen. The benefits are funded by contributions made by the employers to the Training Fund pursuant to collective bargaining agreements between Local 1 and the St. Louis Chapter, NECA. The Training Fund is a party in interest with respect to the Welfare Fund because employees of the Training Fund are participants in the Welfare Fund. As of December 31, 2002, the Training Fund had net assets available for benefits of $4,998,407 based upon audited financial statements.[11] As of April 30, 2003, the Training Fund had 3,267 participants. The Training Fund's present facility is located at 2300 Hampton Avenue, St. Louis, Missouri (the 2300 Hampton Avenue Building).

3. The Welfare Fund is administered by six trustees. Three of the Welfare Fund Trustees are appointed by Local 1 while the remaining three Welfare Fund Trustees have been appointed by the St. Louis Chapter, NECA. The Local 1 appointed Welfare Fund Trustees are Messrs. Stephen P. Schoemehl, James Reinheimer and Mathew Lampe. The St. Louis Chapter, NECA appointed trustees of the Welfare Fund are Messrs. Douglas R. Martin, Robert Kaemmerlen and Eric Aschinger.

The Training Fund is also administered by six trustees, three of whom are appointed by Local 1, and three of whom are appointed by the St. Louis Chapter, NECA. The Local 1 appointed Training Fund Trustees are Messrs. Stephen P. Schoemehl, Thomas E. George, and Dan King. The St. Louis Chapter, NECA appointed Training Fund Trustees are Messrs. Douglas R. Martin, T. Michael Fogarty, and Stephen J. Kohnen. As noted herein, Messrs. Stephen P. Schoemehl and Douglas Martin are common Trustees to both Funds.

4. The IBEW–NECA Service Center (the Service Center), which is a ''not for profit'' Missouri corporation, is a party in interest with respect to the Welfare Fund because it is an employer whose employees participate in such Fund. The Board of Directors of the Service Center are appointed by the Business Manager of Local 1 and the St. Louis Chapter, NECA. The Service Center provides employee benefit plan administration to approximately 17 welfare and pension funds, including the Funds. The largest group of employee benefits funds administered by the Service Center were established by Local 1 and the St. Louis Chapter, NECA pursuant to collective bargaining. The Service Center also administers employee benefit funds established by Local 257, IBEW, and the St. Louis Chapter, NECA, and a pension fund established by the Illinois Chapter, NECA and several locals of the IBEW. The Service Center's costs of administration are allocated among the various employee benefit funds that the Service Center administers.

The Service Center's sole administrative facility is located at 3260 Hampton Avenue, St. Louis, Missouri. There, the Service Center leases portions of three separate two-story buildings (the 3260 Hampton Avenue Buildings) from the Local 1, IBEW Pension Benefit Trust Fund (the Pension Fund), which is the owner of the 3260 Hampton Avenue Buildings. The Pension Fund is one of the employee benefit plans administered by the Service Center. The three 3260 Hampton Avenue Buildings comprise a total of 12,000 square feet of space. Of this total, the Service Center leases 9,300 square feet of space in these premises.[12] Two unrelated tenants occupy the remaining space in the 3260 Hampton Avenue Buildings.

The Welfare Fund is administered by the Service Center in the 3260 Hampton Avenue Buildings. Of the 9,300 square feet of space leased by the Service Center, employees of the Service Center perform work for the Welfare Fund within approximately 3,965 square feet of space.

The parking facilities at the 3260 Hampton Avenue Buildings are limited with a total of 45 spaces, of which 13 spaces are leased to the two outside tenants. There is no convenient overflow parking at the 3260 Hampton Avenue Buildings.

5. Under section 4.05 of the Welfare Fund Trust Agreement, the Welfare Fund Trustees are authorized to invest in real estate. Therefore, on September 26, 2002, the Welfare Fund Trustees signed a contingent sales contract for the purchase of a two-story, concrete block building, with office and training center facilities, located at 5735 Elizabeth Avenue, St. Louis, Missouri (the 5735 Elizabeth Avenue Building) with the owner, the Plumbers' and Pipefitters' Welfare Educational Fund, an unrelated party. Following the initial planning meetings, Messrs. Schoemehl and Martin, who are the common Trustees of the Welfare Fund and the Training Fund, did not participate in the decisions to purchase the 5735 Elizabeth Avenue Building or to lease it, in accordance with the Lease described herein.

Under the terms of the contingent sales contract, the Welfare Fund must satisfy the purchaser's contingencies prior to the last day of the applicable contingency period. The contingencies to be satisfied contemplate the Welfare Fund (a) obtaining any and all inspections and assessment reports pertaining to the 5735 Elizabeth Avenue Building; (b) obtaining a commitment for title insurance; (c) obtaining a survey of the 5735 Elizabeth Avenue Building

[10] According to the Applicants, the Welfare Fund's 2002 audit report has not been completed. However, draft balance sheets for this Fund show net assets available for benefits of $91,586,030 as of December 31, 2002, and $89,305,694, as of March 31, 2003.

[11] Based on an unaudited financial statement, the Training Fund had net assets available for benefits of $4,832,184.44 as of March 31, 2003.

[12] As noted above, the Pension Fund currently leases portions of its 3260 Hampton Avenue Buildings to the Service Center, a party in interest with respect to the Pension Fund. The Applicants represent that the current lease satisfies the terms and conditions of Prohibited Transaction Exemptions (PTEs) 76–1 and 77–10 (41 FR 12740, March 26, 1976 and 42 FR 33918, July 1, 1977, respectively). However, the Department expresses no opinion herein on whether such lease satisfies the terms and conditions of these class exemptions.

by a licensed Missouri land surveyor; (d) obtaining verification that the present zoning and deed restrictions of the 5735 Elizabeth Avenue Building will permit the Welfare Fund's intended commercial use and development; (e) reviewing and approving all documents and contracts pertaining to the 5735 Elizabeth Avenue Building; (f) receiving evidence satisfactory to the Welfare Fund in all respects as to the economic feasibility of acquiring, developing, and improving the 5735 Elizabeth Building; and (g) obtaining, from the Department, an individual exemption from the Act's prohibited transactions rules in order to engage in the subject Lease of a portion of the 5735 Elizabeth Avenue Building by the Welfare Fund to the Training Fund.

The relevant terms of the proposed sale contemplate that the 5735 Elizabeth Avenue Building will be sold to the Welfare Fund for $1,070,000 on an ''as is'' basis. The sale will take place approximately 30 days from the date the Department publishes the notice granting the requested exemption in the **Federal Register**.

6. Under section 3.03(a)(3) of the Training Fund Trust Agreement, the Training Fund Trustees are authorized to enter into a lease of buildings related to the training program. In this regard, the Applicants represent that the Training Fund requires overflow classroom and lab space at a location which is conveniently located to the Training Fund's 2300 Hampton Avenue Building. The Applicants state that the lease of the second floor of the 5735 Elizabeth Avenue Building would present an attractive opportunity for the Training Fund to acquire overflow classroom and lab space at a location that is one block away from the Training Fund's existing facility in the 2300 Hampton Avenue Building, and close to the Local 1 office.

The Training Fund Trustees represent that the Training Fund cannot meet current and anticipated demand for training programs at the 2300 Hampton Avenue Building. This is because the 2300 Hampton Avenue Building is located on a landlocked parcel. The Training Fund Trustees also state that constructing on the existing land parcel would be disruptive and costly for the Training Fund. Furthermore, the Training Fund Trustees maintain that leaving the existing facility at 2300 Hampton Avenue would not be an option for the Training Fund because it owns the property and, as of 1999, renovations costing $1,600,000 were made to the building.

7. The Applicants state that the Welfare Fund and its administrator, the Service Center, also require additional space for claims administration offices. The Applicants assert that the first floor of the 5735 Elizabeth Avenue Building will present an opportunity to expand and consolidate the Service Center's administrative offices on a single floor at a location that is convenient to many participants because of its proximity to the Training Fund and Local 1, one block apart in distance. The Applicants represent that the proposed lease of office space between the Welfare Fund and the Service Center, a participating employer, will be subject to the exemptive relief provided under PTEs 76–1 and 77–10. The Applicants further explain that it is the parties' intention that the Service Center Lease will comply with the terms and conditions of these class exemptions.[13] Therefore, the Applicants do not request additional administrative exemptive relief from the Department regarding such Lease.

8. Accordingly, with respect to the second floor of the 5735 Elizabeth Avenue Building, the Applicants request an administrative exemption from the Department that will permit, if granted, the Welfare Fund to lease classroom space and supplemental facilities to the Training Fund. The exemption transaction and related transactions will be structured as follows:

(a) The Welfare Fund will purchase the 5735 Elizabeth Avenue Building for a purchase price of $1,070,000, contingent upon, among other things, the Department granting this exemption;

(b) The Welfare Fund and the Training Fund will enter into the subject Lease for classroom space and supplemental facilities on the second floor of the 5735 Elizabeth Avenue Building; and

(c) The Welfare Fund and the Service Center will enter into the Service Center Lease on the first floor of the 5735 Elizabeth Avenue Building in a manner that is designed to comply with PTEs 76–1 and 77–10.

9. The construction costs in renovating the 5735 Elizabeth Avenue Building are estimated at $1,503,934, with an estimated additional $115,000 in professional costs related to architectural, legal, and appraisal services.[14] The Training Fund will contribute $426,207 to fund its allocated share of the second floor construction costs. This will result in a total net cost to the Welfare Fund of $2,262,727 for the purchase price and renovation costs of the 5735 Elizabeth Avenue Building. However, such costs will not exceed 5 percent of the assets of the Welfare Fund.

10. The second floor Lease of the 5735 Elizabeth Avenue Building to the Training Fund is for 8,309 square feet in ''white box'' condition, with renovations completed to bring the second floor into compliance with applicable building codes.[15] Initially, the Training Fund's base rent was set at $10.50 per square foot[16] based upon an independent appraisal (the Appraisal) of the property that was performed on November 20, 2002 by Messrs. Edward W. Dinan, MAI, CRE and Mark B. Baffa, Appraiser/Analyst, who are qualified, independent appraisers (the Appraisers), employed by Dinan Real Estate Advisors of St. Louis, Missouri. (*See* Representation 14 for further details about the Appraisal.) The Appraisers concluded that the market rent for the first floor Service Center Lease was $14.50 per square foot, and for the second floor Training Fund Lease, $10.50 per square foot. The $10.50 per square foot rental amount was based on the assumption that the Welfare Fund would fund the full $426,207 of construction costs for the renovation and any rehabilitation of the second floor of the 5735 Elizabeth Avenue Building. However, the Training Fund Trustees decided to

[13] The Welfare Fund Trustees represent that the Service Center Lease will satisfy the terms and conditions of PTEs 76–1 and 77–10. However, the Department expresses no opinion herein on whether such lease will satisfy the terms and conditions of these class exemptions.

[14] It is contemplated that Kadean Construction Company (Kadean), a general contractor, will perform the renovation work to be performed for the Training Fund. Kadean is not a party in interest to the Welfare Fund or the Training Fund because it is not a contributing employer. However, Kadean will subcontract the electrical work on the project to signatory employers who are parties in interest to the Training and Welfare Funds as contributing employers.

The Department is providing no opinion in this proposed exemption on whether the contemplated expenditures to be made by the Training Fund for the construction of the second floor of the 5735 Elizabeth Avenue Building are (or will be) consistent with the fiduciary responsibilities contained in part 4 of title I of the Act. In this regard, the Department notes that section 404(a) of the Act requires, among other things, that plan fiduciaries act prudently and solely in the interest of the plan and its participants and beneficiaries when providing benefits to such participants and beneficiaries and defraying reasonable expenses of administering the plan.

[15] The Applicants represent that the Welfare Fund and the independent fiduciary are required to approve any alterations, additions, modifications, or improvements of a permanent nature to the second floor. During the term of the Lease, the alterations are the property of the Training Fund, and the Training Fund is required to reimburse the Welfare Fund for any additional taxes, inspections, and fees that are attributable in any way to such alterations. At the expiration of the Lease, or sooner termination, the alterations automatically become the property of the Welfare Fund.

[16] Or $7,270 monthly and $87,245 annually.

finance the second floor improvements by agreeing to pay the Welfare Fund $426,207, thereby buying down the Training Fund's rent to $6 per square foot.[17]

11. The Training Fund Lease is a written, triple net lease, having an initial term of five years and two five year renewal options. The Training Fund will pay 41.25 percent of the operating costs of the Building. Among others, these operating expenses include real estate taxes and insurance. At the time the Lease options are to be exercised, rent is to be set by the Welfare Fund's independent fiduciary, who has experience in real estate valuations.

Section 2.2 of the Training Fund Lease provides that the rent may be increased by the independent fiduciary, at the time of renewal, but in no event can the rent drop below the preceding term's rent. In this respect, the Welfare Fund is assured that the base rent amount remains at $6 per square foot. However, the Training Fund will have the right to terminate its exercise of a renewal option if the Training Fund does not accept the independent fiduciary's determination of rent payable during the renewal term.

12. The first floor lease of the 5735 Elizabeth Avenue Building to the Service Center, which the Applicants believe will be covered under PTEs 76–01 and 77–10, is for 11,836 square feet of finished office space. The Service Center's rent is set at $14.50 per square foot. The Service Center Lease is a written, triple net lease having a 10 year term, with one five year renewal option. The Service Center Lease provides for yearly termination during the initial term as of the last day of each lease year, provided that the Service Center gives at least 6 months prior written notice of such termination and pays a termination fee equal to the amount of unamortized improvement costs and a penalty of three months' rent. At the time the lease option is to be exercised, rent is to be set by the Welfare Fund's independent fiduciary.

Section 2.2 of the Service Center Lease provides that the rent may be increased by the independent fiduciary, at the time of renewal, but in no event can the rent drop below the preceding term's rent. In this respect, the Welfare Fund is assured that the base rent will remain at $14.50 per square foot. The Service Center will also pay 58.75 percent of the operating costs associated with the 5735 Elizabeth Avenue Building.

13. The Welfare Fund anticipates a rate of return on the 5735 Elizabeth Building of between 8.5 percent to 9.5 percent. With the assistance of the independent fiduciary, TPC, the Welfare Fund has established a contingency reserve of 10 percent of the projected construction costs ($150,000). If the entire contingency reserve is used, the Welfare Fund's projected return is 8.55 percent.

14. As noted briefly in Representation 10, on November 25, 2002, the Welfare Fund Trustees obtained an independent appraisal report (the Appraisal Report) of the 5735 Elizabeth Avenue Building. In the Appraisal Report, the Appraisers also valued the proposed improvements and the contemplated Leases.

Initially, the Appraisers determined that the fair market value of a fee simple interest in the 5735 Elizabeth Avenue Building was $1,070,000 as of November 20, 2002, in an ''as is'' condition. The Appraisers then valued the 5735 Elizabeth Avenue Building as of September 1, 2003, on an ''as proposed basis'' using both a ''direct capitalization'' valuation ($2,690,000) and a sales comparison approach ($2,620,000).

The Appraisal Report also included a survey of area rents. Under the survey, the Appraisers concluded that the market rent for the first floor Service Center Lease was $14.50 per square foot, and $10.50 per square foot for the second floor Training Fund Lease.

15. As noted above, the proposed rental under the Training Fund Lease was adjusted to $6 per square foot based upon the Training Fund agreeing to fund its allocated share of the construction costs. These costs include, among others, new mechanical, electrical and plumbing systems for the 5735 Elizabeth Avenue Building. The Appraisers, in a letter dated December 16, 2002, considered $6 per square foot ''market rent,'' given the assumption that the Training Fund was financing its own improvements. The Appraisers also adjusted the direct capitalization valuation of the 5735 Elizabeth Avenue Building downward to $2,290,000 in order to take into account the reduction in the Training Fund's rent to $6 per square foot. However, the Appraisers' sales comparison valuation remained unchanged at $2,690,000.

16. In addition to its short term obligations, the Welfare Fund is funding retiree medical benefits which is a long term funding goal similar to a pension benefit. The Welfare Fund's projected investment in the 5735 Elizabeth Avenue Building of approximately $2,290,000, with a projected return ranging from 8.5 percent to 9.5 percent, represents approximately 2.6 percent of the Welfare Fund's assets. The Welfare Fund's investment consultant, Mr. Randall Kirkland, has reviewed the contemplated purchase and has concluded that it does not represent an over-concentration in real estate and will fit the long term investment goals of the Welfare Fund which is funding for retiree medical. Furthermore, the Welfare Fund Trustees, and for that matter, the Training Fund Trustees, have determined that the Lease is an appropriate transaction for the Funds and is in the best interests of the participants and beneficiaries of such Funds.

17. The Welfare Fund Trustees have retained TPC to serve as independent fiduciary with respect to the Training Fund Lease and the Service Center Lease. Mr. Philip Hulse, the President of TPC, will undertake the specific duties of the independent fiduciary. Mr. Hulse is a real estate broker and a member of several real estate organizations, including the Society of Industrial and Office Realtors, National Association of Realtors, St. Louis Association of Realtors, Missouri Association of Realtors, and the Missouri State Bank Board of Directors. In addition, Mr. Hulse has partial ownership interests in several real estate partnerships of over two million square feet of office, industrial, and commercial space throughout the St. Louis metropolitan market. Since 1985, Mr. Hulse's firm, TPC, has been involved in the St. Louis, Missouri commercial and industrial real estate community where it has assisted clients in a variety of capacities, including tenant and buyer representation, site selection, asset disposition, investment, and development.

On December 17, 2002, the Welfare Fund Trustees and Mr. Hulse on behalf of TPC, entered into and executed an independent fiduciary engagement agreement. Pursuant to this agreement, TPC has agreed to (a) evaluate and make recommendations relating to the provisions on the fair market rental value of the 5735 Elizabeth Avenue Building (and any proposed amendments thereto); (b) evaluate and make recommendations on the provisions of the sales contact for the 5735 Elizabeth Avenue Building (and any proposed amendments thereto); (c) evaluate and make recommendations on the provisions of the Training Fund and Service Center Leases (and any proposed amendments thereto), and make a determination and

[17] Or $4,155 monthly and $49,854 annually. With the payment of renovation costs and first year rent, the Training Fund's total investment in the 5735 Elizabeth Avenue Building ($476,061) would represent approximately 10 percent of the Training Fund's assets.

recommendation to the Welfare Fund Trustees whether such Leases would be in the best interest and protective of the Funds; (d) monitor the transactions related to the Training Fund Lease, including verification that monthly rent has been timely paid; (e) monitor the exemption to ensure that the terms are complied with and take all appropriate actions to ensure that the Training Fund Lease is protective and in the best interest of the Welfare Fund; and (f) recommend to the Welfare Fund Trustees whether the Leases should be terminated or the amount of the Lease payment adjustments when the five year options under the Training Fund Lease becomes due.

On behalf of TPC, Mr. Hulse represents that both he and the firm are independent of, and unrelated to either Applicants. In addition, Mr. Hulse states that he has been advised by legal counsel to the Welfare Fund regarding his fiduciary obligations under ERISA and he acknowledges and accepts such duties, responsibilities and liabilities as an ERISA fiduciary for the Welfare Fund.

In his fiduciary capacity, Mr. Hulse has reviewed and made recommendations to the Welfare Fund Trustees on the purchase of the 5735 Elizabeth Avenue Building and contemplated leases involving the Training Fund and the Service Center. Prior to making its determination, Mr. Hulse represents that he has examined the Welfare Fund's overall investment portfolio, considered the liquidity requirements of the Welfare Fund, considered the diversification of the portfolio in light of the proposed transactions, and considered whether the proposed transactions herein comply with the Welfare Fund's investment objectives and policies. Lastly, Mr. Hulse explains that he has reviewed the Training Fund's creditworthiness to enter into the contemplated Lease.

Based on his review, Mr. Hulse has determined that both the purchase and Lease transactions are suitable for the Welfare Fund and its participants and beneficiaries. Mr. Hulse also believes that the Training Fund's ''rent buy down'' represents a common practice within the real estate industry and is, therefore, appropriate in this transaction. Further, Mr. Hulse represents that due to his commercial leasing experience, he has the ability to procure a fair market valuation of the rental space once the option to renew comes due five years from the inception of the Lease.

18. In summary, the Applicants represent that the transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The terms of the Lease will be at least favorable to the Welfare Fund and the Training Fund as those obtainable in an arm's length transaction with an unrelated party.

(b) Qualified, independent appraisers have determined the initial amount of the Lease payments.

(c) A qualified, independent fiduciary has approved the Lease and will monitor the terms of the exemption, at all times, on behalf of the Welfare Fund.

(d) The independent fiduciary will take whatever actions are necessary and proper to enforce the Welfare Fund's rights under the Lease and to protect the participants and beneficiaries of the Welfare Fund.

(e) The rental payments under the Lease will be adjusted once every five years by the independent fiduciary to ensure that such rental payments are not greater than or less than the fair market rental value of the leased space.

(f) The fair market rental amount for the leased space, at no time, will exceed 25 percent of the assets of either Fund, including any improvements that are constructed thereon.

(g) The independent fiduciary, the Welfare Fund Trustees and the Training Fund Trustees have determined that the Lease is an appropriate investment for the Welfare Fund and is in the best interest of the participants and beneficiaries of the respective Funds.

Notice to Interested Persons

Notice of proposed exemption will be provided to all interested persons by first class mail within 10 days of publication of the notice of pendency in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption, as published in the **Federal Register**, and a supplemental statement, as described at 29 CFR 2570.43(b)(2). Such notice will inform interested persons of their right to comment on the proposed exemption. Comments are due within 40 days of the date of publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Silvia M. Quezada of the Department, telephone (202) 693–8553. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed in Washington, DC, this 19th day of May, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–12889 Filed 5–21–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemption 2003–09; [Exemption Application No. D–11042] et al. Grant of Individual Exemptions; Metropolitan Life Insurance Company (MetLife)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Metropolitan Life Insurance Company (MetLife) Located in New York, NY [Prohibited Transaction Exemption 2003–09; Exemption Application No. D–11042]

Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,[1] shall not apply, effective April 6, 2001, to the cash sale (the Sale) to MetLife of a note (the Note), issued by the Pacific Gas & Electric Company (PG&E), by MetLife's Liquidity Plus Account (the Account) for which MetLife acts as investment manager and is a party in interest with respect to employee benefit plans (the Plans) invested in such Account.

This exemption is subject to the following conditions:

(a) The Sale was a one-time transaction for cash.

(b) The sales price for the Note was based upon an amount representing the greater of the Note's outstanding principal balance, plus accrued interest, or the Note's fair market value as determined by independent broker-dealers.

(c) The Account did not pay any fees, commissions or other expenses in connection with the Sale.

(d) As manager of the Account, MetLife determined, at the time of the transaction, that the Sale was appropriate for, and in the best interests of, the Account, the Plans investing therein, and their participants and beneficiaries.

(e) MetLife took all appropriate actions necessary to safeguard the interests of the Account and the Plans in connection with the Sale.

(f) If the exercise of any of MetLife's rights, claims or causes of action in connection with its ownership of the Note results in MetLife recovering from PG&E an aggregate amount that is greater than the sales price for such Note, MetLife will refund such excess amount to the Account.

Effective Date: This exemption is effective as of April 6, 2001.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 3, 2003 at 68 FR 10041.

FOR FURTHER INFORMATION CONTACT: Ms. Anna M.N. Mpras of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

The JPMorgan Chase Bank (Located in New York, New York)

[Prohibited Transaction Exemption 2003–10; Application No. D–11062]

Exemption

Section I—Transactions

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A)–(E) of the Code, shall not apply as of December 31, 2000, to:

(A) the continuation of a lease (the Lease), by the Commingled Pension Trust Fund (Strategic Property) of JPMorgan Chase Bank (the Fund) with respect to which JPMorgan Chase Bank (JPMCB) is the trustee (the Trustee), of office space in a certain commercial office building (the Property) to Chase Global Funds Service Company (CGF), a party in interest with respect to employee benefit plans whose assets are invested in the Fund (Plans) and an affiliate of JPMCB; and

(B) the continued and future provision by JPMCB or its affiliates of letters of credit (Letter(s) of Credit) to guarantee the obligations of unrelated third-party tenants to pay rent to the Fund under commercial real estate leases.

This exemption is subject to the conditions set forth in Section II.

Section II—Conditions

(A) The Fund is represented by a fiduciary independent of JPMCB and its affiliates (the independent fiduciary) with respect to the Lease to perform the following functions:

(1) Confirm that when the Lease originally was entered into, and as modified to date, all the terms and conditions of the Lease, including those relating to renewal options and rights of first refusal, were commercially reasonable and at least as favorable to the Plans as those terms and conditions which could have been obtained at arm's length with an unrelated third party;

(2) determine, based upon a written appraisal report by a qualified appraiser independent of JPMCB and its affiliates, that the leasing renewal rate the Fund will charge CGF if CGF elects to exercise

[1] For purposes of this exemption, references to provisions of Title I of the Act, unless otherwise specified, rafer also to corresponding provisions of the Code.

its renewal options under the Lease, effective in 2004 and thereafter, and that the leasing rate with respect to any space leased by CGF in the Property pursuant to any rights of first refusal CGF has under the Lease, accurately reflect at least fair market rental value;

(3) negotiate and approve, subject to the appropriate ERISA fiduciary standards, such amendments to the Lease upon renewal(s) as it deems appropriate, including, for example: (i) a shorter renewal term than the current five year term; (ii) additional renewal period(s) (provided that the rent paid in any time periods after February 28, 2009, under any newly granted renewal option(s) would be at 100% of fair rental value, as opposed to the 95% of fair rental value that applies for periods through February 28, 2009); (iii) the lease of less square footage than the current square footage covered under the Lease; (iv) the lease of more square footage than the current square footage covered under the Lease (provided that the rent paid for any square footage in excess of the current square footage would also be leased at 100% of fair rental value, and not 95% of fair rental value); (v) using a ''base year'' under the Lease (upon which certain periodic increases such as taxes are calculated) updated to the year 2004, and (vi) allowing CGF to install shatter-proof glass in the space it leases; provided that all such amendments are not more favorable to the lessee than the terms generally available in arm's length transactions between unrelated parties, as determined by the independent fiduciary; and

(4) represent the Fund and the participants (Participants) in the Plans as independent fiduciary in any circumstances in addition to those described in subsection (3) above while the Lease (including any periods of renewal) is in effect which would present a conflict of interest for the Trustee, including but not limited to: default by CGF or disagreement on an economic computation under the Lease.

(B) The Fund is represented by an independent fiduciary with respect to any existing or future Letters of Credit to perform the following functions:

(1) monitor monthly reports of rental payments of tenants utilizing a Letter of Credit issued by JPMCB or any affiliate to guarantee their lease payments;

(2) confirm whether an event has occurred that calls for the Letter of Credit to be drawn upon; and

(3) represent the Fund and the Participants as an independent fiduciary in any circumstances with respect to the Letters of Credit which would present a conflict of interest for the Trustee, including but not limited to: the need to enforce a remedy against itself or an affiliate with respect to its obligations under a Letter of Credit.

(C) Future Letters of Credit are issued by JPMCB or an affiliate to guarantee the obligations of third-party tenants to pay rent to the Fund under commercial real estate leases only if the following additional conditions are met:

(1) JPMCB or its affiliate, as the issuer of a Letter of Credit, has at least an ''A'' credit rating by at least one nationally recognized statistical rating service at the time of the issuance of the Letter of Credit;

(2) the Letter of Credit has objective market drawing conditions and states precisely the documents against which payment is to be made;

(3) JPMCB does not ''steer'' the Fund's tenants to itself or its affiliates in order to obtain the Letter of Credit;

(4) Letters of Credit are issued only to tenants which are unrelated to JPMCB; and

(5) The terms of any future Letters of Credit are not more favorable to the tenants than the terms generally available in transactions with other similarly situated unrelated third-party commercial clients of JPMCB or its affiliates.

Section III—Definitions

(A) The term ''independent fiduciary'' means Aon Fiduciary Counselors, Inc. (AFC) or any successor independent fiduciary, provided that AFC or the successor independent fiduciary is: (1) independent of and unrelated to JPMCB and its affiliates, and (2) appointed to act on behalf of the Fund for the purposes described in conditions II(A) and (B) above. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to JPMCB if: (1) Such fiduciary directly or indirectly controls, is controlled by or is under common control with JPMCB, (2) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption, except that an independent fiduciary may receive compensation for acting as an independent fiduciary from JPMCB in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary's ultimate decision and (3) more than 5 percent of such fiduciary's annual gross revenue in its prior tax year will be paid by JPMCB and its affiliates in the fiduciary's current tax year.

(B) The term ''affiliate'' means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) any officer, director, employee, relative or partner in any such person; and

(3) any corporation or partnership of which such person is an officer, director, partner or employee.

(C) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Effective Date: The exemption is effective as of December 31, 2000.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 21, 2003, at 68 FR 13954.

FOR FURTHER INFORMATION CONTACT: Karen E. Lloyd of the Department, telephone (202) 693–8540. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of May, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–12888 Filed 5–21–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–10269]

Withdrawal of the Notice of Proposed Exemption Involving the Travelers Group Inc. 401(k) Savings Plan (the Plan) Located in New York, NY

In the **Federal Register** dated December 30, 1996, (61 FR 68794), the Department of Labor (the Department) published a notice of proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1986. The notice of proposed exemption concerned: (1) The in-kind contribution by Travelers Group Inc. (TGI) of certain options (the Stock Option or Stock Options) into the accounts in the Plan of eligible employees of TGI and its subsidiaries and affiliates (the Employees or Employee); (2) the holding of the Stock Options by such accounts; and (3) the exercise of such Stock Options by Employees in order to purchase shares of common stock of TGI.

By letter dated April 29, 2003, Citigroup Inc., (formerly TGI) and its affiliates requested that the application for exemption be withdrawn.

Accordingly, the notice of proposed exemption is hereby withdrawn.

Signed at Washington, DC, this 19th day of May 2003.

Ivan L. Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–12890 Filed 5–21–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL2–92]

Canadian Standards Association; Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of Canadian Standards Association (CSA) for expansion of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of the application.

DATES: You may submit comments in response to this notice, or any request for extension of the time to comment, by (1) regular mail, (2) express or overnight delivery service, (3) hand delivery, (4) messenger service, or (5) FAX transmission (facsimile). Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Comments (or any request for extension of the time to comment) must be submitted by the following dates:

Regular mail and express delivery service: Your comments must be postmarked by June 6, 2003.

Hand delivery and messenger service: Your comments must be received in the OSHA Docket Office by June 6, 2003. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m.

Facsimile and electronic transmission: Your comments must be sent by June 6, 2003.

ADDRESSES: *Regular mail, express delivery, hand-delivery, and messenger service:* You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket NRTL2–92, Room N–2625, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this notice, Docket NRTL2–92, in your comments.

Internet access to comments and submissions: OSHA will place comments and submissions in response to this notice on the OSHA Web page *http://www.osha.gov*. Accordingly, OSHA cautions you about submitting information of a personal nature (*e.g.*, social security number, date of birth). There may be a lag time between when comments and submissions are received and when they are placed on the Web page. Please contact the OSHA Docket Office at (202) 693–2350 for information about materials not available through the OSHA Web page and for assistance in using the Web page to locate docket submissions. Comments and submissions will also be available for inspection and copying at the OSHA Docket Office at the address above.

Extension of Comment Period: Submit requests for extensions concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210. Or fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Sherry Nicolas, Office of Technical Programs and Coordination Activities, NRTL Program, Room N3653 at the address shown immediately above for the program, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that Canadian Standards Association (CSA) has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). CSA's expansion request covers the use of additional test standards. OSHA's current scope of recognition for CSA may be found in the following informational Web page: *http://www.osha-slc.gov/dts/otpca/nrtl/csa.html*.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in section 1910.7 of title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, OSHA can accept products ''properly certified'' by the NRTL.

The Agency processes applications by an NRTL for initial recognition or for

expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on an application. These notices set forth the NRTL's scope of recognition or modifications of this scope.

The most recent notices published by OSHA for CSA's recognition covered a renewal and expansion of recognition, which OSHA announced on March 16, 2001 (66 FR 15280) and granted on July 3, 2001 (66 FR 35271).

The current addresses of the testing facilities (sites) that OSHA recognizes for CSA are:

Canadian Standards Association, Etobicoke (Toronto), 178 Rexdale Boulevard, Etobicoke, Ontario, M9W 1R3.
CSA International, Pointe-Claire (Montreal), 865 Ellingham Street, Pointe-Claire, Quebec H9R 5E8.
CSA International, Richmond (Vancouver), 13799 Commerce Parkway, Richmond, British Columbia V6V 2N9.
CSA International, Edmonton, 1707–94th Street, Edmonton, Alberta T6N 1E6.
CSA International, Cleveland, 8501 East Pleasant Valley Road, Cleveland, Ohio 44131 (formerly part of the American Gas Association).
CSA International, Irvine, 2805 Barranca Parkway, Irvine, California 92606.

General Background on the Application

CSA has submitted a request, dated March 27, 2002 (*see* Exhibit 30), to expand its recognition as an NRTL to use 17 additional test standards. The NRTL Program staff has determined that nine of these standards cannot be included in the expansion because they are not ''appropriate test standards,'' within the meaning of 29 CFR 1910.7(c). The staff makes similar determinations in processing expansion requests from any NRTL. Therefore, OSHA would approve eight test standards for the expansion, which are listed below. Through no fault of CSA, the application has been delayed in processing.

CSA seeks recognition for testing and certification of products for demonstration of conformance to the following additional test standards.

ANSI Z21.19 Refrigerators Using Gas Fuel
ANSI Z21.42 Gas-Fired Illuminating Appliances
ANSI Z21.45 Flexible Connectors of Other Than All-Metal Construction for Gas Appliances
ANSI Z21.54 Gas Hose Connectors for Portable Outdoor Gas-Fired Appliances
ANSI Z21.57 Recreational Vehicle Cooking Gas Appliances
ANSI Z21.58 Outdoor Cooking Gas Appliances
ANSI Z21.74 Portable Refrigerators for Use With HD–5 Propane Gas
ANSI Z21.76 Gas-Fired Unvented Catalytic Room Heaters for Use With Liquefied Petroleum (LP) Gases
UL 2017 General Purpose Signaling Devices and Systems

The designations and titles of the above test standards were current at the time of the preparation of this notice.

OSHA recognition of any NRTL for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, an NRTL's scope of recognition excludes any product(s) falling within the scope of the test standard for which OSHA has no testing and certification requirements. CSA seeks recognition for testing and certification of products to demonstrate compliance with the following nine standards.

The Underwriters Laboratories Inc. (UL) test standard listed above also is approved as an American National Standard by the American National Standards Institute (ANSI). However, for consistency in our treatment of such standards in previous notices, we use the designation of the standards developing organization (*e.g.*, UL 2017) for the standard, as opposed to the ANSI designation (*e.g.*, ANSI/UL 2017). Under our procedures, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard. Contact ''NSSN'' (*http://www.nssn.org*), an organization partially sponsored by ANSI, to find out whether or not a test standard is currently ANSI-approved.

Preliminary Finding on the Application

CSA has submitted an acceptable request for expansion of its recognition as an NRTL. In connection with this request, OSHA did not perform an on-site review of CSA's NRTL testing facilities. However, NRTL Program assessment staff reviewed information pertinent to the request and recommended that CSA's recognition be expanded to include the additional test standards listed above (*see* Exhibit 31).

Following a review of the application file, the assessor's recommendation, and other pertinent documents, the NRTL Program staff has concluded that OSHA should grant to CSA the expansion of recognition as an NRTL to use the additional test standards listed above. The staff, therefore, recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon the recommendations of the staff, the Agency has made a preliminary finding that the Canadian Standards Association can meet the requirements, as prescribed by 29 CFR 1910.7, for the expansion of recognition. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether CSA has met the requirements of 29 CFR 1910.7 for expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comment should consist of pertinent written documents and exhibits. To consider it, OSHA must receive the comment at the address provided above (*see* **ADDRESSES**) no later than the last date for comments (*see* **DATES** above). Should you need more time to comment, OSHA must receive your written request for extension at the address provided above no later than the last date for comments. You must include your reason(s) for any request for extension. OSHA will limit an extension to 15 days unless the requester justifies a longer period. We may deny a request for extension if it is frivolous or otherwise unwarranted. You may obtain or review copies of CSA's request, the recommendation on the expansion, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL 2–92, the permanent record of public information on CSA's recognition.

The NRTL Program staff will review all timely comments, and after resolution of issues raised by these comments, will recommend whether to grant CSA's expansion request. The Agency will make the final decision on granting the expansion, and in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed in Washington, DC, this 23rd day of April, 2003.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 03–12845 Filed 5–21–03; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–053)]

NASA Advisory Council, Planetary Protection Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting; supplementary information addition.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces an administrative oversight in the **SUPPLEMENTARY INFORMATION** previously provided for the forthcoming meeting of the NASA Advisory Council (NAC), Planetary Protection Advisory Committee (PPAC); Notice Number 03–051. This notice corrects that oversight by providing additional information.

DATES: Thursday, May 29, 2003, 6:30 p.m. to 9:15 p.m., Friday, May 30, 2003, 8:30 a.m. to 5 p.m., and Saturday, May 31, 2003, 8:30 a.m. to 2:30 p.m.

ADDRESSES: Hilton Cocoa Beach, 1550 North Atlantic Avenue, Cocoa Beach, Florida 32931.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–4452.

PREVIOUSLY ANNOUNCED SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Friday, May 30, 2003, 11 a.m. to noon, in accordance with the Government Sunshine Act, 5 U.S.C. 552b(c), to hear a briefing on Mars Planetary Protection issues associated with an ongoing procurement. All other times of the meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Planetary Protection Program Status/Plans
—Mars Planetary Protection and Current Standards
—Communications Issues in Planetary Protection
—Solar System Exploration Planetary Protection Status

ADDITION TO SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Friday, May 30, 2003, 11 a.m. to 12:15 p.m., in accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C. app.) (FACA) and the Government Sunshine Act, 5 U.S.C. 552b(c)(3) and 552b(c)(4), to hear a briefing on Mars Planetary Protection issues associated with an ongoing procurement and are exempt from public disclosure under 10 U.S.C. 2305(g). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–12898 Filed 5–21–03; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR part 60—''Disposal of High-Level Radioactive Wastes in Geologic Repositories''.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* The information need only be submitted one time.

5. *Who will be required or asked to report:* State or Indian Tribes, or their representatives, requesting consultation with the NRC staff regarding review of a potential high-level radioactive waste geologic repository site, or wishing to participate in a license application review for a potential geologic repository (other than a potential geologic repository site at Yucca Mountain, Nevada, currently under investigation by the U.S. Department of Energy, which is now regulated under 10 CFR part 63).

6. *An estimate of the number of annual responses:* None are expected in the next three years.

7. *The estimated number of annual respondents:* None are expected in the next three years.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 121 hours; however, none are expected in the next three years.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* Part 60 requires States and Indian Tribes to submit certain information to the NRC if they request consultation with the NRC staff concerning the review of a potential repository site, or wish to participate in a license application review for a potential repository (other than the Yucca Mountain, Nevada site proposed by the U.S. Department of Energy). Representatives of States or Indian Tribes must submit a statement of their authority to act in such a representative capacity. The information submitted by the States and Indian Tribes is used by the Director of the Office of Nuclear Material Safety and Safeguards as a basis for decisions about the commitment of NRC staff resources to the consultation and participation efforts. As provided in § 60.1, the regulations in 10 CFR part 60 no longer apply to the licensing of a geologic repository at Yucca Mountain. All of the information collection requirements pertaining to Yucca Mountain were included in 10 CFR part 63, and were approved by the Office of Management and Budget under control number 3150–0199. The Yucca Mountain site is regulated under 10 CFR part 63 (66 FR 55792, November 2, 2001).

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 23, 2003. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Bryon Allen, Office of Information and Regulatory Affairs (3150–0127), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 15th day of May, 2003.

For the Nuclear Regulatory Commission.

Beth St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–12848 Filed 5–21–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: NRC Form 398, ''Personal Qualification Statement—Licensee''.
2. Current OMB approval number: 3150–0090.
3. How often the collection is required: On occasion and every six years (at renewal).
4. Who is required or asked to report: Individuals requiring a license to operate the controls at a nuclear reactor.
5. The number of annual respondents: 1,155.
6. The number of hours needed annually to complete the requirement or request: 1,465 or approximately 1.3 hours per response (1,465 hours ÷ 1,155 applications (new, re-applications, renewals and waivers = 1,155) = 1.3 hours per response).
7. Abstract: NRC Form 398 requests detailed information that should be submitted by a licensing applicant and facility licensee when applying for a new or renewal license to operate the controls at a nuclear reactor facility. This information, once collected, would be used for licensing actions and for generating reports on the Operator Licensing Program.

Submit, by July 21, 2003 comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC Worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–5 C3, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *infocollects@nrc.gov.*

Dated at Rockville, Maryland, this 15th day of May 2003.

For the Nuclear Regulatory Commission.

Beth St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–12849 Filed 5–21–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 030–05219, 030–14482, and 070–00124]

Notice of Finding of No Significant Impact and Availability of Environmental Assessment for License Amendment of Materials License Nos. 29–00055–06, 29–00055–15, AND SNM–107 (Teledyne Brown Engineering, Inc., Westwood, NJ)

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuing license amendments to Teledyne Brown Engineering, Inc. for Materials License Nos. 29–00055–06, 29–00055–15, and SNM–107, to authorize release of its facilities in Westwood and Plainfield, New Jersey, for unrestricted use and has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of the proposed action is to allow for the release of the licensee's Westwood and Plainfield, New Jersey, facilities for unrestricted use. Teledyne Brown Engineering, Inc. has been authorized by NRC since 1964 to use radioactive materials for analytical services, research and development, precious metals recovery, and other similar purposes at these sites. On February 7, 2003, Teledyne Brown Engineering, Inc. requested that NRC release the facilities for unrestricted use. Teledyne Brown Engineering, Inc. has conducted surveys of the facilities and determined that the facilities meet the license termination criteria in subpart E of 10 CFR part 20.

III. Finding of No Significant Impact

The NRC staff has evaluated Teledyne Brown Engineering's request and the results of the surveys and has concluded that the completed action complies with 10 CFR part 20. The staff has prepared the EA (summarized above) in support of the proposed license amendment to terminate the license and release the facility for unrestricted use. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession No. ML031350057). Any questions with respect to this action should be referred to Betsy Ullrich, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5040, fax (610) 337–5269.

Dated at King of Prussia, Pennsylvania this 15th day of May, 2003.

For the Nuclear Regulatory Commission

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.

[FR Doc. 03–12846 Filed 5–21–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Kadant Inc., Common Stock, $.01 Par Value) File No. 1–11406

May 16, 2003.

Kadant Inc., 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 Common Stock, $.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 State of Delaware, 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 March 6, 2003 to withdraw the Issuer's Security from listing on the Amex and to list the Security on the New York Stock Exchange, Inc. (''NYSE''). The Board of the Issuer considered such action to be in the best interest of the Issuer and its stockholders. In addition, the Board states that the reasons for such change in listing include: (i) Increasing the Company's visibility in the global investment community; (ii) the prestige associated with being a NYSE-listed company; and (iii) avoiding the direct and indirect costs and the division of the market resulting from dual listing on the AMEX and the NYSE.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and from registration under section 12(b) of the Act[3] shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before June 10, 2003, 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. 03–12808 Filed 5–21–03; 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. 35–27679]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

May 16, 2003.

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 June 10, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After June 10, 2003, 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. (70–10120)

Unitil Corporation (''Unitil''), 6 Liberty Lane West, Hampton, New Hampshire, 03842–1270, a registered holding company under the Act, and its wholly owned subsidiary companies, Fitchburg Gas and Electric Light Company (''Fitchburg''), Unitil Energy Systems, Inc., Unitil Power Corp., Unitil Realty Corp., Unitil Resources, Inc. and Unitil Service Corp. (''Unitil Service'') (the ''Subsidiaries'' or ''Money Pool Participants'' and together with Unitil the ''Applicants'') have filed an application-declaration under sections 6, 7, 9(a), 10 and 12(b) of the Act and rules 43 and 45 thereunder.

By order dated June 9, 2000 (HCAR No. 27182), Applicants were authorized to make unsecured short-term borrowings and to operate a system money pool (''Money Pool'') through June 30, 2003. The Applicants now request authority to make additional short-term borrowings and extend the operation of the Money Pool through June 30, 2006 (''Authorization Period'').

Unitil requests authorization for short-term borrowing on a revolving basis from certain banks up to an aggregate amount of $55,000,000 from time to time through the Authorization Period.

In addition, Fitchburg requests authorization for short-term borrowings from the Money Pool, and direct borrowings from commercial banks, in an aggregate principal amount at any one time outstanding not to exceed $35,000,000 from time to time through the Authorization Period.

Unitil believes that an increase to its borrowing authority is beneficial because it will allow the company to respond to increased working capital requirements as a result of commodity volatility and restructuring charges, as well as necessary facility system improvements and growth.

Unitil's existing and proposed borrowing arrangements will provide for borrowings at (1) ''base'' or ''prime'' rates publicly announced by a bank as the rate charged on loans to its most creditworthy business firms; or (2) ''money market'' rates (market-based rates that are generally lower than base or prime rates, made available by banks on an offering or ''when available'' basis). In addition, borrowings may be based on the daily federal funds rate. Borrowings under the credit arrangements will mature not more than nine months from the date of issue. In the future, the Company may choose to formalize its banking relationship with its banks through a syndicated credit facility. The duration of any such facility would not exceed 365 days.

Unitil expects to use the proceeds from the requested borrowings for (1) loans or advances to subsidiaries through the Money Pool; (2) payment of

outstanding indebtedness; (3) short-term cash needs that may arise due to payment timing differences; and (4) other general corporate purposes.

Any of the proposed short-term borrowings by Fitchburg from commercial banks will be under terms and conditions substantially similar to those of the borrowing arrangements between Unitil and its commercial bank lenders, described above. Fitchburg will use the proceeds from these borrowings to meet working capital requirements, provide interim financing for construction expenditures, and to meet debt and preferred stock sinking fund requirements.

In connection with the continued use of the Money Pool by the Applicants under the Cash Pooling and Loan Agreement (''Pooling Agreement'') among Unitil and the Money Pool Participants dated as of February 1, 1985, as amended, Fitchburg requests authorization to make loans to the other Money Pool Participants and incur borrowings from Unitil and the other Money Pool Participants, and the Applicants request authorization to make loans to Fitchburg, both through the Authorization Period. Under the Pooling Agreement, Unitil and the Subsidiaries invest their surplus funds, and the Subsidiaries borrow funds, from the money pool. Unitil Service administers the money pool on an ''at cost'' basis. The purpose of the Money Pool is to provide the Subsidiaries with internal and external funds and to invest surplus funds of Unitil and the Subsidiaries in short-term money market instruments. The Applicants state that the Money Pool provides the Subsidiaries with lower short-term borrowing costs due to elimination of banking fees; a mechanism to earn a higher return on interest from surplus funds that are loaned to other Subsidiaries; and decreased reliance on external funding sources.

Applicants state that the authorization sought shall be conditioned on Unitil, Unitil Energy and Fitchburg maintaining a common equity (as reflected in the most recent 10–K or 10–Q filed with the Commission under the Securities Exchange Act of 1934, as amended (''1934 Act''), adjusted to reflect changes in capitalization since the balance sheet date therein) of at least 30% of its consolidated capitalization (common equity, preferred stock, long-term and short-term debt) during the period of authorization. In addition, no borrowings under bank credit facilities may be made in reliance upon any order issued in this matter unless: (i) The debt security to be issued, if rated, is rated investment grade; (ii) all outstanding securities of the issuer that are rated are rated investment grade; and (iii) all outstanding securities of Unitil that are rated are rated investment grade.

For purposes of this condition, a security will be considered rated investment grade if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the 1934 Act.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–12809 Filed 5–21–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47878]

Notice of Intention To Cancel Registrations of Certain Transfer Agents

May 15, 2003.

Notice is given that the Securities and Exchange Commission (''Commission'') intends to issue an order, pursuant to section 17A(c)(4)(B) of the Securities Exchange Act of 1934 (Exchange Act),[1] canceling the registrations of the transfer agents whose names appear in the attached Appendix.

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, or Lori R. Bucci, Special Counsel, at 202/942–4187, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

Background

Section 17A(c)(4)(B) of the Exchange Act provides that if the Commission finds that any transfer agent registered with the Commission is no longer in existence or has ceased to do business as a transfer agent, the Commission shall by order cancel that transfer agent's registration. Accordingly, at any time after June 23, 2003, the Commission intends to issue an order canceling the registrations of any or all of the transfer agents listed in the Appendix.

The Commission has made efforts to locate and determine the status of each of the transfer agents listed in the Appendix. In some cases, the Commission was unable to locate the transfer agent, and in other cases, the Commission learned that the transfer agent was no longer in existence or had ceased doing business as a transfer agent. Based on the facts it has, the Commission believes that each of the transfer agents listed in the Appendix are no longer in existence or have ceased doing business as a transfer agent.

Any transfer agent listed in the Appendix that believes its registration should not be cancelled must notify the Commission in writing prior to June 23, 2003. Written notifications must be mailed to: Lori R. Bucci, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001, or be sent by facsimile to Lori R. Bucci at (202) 824–5049.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[2]

J. Lynn Taylor,

Assistant Secretary.

APPENDIX

Registration number	Name
(84–5920)	The Axess Media Group, LTD
(84–5826)	Corey L. Lewis
(84–5847)	Financial Strategies, LLC
(84–1883)	ICOA Incorporated
(84–5756)	IDM Corporation
(84–5727)	Impact Administrative Services, Inc.
(84–1208)	MLH Depositary Inc
(84–5875)	NAVCAP Securities Inc.
(84–5647)	Penn Street Advisors, Inc.
(84–5834)	Reserve General Escrow Company
(84–682)	Swiss Chalet, Inc.
(84–191)	Texaco Inc.
(84–986)	The Troy Investment Fund
(84–1947)	Vermont Fund Advisors, Inc.

[FR Doc. 03–12807 Filed 5–21–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78q–1(c)(4)(B).

[2] 17 CFR 200.30–3(a)(22).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47876; File Nos. SR–NASD–2003–79; SR–NYSE–2003–17]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes by the National Association of Securities Dealers, Inc. and the New York Stock Exchange, Inc. Relating to Establishing Effective Dates for Certain Provisions of NASD Rule 2711, Research Analysts and Research Reports, and NYSE Rule 472, Communications with the Public

May 15, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 6, 2003, the National Association of Securities Dealers, Inc. (''NASD''), and on May 9, 2003, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the respective self-regulatory organizations (''SROs''). The SROs have designated the proposed rule changes as constituting stated policies, practices, or interpretations with respect to the meaning, administration, or enforcement of an existing rule series under paragraph (f)(1) of Rule 19b–4 under the Act,[3] which render the proposals effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statements of the Terms of Substance of the Proposed Rule Changes

A. NASD

NASD is filing with the SEC a proposed rule change to establish July 30, 2003, or until a superseding permanent exemption is approved by the SEC and becomes effective, as the effective date for NASD Rules 2711(b) and (c) for members that over the previous three years, on average, have participated in 10 or fewer investment banking transactions as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions. NASD Rules 2711(b) and (c), when effective, prohibit a research analyst from being subject to the supervision or control of any employee of a member's investment banking department, and will further require legal or compliance personnel to intermediate certain communications between the research department and either the investment banking department or the company that is the subject of a research report or recommendation (''subject company'').

B. NYSE

The NYSE is filing with the SEC a proposed rule change that would establish July 30, 2003, or until such date as a permanent exemption is approved by the SEC and becomes effective, as the effective date for certain provisions of Rule 472 (''Communications with the Public'') for certain members and member organizations.

II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their original rule filings with the Commission, the SROs included statements concerning the purpose of, and basis for, the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The SROs have prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. NASD's Purpose

NASD is filing the proposed rule change to establish July 30, 2003, or until the date a superseding permanent exemption is approved by the SEC and becomes effective, as the effective date for NASD Rules 2711(b) and (c) for members that over the previous three years, on average per year, have participated in 10 or fewer investment banking transactions as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions. Pursuant to the SEC's approval of SR–NASD–2002–87[4] and SR–NASD–2002–161[5], NASD Rules 2711(b) and (c), as applied to this class of members, otherwise would have gone into effect on May 5, 2003. NASD seeks to delay implementation of these provisions for these members while it finalizes a proposal to create a permanent exemption for firms that engage in limited underwriting activity. The purpose of the delayed implementation—and ultimately a permanent exemption—is to preserve the role of certain smaller firms that often are the sole or primary source of underwriting and research coverage for some smaller or regional companies.

On May 10, 2002, the Commission approved new NASD Rule 2711, which governs conflicts of interest when research analysts recommend equity securities in research reports and during public appearances.[6] The Commission approved a staggered implementation period for the rule. Most provisions of the rule became effective on July 9, 2002, including those that restrict supervision and control of research analysts by the investment banking department. The ''gatekeeper'' provisions, described below, became effective September 9, 2002. The remaining provisions of the Rule became effective on November 6, 2002.

NASD Rule 2711(b) contains provisions that generally restrict the relationship between the research and investment banking departments, including ''gatekeeper'' provisions that require a legal or compliance person to intermediate certain communications between the research and investment banking departments. NASD Rule 2711(b)(1) prohibits a research analyst from being under the control or supervision of any employee of the investment banking department. NASD Rule 2711(b)(2) prohibits employees in the investment banking department from reviewing or approving any research report prior to publication. NASD Rule 2711(b)(3) creates an exception to (b)(2) to allow investment banking personnel to review a research report prior to publication to verify the factual information contained therein and to screen for potential conflicts of interest. Any permissible written communications must be made through an authorized legal or compliance official or copied to such official. Oral communications must be made through, or in the presence of, an authorized legal or compliance official and must be documented.

Similarly, NASD Rule 2711(c) restricts communications between a member and the subject company of a research report, except that a member

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(1).

[4] *See* Securities Exchange Act Release No. 46165 (July 3, 2002), 67 FR 46555 (July 15, 2002).

[5] *See* Securities Exchange Act Release No. 46949 (December 4, 2002), 67 FR 76202 (December 11, 2002).

[6] *See* Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34968 (May 16, 2002) (''May 10th order'').

may submit sections of the research report to the company to verify factual accuracy and may notify the subject company of a ratings change after the ''close of trading'' on the business day preceding the announcement of the ratings change. Submissions to the subject company may not include the research summary, the rating or the price target, and a complete draft of the report must be provided beforehand to legal or compliance personnel. Finally, any change to a rating or price target after review by the subject company must first receive written authorization from legal or compliance.

As the Commission noted in the May 10th order, several commenters argued that the gatekeeper provisions would impose significant costs, especially for smaller firms that would have to hire additional personnel. Commenters also noted that personnel often wear multiple hats in smaller firms, thereby causing a greater burden to comply with the restriction on supervision and control by investment banking personnel over research analysts. NASD received similar comments in response to *Notice to Members* 02–44, which sought comment on whether certain members should be exempted from certain provisions of the Rule and what criteria should be employed to fashion such an exemption.

NASD received 10 comments in response to the *Notice to Members*.[7] Generally, the comments emphasized the financial and administrative burdens imposed by NASD Rule 2711 to implement the gatekeeper provisions and to structure firms so that research personnel are not subject to supervision by investment banking personnel. Commenters argued that the conflicts addressed by NASD Rule 2711 are less pronounced with respect to smaller firms and that the burdens of compliance could force firms to discontinue their research business.

In response to the comments, NASD has been developing a proposed permanent exemption to preserve the role of smaller firms in the capital raising process and to ensure research coverage for smaller or regional companies.

NASD believes that compliance with both NASD Rules 2711(b) and (c) continues to pose financial and administrative challenges for certain smaller firms. As such, NASD believes it appropriate to extend the effective date of those provisions for members that over the previous three years, on average per year, have participated in 10 or fewer investment banking transactions as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions. NASD proposes to delay the effective date of NASD Rules 2711(b) and (c) until July 30, 2003, or until the date a superseding permanent exemption is approved by the SEC and becomes effective.

As a further condition for the delayed implementation date, those firms that meet the eligibility requirements outlined above would be required to maintain records of communications that would otherwise be subject to the gatekeeper provisions of NASD Rules 2711(b) and (c).

2. NASD's Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[8] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that this proposed rule change would reduce or expose conflicts of interest and thereby significantly curtail the potential for fraudulent and manipulative acts. NASD further believes that the proposed rule change will provide investors with better and more reliable information with which to make investment decisions.

3. NYSE's Purpose

The Exchange is filing the proposed rule change to establish July 30, 2003, or until such date as a permanent exemption is approved by the SEC and becomes effective, as the effective date for NYSE Rule 472(b)(1), (2) and (3), subject to certain conditions, for members and member organizations that over the previous three years, on average per year, have participated in ten or fewer investment banking services transactions as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions (hereinafter referred to as ''small firms'').

In the May 10th order, the Commission approved amendments to NYSE Rules 351 (''Reporting Requirements'') and 472, which place prohibitions and/or restrictions on Investment Banking Department, Research Department, and Subject Company relationships and communications and impose new disclosure requirements on members and member organizations and their associated persons. At the same time, the Commission also approved a staggered implementation period for the rules. Most provisions of the rules became effective on July 9, 2002, including those that restrict supervision and control of associated persons by the investment banking department and those that require disclosure of investment banking compensation received from a subject company. The ''gatekeeper'' provisions, described below, became effective on September 9, 2002.

On July 9, 2002, the Exchange filed, for immediate effectiveness, SR–NYSE–2002–23[9] that extended the effective date to November 6, 2002 for NYSE Rule 472(b)(1), (2) and (3) (''gatekeeper'' provisions) for small firms.

On November 7, 2002, the Exchange filed, for immediate effectiveness, SR–NYSE–2002–60,[10] which extended the delayed effective date of the gatekeeper provisions for small firms until May 5, 2003.

Small Firm Relief

NYSE Rule 472 contains provisions that generally restrict the relationship between the research and investment banking departments, including ''gatekeeper'' provisions that require a legal or compliance person to intermediate certain communications between the research and investment banking departments. NYSE Rule 472(b)(1) prohibits an associated person (also referred to throughout this filing as a ''research analyst'') from being under the control or supervision of any employee of the investment banking department.

NYSE Rule 472(b)(1) also prohibits the investment banking department from reviewing or approving any research reports prior to distribution. NYSE Rule 472(b)(2) creates an exception to the prohibition of (b)(1) to allow investment banking personnel to review a research report prior to

[7] Letter from David Amster, CRT Capital Group, dated August 19, 2002; Letter from Peter V.B. Unger, Fulbright & Jaworski, LLP, dated August 30, 2002; Letter from First Analysis Securities Corp., dated August 30, 2002; Letter from Scott Cleland and John Eade, Investorside Research Association, dated August 29, 2002; Letter from W. Gray Medlin, The Carson Medlin Co., dated August 29, 2002; Letter from Cathryn Streeter, BioScience Securities, Inc., dated August 28, 2002; E-mail from James Nelson, Minnesota Valley Investments, dated July 31, 2002; E-mail from Joe B. Kercheville, Kercheville & Company, dated August 28, 2002; E-mail from Ray Chin, DBS Vickers Securities (USA) Inc., dated July 29, 2002; Letter from Stuart J. Kaswell, Securities Industry Association, dated August 30, 2002.

[8] 15 U.S.C. 78o–3(b)(6).

[9] *See* Securities Exchange Act Release No. 46182 (July 11, 2002), 67 FR 47013 (July 17, 2002).

[10] *See* note 5 *supra.*

publication to verify the accuracy of information contained therein and to review for any potential conflicts of interest. Any permissible written communications must be made through legal or compliance or copied to legal or compliance. Oral communications must be made through, or in the presence of, legal or compliance personnel and must be documented.

Similarly, NYSE Rule 472(b)(3) restricts communications between a member or member organization and the subject company of a research report, except that a member or member organization may submit sections of the research report to the subject company to verify factual accuracy and may notify the subject company of a ratings change after the ''close of trading'' on the business day preceding the announcement of the ratings change. Submissions to the subject company may not include the research summary, the rating or the price target, and a complete draft of the research report must be provided beforehand to legal or compliance personnel. Finally, any change to a rating or price target after review by the subject company must first receive written authorization from legal or compliance.

As the Commission noted in the May 10th order, several commenters argued that the ''gatekeeper'' provisions would impose significant costs, especially for smaller firms that may have to hire additional personnel to comply with the requirements. Commenters also noted that personnel often wear multiple hats in smaller firms, thereby causing a greater burden to comply with the restriction on supervision and control by investment banking personnel over research analysts. These comments raised the prospect that the Rules might force some firms out of the investment banking or research business and/or reduce important sources of capital and research coverage for smaller companies.

Accordingly, the Exchange is proposing to delay implementation of NYSE Rules 472(b)(1), (2), and (3) until July 30, 2003, or until a permanent exemption is approved by the SEC and becomes effective, for small firms. Those members or member organizations that meet the eligibility requirements outlined above for the delayed implementation date would also be required to maintain records of communications that would otherwise be subject to the gatekeeper provisions of NYSE Rule 472(b).

4. NYSE's Statutory Basis

The statutory basis for the proposed rule change is section 6(b)(5) of the Exchange Act [11] which requires, among other things, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and in general to protect investors and the public interest.

B. Self-Regulatory Organizations' Statements on Burden on Competition

The SROs do not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

The NASD and NYSE have not solicited or received written comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The proposed rule changes have been filed by the SROs as stated policies, practices, or interpretations with respect to the meaning, administration, or enforcement of an existing rule series under Rule 19b–4(f)(1) under the Act.[12] Consequently, they have become effective pursuant to section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(1) thereunder.[14]

At any time within 60 days of the filing of such proposed rule changes, the Commission may summarily abrogate such rule changes if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule changes are 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 submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 filings will also be available for inspection and copying at the principal offices of the SROs. All submissions should refer to the file numbers SR–NASD–2003–79 and SR–NYSE–2003–17 and should be submitted by June 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–12873 Filed 5–21–03; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 240.19b–4(f)(1).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(1).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4369]

Determination and Certification Under Section 40A of the Arms Export Control Act

Pursuant to section 40A of the Arms Export Control Act (Pub. L. 90–629—22 U.S.C. 2771 *et seq.*), as added by section 330 of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132), and Executive Order 11958, as amended, I hereby determine and certify to the Congress that the following countries are not cooperating fully with United States antiterrorism efforts:

Cuba;
Iran;
Libya;
North Korea;
Sudan;
Syria.

This determination and certification shall be transmitted to the Congress and published in the **Federal Register**.

Dated: May 15, 2003.

Richard L. Armitage,

Deputy Secretary of State , Department of State.

[FR Doc. 03–12874 Filed 5–21–03; 8:45 am]

BILLING CODE 4710–10–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, As Amended by Public Law 104–13; Proposed Collection; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR section 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–2523.

Comments should be sent to the Agency Clearance Officer no later than July 21, 2003.

SUPPLEMENTARY INFORMATION:

Type of request: Regular submission, proposal to extend without revision a currently approved collection of information (OMB control number 3316–0016).

Title of Information Collection: Farmer Questionnaire-Vicinity of Nuclear Power Plants.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households, and farms.

Small Business or Organizations Affected: No.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 300.

Estimated Total Annual Burden Hours: 150.

Estimated Average Burden Hours Per Response: .5.

Need For and Use of Information: This survey is used to locate, for monitoring purposes, rural residents, home gardens, and milk animals within a five mile radius of a nuclear power plant. The monitoring program is a mandatory requirement of the Nuclear Regulatory Commission set out in the technical specifications when the plants were licensed.

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations, Information Services.

[FR Doc. 03–12834 Filed 5–21–03; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending May 9, 2003

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–15109.

Date Filed: May 5, 2003.

Parties: Members of the International Air Transport Association.

Subject:

PTC3 0644 dated 6 May 2003 r1–r5

Mail Vote 299—Resolution 010n

Special Passenger Amending Resolution between Afghanistan and Pakistan

Intended effective date: 15 May 2003

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–12814 Filed 5–21–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending May 9, 2003

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's procedural regulations (See 14 CFR 301.201 *et. seq.*). The due date for answers, conforming applications, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2003–15130.

Date Filed: May 7, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 28, 2003.

Description: Application of Northwest Airlines, Inc., pursuant to 49 U.S.C. sections 41101 and 41102 and subpart B, requesting a certificate of public convenience and necessity authorizing Northwest to provide scheduled foreign air transportation of persons, property, and mail between any point or points in the United States, via intermediate points, and any point or points in Iraq and beyond. Northwest also requests, that the Department integrate this certificate authority with all of its existing certificate and exemption authority to the extent consistent with U.S. bilateral agreements and DOT policy.

Docket Number: OST–2003–15138.

Date Filed: May 7, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 28, 2003.

Description: Application of Aviation Concepts, Inc., pursuant to 49 U.S.C. section 41102 and subpart B, requesting a certificate of public convenience and necessity to engage in foreign charter air transportation of persons, property, and mail.

Docket Number: OST–2003–15139.

Date Filed: May 7, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 28, 2003.

Description: Application of Aviation Concepts, Inc., pursuant to 49 U.S.C. section 41102 and subpart B, requesting a certificate of public convenience and necessity to engage in interstate charter air transportation of persons, property, and mail.

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–12813 Filed 5–21–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare an Environmental Assessment and Conduct Scoping for Air Traffic Procedural Changes Associate With the Midwest Airspace Plan

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Intent to prepare an Environmental Assessment (EA) and conduct scoping meetings.

SUMMARY: The Federal Aviation Administration (FAA), Central Region, is issuing this notice to advise the public, pursuant to the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. 4332(2)(C) that the FAA intends to prepare an EA for the proposed Midwest Airspace Plan (MAP). While not required for an EA, the FAA is issuing this Notice of Intent to facilitate public involvement. This

EA will assess the potential environmental impacts resulting from proposed modifications to air traffic routings in the metropolitan St. Louis, Missouri and surrounding areas. Airports in this area include Lambert-St. Louis International Airport, Spirit of St. Louis Airport, St. Louis Downtown Airport, St. Louis Regional Airport, Scott Air Force Base/Mid-America Airport, as well as other smaller general aviation use airports. All reasonable alternatives will be considered including a no action alternative/option.

FOR FURTHER INFORMATION CONTACT: Donna O'Neill, Airspace Branch, ACE–520, Air Traffic Division, Federal Aviation Administration, 901 E. Locust, Kansas City, MO 64106; telephone: (816) 329–2560.

SUPPLEMENTARY INFORMATION: The FAA issued its Final Environmental Impact Statement (FEIS) on W–1–W, a new staggered parallel runway at St. Louis-Lambert International Airport on December 19, 1997. The subsequent Record of Decision (ROD) on Improvements to Lambert-St. Louis International Airport, dated September 30, 1998 directed that action be taken to develop air traffic control and airspace management procedures to effect the safe and efficient movement of air traffic to and from the proposed new runway, including the development of a system for the routing of arriving and departing traffic and the design, establishment, and publication of standardized flight operating procedures including instrument approach procedures and standard instrument departure procedures.

The FAA's Midwest Airspace Plan examines alternative ways to modify air traffic routes and procedures to enhance safety and improve operational efficiency in the St. Louis airspace environment. The Midwest Airspace Plan encompasses a geographic area of approximately 75 miles around the Lambert-St. Louis International Airport. Airports in the study area include: Lambert-St. Louis International Airport, Spirit of St. Louis Airport, St. Louis Downtown Airport, St. Louis Regional Airport, Scott Air Force Base/Mid-America Airport, as well as other smaller general aviation use airports.

The FAA will examine methods that will take advantage of new and emerging ATC technologies, improved performance characteristics of modern aircraft, as well as improvements in navigation capabilities. The proposal will address the merits of alternative airspace design scenarios that safely and efficiently use regional airspace and utilize the additional runway being constructed at the Lambert-St. Louis International Airport.

As part of the airspace redesign effort, the FAA will conduct detailed analyses, which will be used to evaluate the potential environmental impacts in the study area. During scoping, and upon publication of a draft EA and a final EA, the FAA will be contacting and coordinating with federal, state, and local agencies, as well as the public, to obtain comments and suggestions regarding the EA for the proposed project. The EA will assess impacts and reasonable alternatives including a no action alternative, pursuant to NEPA; FAA Order 1050.1, Policies and Procedures for Assessing Environmental Impacts; DOT Order 5610.1, Procedures for Considering Environmental Impacts; and the President's Council on Environmental Quality (CEQ) Regulations implementing the provisions of NEPA, 40 CFR Parts 1500–1508, and other appropriate Agency guidance.

Public Scoping Process: While not required for an EA, the FAA will use the scoping process as outlined in the Council on Environmental Quality (CEQ) Regulations and guidelines to facilitate public involvement. Concerned individuals and agencies are invited to express their views either in writing or by providing oral comments at a scoping meeting. The purpose of the scoping process is: (1) To provide a description of the proposed action, (2) to provide an early and open process to determine the scope of issues to be addressed and to identify potentially significant issues or impacts related to the proposed action that should be analyzed in the EA, (3) to identify other coordination and any permit requirements associated with the proposed action, (4) to identify and eliminate from detailed study those issues that are not significant or those that have been adequately addressed during a prior environmental review process.

The FAA has scheduled four public scoping meetings. Each meeting will be held from 7 p.m. to 9 p.m. at sites listed below. Each of the meetings will begin with an overview of the project (7 p.m.–7:15 p.m.), followed by an informal open house period (7:15 p.m.–8:30 p.m.) and will conclude with a question and answer session (8:30 p.m.–9 p.m.). The open house portion of each public scoping meeting will include redesign displays and graphics and will provide an opportunity for one-on-one interaction between representatives of the FAA and the general public. Comments will be received via court recorder or written form throughout the duration of the meeting.

Scoping Meeting dates and locations are:

—June 11, 2003—Collinsville, IL Holiday Inn

—June 17, 2003—Kirkwood, MO Holiday Inn

—June 18, 2003—St. Peters, MO City Hall

—June 19, 2003—Alton, IL Holiday Inn

In meeting with NEPA coordination requirements, the FAA has scheduled one meeting that will be dedicated primarily to federal, state and local agency staff, and Native American governments. This meeting is scheduled on June 11 from 1 to 3 p.m. at the Sheraton St. Louis City Center Hotel, St. Louis, MO. Although this meeting will be held primarily for the benefit of federal, tribal, state and local agency staff, it will also be open to the public.

The scoping period begins with this announcement. To ensure that all issues are identified, the FAA is requesting comments and suggestions on the project scope from all interested federal, state and local agencies and other interested parties. In furtherance of this effort, the FAA has established an Internet Web site that can be accessed at: *http://www.faa.gov/ats/central/enviro/map.html.* Additional information about the Midwest Airspace Plan, including the scoping meeting schedule and meeting locations can be found at this internet site. Additionally, the FAA will be maintaining the following telephone number for general information: 816–329–2560.

Dates: The FAA will accept formal scoping comments through July 18, 2003. Written comments should be directed to the following address: Federal Aviation Administration, 901 E. Locust, Attn: ACE–520–MAP, Kansas City, MO 64106. Comments will also be accepted electronically via *http://www.faa.gov/ats/nar/central/enviro/map.html.*

Issued in Kansas City, Missouri on May 6, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–12819 Filed 5–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (03–03–C–00–HLN) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Helena Regional Airport, Submitted by the Helena Regional Airport Authority, Helena Regional Airport, Helena, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Helena Regional Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before June 23, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: David S. Stelling, Manager; Helena Airports District Office, HLN–ADO; Federal Aviation Administration; 2725 Skyway Drive, Suite 2, Helena, MT 59602.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ronald S. Mercer, Airport Director, at the following address: 2850 Skyway Drive, Helena, MT 59602.

Air Carriers and foreign air carriers may submit copies of written comments previously provided at Helena Regional Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: David S. Stelling, 406–449–5271, Airports District Office, 2725 Skyway Drive, Suite 2, Helena, MT 59602. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (03–03–C–00–HLN) to impose and use PFC revenue at Helena Regional Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 13, 2003, the FAA determined that the application to impose and use the revenue from a PFC, submitted by Helena Regional Airport, Helena, Montana, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 22, 2003. The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge-effective date: October 1, 2003.

Proposed charge-expiration date: June 1, 2010.

Total requested for use approval: $2,350,897.

Brief description of proposed projects: Disabled Passenger Access Lift Acquisition; Southside Taxilane Construction—Phase I; Southside Taxilane Construction—Phase II; Loop Road and Parking Lot Improvements; Runway 9 perimeter Access Road; Terminal Building Expansion and Remodel; Snow Removal Equipment Acquisition; and Aircraft Rescue and Fire Fighting Equipment Acquisition.

Class or classes of air carriers that the public agency has requested not be required to collect PFC's: On-demand, Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Helena Regional Airport.

Issued in Renton, Washington on May 13, 2003.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 03–12820 Filed 5–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Environmental Impact Statement: Rail Corridor—Petersburg, Virginia (Collier Yard) to Raleigh, North Carolina (Boylan Wye)

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The FRA is issuing this notice to advise the public that a Tier II Environmental Impact Statement (EIS) will be prepared for a 138-mile portion of the Southeast High Speed Rail (SEHSR) Corridor from Petersburg, Virginia (Collier Yard) to Raleigh, North Carolina (Boylan Wye).

FOR FURTHER INFORMATION CONTACT: Mr. David Foster, Rail Environmental Programs Manager, North Carolina Department of Transportation Rail Division, 1553 Mail Service Center, Raleigh, NC, 27699–1553, telephone (919) 508–1917; or Mr. David Valenstein, Environmental Program Manager, Federal Railroad Administration (FRA), 400 Seventh Street, SW., MS 20, Washington, DC 20590, telephone (202) 493–6368.

SUPPLEMENTARY INFORMATION: The FRA, in cooperation with the Federal Highway Administration (FHWA), the North Carolina Department of Transportation (NCDOT), and the Virginia Department of Rail and Public Transportation (VDRPT), will prepare a Tier II Environmental Impact Statement for a 138-mile portion of the SEHSR Corridor from Petersburg, Virginia at Collier Yard to Raleigh, North Carolina at the Boylan Wye. This study will evaluate alternatives and environmental impacts within the preferred corridor (Alternative A) described in the Tier I Record of Decision for the SEHSR Corridor from Washington, DC to Charlotte, North Carolina. The study corridor generally follows the Burgess Connector rail line from Collier Yard to Burgess, Virginia and the former Seaboard Air Line (S-line) from Burgess to Raleigh, North Carolina.

Multiple options within the preferred corridor exist to connect the S-line from Burgess to Main Street Station in Richmond, Virginia, which is the destination for intercity rail service in this segment of the SEHSR Corridor. VDRPT and the FRA propose to address options in this area in separate environmental documentation to be prepared prior to construction of the SEHSR between Richmond, Virginia and Raleigh, North Carolina. Different routings are possible through Petersburg and capacity issues exist on the A-line particularly crossing the Appomattox River would be considered in the separate documentation.

This environmental process has four basic goals: (1) Reiterate the purpose and need as established in the Tier I EIS for the Washington DC to Charlotte NC portion of the SEHSR corridor; (2) develop alternatives within the study corridor; (3) conduct a detailed evaluation of environmental impacts for the alternatives; and (4) select a preferred alternative.

Scoping and Comments: FRA encourages broad participation in the EIS process during scoping and

subsequent review of the resulting environmental documents. Comments and suggestions are invited from all interested agencies and the public at large to insure the full range of issues related to the proposed action and all reasonable alternatives are addressed and all significant issues are identified. Public agencies with jurisdiction are requested to advise the FRA and NCDOT of the applicable permit and environmental review requirements of each agency, and the scope and content of the environmental information that is germane to the agency's statutory responsibilities in connection with the proposed improvements. Agency scoping meetings have been scheduled for June 17 and 18, 2003 at the following locations:

• June 17, 10:30 am, VDRPT Executive Conference Room, 1313 East Main Street, Suite 300, Richmond, VA.

• June 18, 10:00 am, NCDOT Photogrammetry Conference Room, Room 322–A, 1020 Birch Ridge Drive, Building B, Raleigh, NC.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies in North Carolina and Virginia. An iterative public involvement/information program will support the process. The program will involve newsletters, a project hotline, informational workshops, small group meetings, and other methods to solicit and incorporate public input throughout the planning process.

Comments and questions concerning the proposed action should be directed to NCDOT or to the FRA at the addresses provided above. Additional information can be obtained by visiting the project Web site at *http://www.sehsr.org* or calling the toll-free project number 1–877–749–RAIL (7245).

Issued in Washington DC on May 15, 2003.

Mark E. Yachmetz,

Associate Administrator for Railroad Development.

[FR Doc. 03–12812 Filed 5–21–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34343]

International Steel Group Inc.—Continuance in Control Exemption—ISG Railways, Inc.

International Steel Group Inc. (ISG), a noncarrier, has filed a verified notice of exemption to continue in control of ISG Railways, Inc. (ISG Railways),[1] upon ISG Railways becoming a Class II rail carrier.

This transaction is related to a simultaneously filed verified notice of exemption in STB Finance Docket No. 34344, *ISG Railways, Inc.—Acquisition of Control Exemption—Assets of Keystone Railroad LLC d/b/a Philadelphia, Bethlehem and New England Railroad Company, Conemaugh & Black Lick Railroad Company LLC, Steelton & Highspire Railroad Company LLC, Lake Michigan & Indiana Railroad Company LLC, Brandywine Valley Railroad Company LLC, Upper Merion & Plymouth Railroad Company LLC, Patapsco & Back Rivers Railroad Company LLC, and Cambria and Indiana Railroad, Inc.,* wherein ISG Railways seeks to acquire the rail lines and substantially all other assets of Keystone Railroad LLC d/b/a Philadelphia, Bethlehem and New England Railroad Company, Conemaugh & Black Lick Railroad Company LLC, Steelton & Highspire Railroad Company LLC, Lake Michigan & Indiana Railroad Company LLC, Brandywine Valley Railroad Company LLC, Upper Merion & Plymouth Railroad Company LLC, Patapsco & Back Rivers Railroad Company LLC, and Cambria and Indiana Railroad, Inc., all Class III rail carrier subsidiaries of Bethlehem Steel Corporation.

The proposed transaction was scheduled to be consummated on or after April 29, 2003, the effective date of the exemption (7 days after the exemption was filed).

ISG currently indirectly controls two existing Class III railroads: ISG South Chicago & Indiana Harbor Railway Company, operating in Illinois and Indiana, and ISG Cleveland Works Railway Company, operating in Ohio.[2]

ISG states that: (1) The rail lines to be acquired by ISG Railways will not connect with the rail lines of any existing rail carrier in the ISG corporate family; (2) this control transaction is not part of a series of anticipated transactions that would result in such a connection; and (3) this control transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval of requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because the transaction involves at least one Class II and one or more Class III rail carriers, the exemption is subject to labor protection requirements of 49 U.S.C. 11326(b).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings referring to STB Finance Docket No. 34343, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, NW.,—2nd Floor, Washington, DC 20036.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: May 15, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–12858 Filed 5–21–03; 8:45 am]

BILLING CODE 4915–00–P

[1] ISG Railways, is a wholly owned subsidiary of ISG Acquisition, Inc., which is a wholly owned subsidiary of ISG.

[2] *See International Steel Group, Inc.—Continuance in Control Exemption—ISG South Chicago & Indiana Harbor Railway Company and ISG Cleveland Works Railway Company,* STB Finance Docket No. 34201 (STB served May 19, 2002).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34344]

ISG Railways, Inc.—Acquisition of Control Exemption—Assets of Keystone Railroad LLC d/b/a Philadelphia, Bethlehem and New England Railroad Company, Conemaugh & Black Lick Railroad Company LLC, Steelton & Highspire Railroad Company LLC, Lake Michigan & Indiana Railroad Company LLC, Brandywine Valley Railroad Company LLC, Upper Merion & Plymouth Railroad Company LLC, Patapsco & Back Rivers Railroad Company LLC, and Cambria and Indiana Railroad, Inc.

ISG Railways, Inc. (ISG Railways),[1] a noncarrier, has filed a verified notice of exemption to acquire, pursuant to an asset purchase agreement, the rail lines and substantially all other assets of Keystone Railroad LLC d/b/a Philadelphia, Bethlehem and New

[1] ISG Railways is a wholly owned subsidiary of ISG Acquisition, Inc., which is a wholly owned subsidiary of International Steel Group Inc.

England Railroad Company (Keystone), Conemaugh & Black Lick Railroad Company LLC (CBLR), Steelton & Highspire Railroad Company LLC (SHP), Lake Michigan & Indiana Railroad Company LLC (LMIC), Brandywine Valley Railroad Company LLC (BVRY), Upper Merion & Plymouth Railroad Company LLC (UMP), Patapsco & Back Rivers Railroad Company LLC (PBR), and Cambria and Indiana Railroad, Inc. (C&I), all Class III rail carrier subsidiaries of Bethlehem Steel Corporation (Bethlehem), operating in Delaware, Indiana Maryland, and Pennsylvania.[2]

This transaction is related to a simultaneously filed verified notice of exemption in STB Finance Docket No. 34343, *International Steel Group Inc.—Continuance in Control Exemption—ISG Railways, Inc.,* wherein International Steel Group Inc. seeks to continue in control of ISG Railways upon ISG Railways becoming a Class II rail carrier pursuant to this proceeding.

The proposed transaction was scheduled to be consummated on or after April 29, 2003, the effective date of the exemption (7days after the exemption was filed).

ISG Railways states that: (i) The railroads do not connect with each other or any railroad in their corporate family; (ii) the acquisition of control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

[2] ISG Railways states that Bethlehem is operating under bankruptcy protection, but Keystone, CBLR, SHP, LMIC, BVRY, UMP, PBR and C&I are not.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34344, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on Kevin M. Sheys, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, NW.,—2nd Floor, Washington, DC 20036.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: May 15, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–12859 Filed 5–21–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–603 (Sub–No. 1X)]

V and S Railway, Inc.—Abandonment Exemption—in Barber County, KS

On May 2, 2003, V and S Railway, Inc. (VSR), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 20-mile line of railroad extending from milepost 21.0, at Medicine Lodge, to the end of the line at milepost 41.0, at Sun City, in Barber County, KS. The line traverses United States Postal Service Zip Codes 67071, 67104, and 67143.

The line does not contain Federally granted rights-of-way. Any documentation in VSR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 20, 2003.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than June 11, 2003. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–603 (Sub-No. 1X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington DC 20423–0001; and (2) Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington DC 20005. Replies to the petition are due on or before June 11, 2003.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

An environmental assessment (EA) (or an environmental impact statement (EIS), if necessary), prepared by SEA, will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days after the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 16, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–12860 Filed 5–21–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices

Privacy Act of 1974, Systems of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of Revised Privacy Act Systems of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Treasury Inspector General for Tax Administration (TIGTA) gives notice of a revised Privacy Act system of records.

DATES: Comments must be received by June 23, 2003. The proposed new system of records will become effective July 1, 2003, unless comments are received which would result in a contrary determination.

ADDRESSES: Comments should be sent to Lori Creswell, Assistant Chief Counsel, Treasury Inspector General for Tax Administration, 1125 15th Street, Room 700A, Washington, DC 20005, 202–622–4068. Comments will be made available for inspection upon written request.

FOR FURTHER INFORMATION CONTACT: Lori Creswell, Assistant Chief Counsel, Treasury Inspector General for Tax Administration, 1125 15th Street, Room 700A, Washington, DC 20005, 202–622–4068.

SUPPLEMENTARY INFORMATION: The Treasury Inspector General for Tax Administration (TIGTA) was established pursuant to the Internal Revenue Service Restructuring and Reform Act of 1998. TIGTA's duties and operating authority are set forth in the Inspector General Act of 1978, 5 U.S.C app. 3. TIGTA exercises all duties and responsibilities of an Inspector General with respect to the Department and the Secretary on all matters relating to the Internal Revenue Service (IRS). TIGTA conducts, supervises, and coordinates audits and investigations relating to the programs and operations of the IRS and related entities. TIGTA is organizationally placed within the Department of the Treasury, but is independent of the Department and all other Treasury offices.

The powers and responsibilities of the Office of Chief Inspector for the Internal Revenue Service, except for the conducting of background checks and the providing of physical security were transferred to TIGTA. The following systems of records maintained by the Chief Inspector's Office of the Internal Revenue Service, published at 63 FR 69905–69913, are being consolidated and renamed as Treasury/DO .311–TIGTA Office of Investigations Files:

IRS 60.001—Assault and Threat Investigation Files, Inspection;

IRS 60.002—Bribery Investigation Files, Inspection;

IRS 60.003—Conduct Investigation Files, Inspection;

IRS 60.004—Disclosure Investigation Files, Inspection;

IRS 60.005—Enrollee Applicant Investigation Files, Inspection;

IRS 60.006—Enrollee Charge Investigation Files, Inspection;

IRS 60.007—Miscellaneous Information File, Inspection;

IRS 60.009—Special Inquiry Investigation Files, Inspection, and

IRS 60.010—Tort Investigation Files, Inspection.

This amendment reflects the transfer of investigative responsibility to TIGTA.

A notice of final rulemaking, is being published separately in the **Federal Register** to amend 31 CFR 1.36. The amendment reflects the consolidation of the above systems of records and transfers the responsibility for the systems from the Internal Revenue Service (IRS) to the Departmental Offices (DO). The exemptions claimed for the systems of records were last published in their entirety on November 21, 2000, at 65 FR 69865.

The revised system of records report, required by the Privacy Act, 5 U.S.C. 552a(r), has been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix 1 to OMB Circular A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, dated November 30, 2000.

The revised system of records, Treasury/DO .311–TIGTA Office of Investigations Files, is published in its entirety below.

Dated: May 8, 2003.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

Treasury/DO .311

SYSTEM NAME:

TIGTA Office of Investigations Files.

SYSTEM LOCATION:

National Headquarters, Office of Investigations, 1125 15th Street, NW., Washington, DC 20005 and Field Division offices listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) The subjects or potential subjects of investigations; (2) The subjects of complaints received by TIGTA; (3) Persons who have filed complaints with TIGTA; (4) Confidential informants; and (5) TIGTA Special Agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Reports of investigations, which may include, but are not limited to, witness statements, affidavits, transcripts, police reports, photographs, documentation concerning requests and approval for consensual telephone and consensual non-telephone monitoring, the subject's prior criminal record, vehicle maintenance records, medical records, accident reports, insurance policies, police reports, and other exhibits and documents collected during an investigation; (2) Status and disposition information concerning a complaint or investigation including prosecutive action and/or administrative action; (3) Complaints or requests to investigate; (4) General case materials and documentation including, but not limited to, Chronological Case Worksheets (CCW), fact sheets, agent work papers, Record of Disclosure forms, and other case management documentation; (5) Subpoenas and evidence obtained in response to a subpoena; (6) Evidence logs; (7) Pen registers; (8) Correspondence; (9) Records of seized money and/or property; (10) Reports of laboratory examination, photographs, and evidentiary reports; (11) Digital image files of physical evidence; (12) Documents generated for purposes of TIGTA's undercover activities; (13) Documents pertaining to the identity of confidential informants; and, (14) Other documents collected and/or generated by the Office of Investigations during the course of official duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3 and 5 U.S.C. 301.

PURPOSE(S):

The purpose of this system of records is to maintain information relevant to complaints received by TIGTA and collected as part of investigations conducted by TIGTA's Office of Investigations. This system also includes investigative material compiled by the IRS' Office of the Chief Inspector, which was previously maintained in the following systems of records: Treasury/IRS 60.001–60.007 and 60.009–60.010.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing personnel actions or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties;

(10) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger; and

(11) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

By name, Social Security Number, and/or case number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Some of the records in this system are maintained and disposed of in accordance with a record disposition schedule approved by the National Archives and Records Administration. TIGTA is in the process of requesting approval of new records schedules concerning all records in this system of records. Records not currently covered by an approved record retention schedule will not be destroyed until TIGTA receives approval from the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Inspector General for Investigations, Office of Investigations, TIGTA, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Section, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2). Non-exempt record source categories include the following: Department of the Treasury personnel and records, complainants, witnesses, governmental agencies, tax returns and related documents, subjects of investigations, persons acquainted with the individual under investigation, third party witnesses, Notices of Federal Tax Liens, court documents, property records, newspapers or periodicals, financial institutions and other business records, medical records, and insurance companies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

Appendix A

Office of Investigations, TIGTA

Field Division SAC Offices

Treasury IG for Tax Administration, 401 West Peachtree St., Atlanta, GA 30365
Treasury IG for Tax Administration, 550 Main Street, Cincinnati, OH 45202
Treasury IG for Tax Administration, 200 W. Adams, Chicago, IL 60606
Treasury IG for Tax Administration, 4050 Alpha Rd., Dallas, TX 75244–4203
Treasury IG for Tax Administration, 600 17th St., Denver, CO 80202
Treasury IG for Tax Administration, 200 W. Forsyth St., Jacksonville, FL 32202
Treasury IG for Tax Administration, 312 East First Street, Los Angeles, CA 90012
Treasury IG for Tax Administration, 201 Varick Street, New York, NY 10008
Treasury IG for Tax Administration, 600 Arch Street, Philadelphia, PA 19106
Treasury IG for Tax Administration, 1301 Clay Street, Oakland, CA 94612
Treasury IG for Tax Administration, New Carrollton Federal Bldg., 5000 Ellin Road, Lanham, MD 20706

Treasury IG for Tax Administration, 1739–H Brightseat Road, Landover, MD 20785
Treasury IG for Tax Administration, 8484 Georgia Ave., Silver Spring, MD 20910

[FR Doc. 03–12795 Filed 5–21–03; 8:45 am]

BILLING CODE 4810–04–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–175–86]

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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, EE–175–86, (TD 8357), Certain Cash or Deferred Arrangements and Employee and Matching Contributions Under Employee Plans (§§ 1.401(k)–1, 1.401(m)–1, and 54.4979–1).

DATES: Written comments should be received on or before July 21, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Certain Cash or Deferred Arrangements and Employee and Matching Contributions Under Employee Plans.

OMB Number: 1545–1069.

Regulation Project Number: EE–175–86.

Abstract: This regulation provide the public with the guidance needed to comply with sections 40(k), 401(m), and 4979 of the Internal Revenue Code. The regulation affects sponsors of plans that contain cash or deferred arrangements or employee or matching contributions, and employees who are entitled to make elections under these plans.

Current Actions: There are no changes to this existing regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, farms, and state, local, or tribal governments.

Estimated Number of Respondents: 355,500.

Estimated Time Per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 1,060,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 16, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–12778 Filed 5–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5735 and Schedule P (Form 5735)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5735, Possessions Corporation Tax Credit (Under Sections 936 and 30A), and Schedule P (Form 5735), Allocation of Income and Expenses Under Section 936(h)(5).

DATES: Written comments should be received on or before July 21, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, Room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Possessions Corporation Tax Credit (Under sections 936 and 30A), and Allocation of Income and Expenses Under Section 936(h)(5).

OMB Number: 1545–0217.

Form Number: Form 5735 and Schedule P (Form 5735).

Abstract: Form 5735 is used to compute the possessions corporation tax credit under sections 936 and 30A. Schedule P (Form 5735) is used by corporations that elect to share their income or expenses with their affiliates. The forms provide the IRS with information to determine if the corporations have computed the tax credit and the cost-sharing or profit-split method of allocating income and expenses.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,371.

Estimated Time Per Respondent: 24 hrs., 53 min.

Estimated Total Annual Burden Hours: 34,126.

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: May 15, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–12779 Filed 5–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2438

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 Form 2438, Undistributed Capital Gains Tax Return.

DATES: Written comments should be received on or before July 21, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Undistributed Capital Gains Tax Return.

OMB Number: 1545–0144.

Form Number: 2438.

Abstract: Form 2438 is used by regulated investment companies to compute capital gains tax on undistributed capital gains designated under Internal Revenue Code section 852(b)(3)(D). The IRS uses this information to determine the correct tax.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 8 hrs., 35 mins.

Estimated Total Annual Burden Hours: 859.

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: May 15, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–12780 Filed 5–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–185–84]

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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–185–84 (TD 8086), Election of $10 Million Limitation on Exempt Small Issues of Industrial Development Bonds; Supplemental Capital Expenditure Statements (§ 1.103–10(b)(2)(vi)).

DATES: Written comments should be received on or before July 21, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue

Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Allan Hopkins at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Election of $10 Million Limitation on Exempt Small Issues of Industrial Development Bonds; Supplemental Capital Expenditure Statements.

OMB Number: 1545–0940.

Regulation Project Number: LR–185–84.

Abstract: This regulation liberalizes the procedure by which a state or local government issuer of an exempt small issue of tax-exempt bonds elects the $10 million limitation upon the size of such issue and deletes the requirement to file certain supplemental capital expenditure statements.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 15, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–12781 Filed 5–21–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 99

Thursday, May 22, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 72

[USCG–2001–10714]

RIN 1625–AA34 (Formerly RIN 2115–AG25)

Update of Rules on Aids to Navigation Affecting Buoys, Sound Signals, International Rules at Sea, Communications Procedures, and Large Navigational Buoys

Correction

In proposed rule document 03–11987 beginning on page 25855 in the issue of Wednesday, May 14, 2003, make the following correction:

§ 72.05–10 [Corrected]

On page 25859, in § 72.05–10, in the third column, in the **Note**, in the fourth and fifth lines, ''*http://pollux.nss.nima.mil/pubs/USCGLL/pubs__j__uscgll__list*'' should read, ''*http://pollux.nss.nima.mil/pubs/USCGLL/pubs__j__uscgll__list.html*''.

[FR Doc. C3–11987 Filed 5–21–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
May 22, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Five Plant Species From the Northwestern Hawaiian Islands, Hawaii; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH09

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Five Plant Species From the Northwestern Hawaiian Islands, Hawaii

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 five of six plant species known historically from the Northwestern Hawaiian Islands. The five species are *Amaranthus brownii*, *Mariscus pennatiformis*, *Pritchardia remota*, *Schiedea verticillata*, and *Sesbania tomentosa.* A total of approximately 493 hectares (1,219 acres) of land on Nihoa, Necker, and Laysan Islands fall within the boundaries of the seven critical habitat units designated for the five species. This critical habitat designation requires the Service to consult under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat. We solicited data and comments from the public on all aspects of the proposed rule, including data on economic and other impacts of the designation.

DATES: This rule becomes effective on June 23, 2003.

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 U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., Room 3–122, P.O. Box 50088, Honolulu, HI 96850–0001.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office at the above address (telephone 808/541–3441; facsimile 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

In the List of Endangered and Threatened Plants (50 CFR 17.12(h)), there are six plant species that, at the time of listing, were reported from the Northwestern Hawaiian Islands (NWHI). *Amaranthus brownii*, *Pritchardia remota*, and *Schiedea verticillata* are endemic to the NWHI, while *Cenchrus agrimonioides*, *Mariscus pennatiformis*, and *Sesbania tomentosa* are reported from several other Hawaiian islands in addition to the NWHI (see Table 1).

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF SIX SPECIES FROM THE NWHI

Species	Island distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	NWHI, Kahoolawe, Niihau
Amaranthus brownii (no common name)	.....	.....	.....	.....	.....	.....	Nihoa (C)
Cenchrus agrimonioides (kamanomano)	.....	C	.....	H	C	R	Kure (H*), Laysan (H), Midway (H)
Mariscus pennatiformis (no common name)	H	H	.....	.....	C	R	Laysan (C)
Pritchardia remota (loulu)	.....	.....	.....	.....	.....	.....	Nihoa (C), Laysan(**)
Schiedea verticillata (no common name)	.....	.....	.....	.....	.....	.....	Nihoa (C)
Sesbania tomentosa (ohai)	C	C	C	H	C	C	Niihau (H), Kahoolawe (C), Necker (C), Nihoa (C)

Key:
C (Current)—occurrence last observed within the past 30 years.
H (Historical)—occurrence not seen for more than 30 years.
R (Reported)—reported from undocumented observations.
* *Cenchrus agrimonioides* var. *laysanensis* was last observed 23 years ago.
** It has been suggested that *Pritchardia remota* was the species of *Pritchardia* once extant on Laysan; however, this is not known for certain.
NWHI include Kure Atoll, Midway Atoll, and Laysan, Necker, Nihoa islands.

Although we considered designating critical habitat on the NWHI for each of the six plant species, for the reasons described below, the final designation includes critical habitat for five of six plant species. Species that also occur on other islands may have critical habitat designated on other islands in previous or subsequent rulemakings.

The Northwestern Hawaiian Islands

The NWHI are a chain of islands that extend along a linear path for approximately 1,600 kilometers (km) (1,000 miles (mi)) in a northwestern direction from Nihoa Island to Kure Atoll and include the following: Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Atoll, Midway Atoll, and Kure Atoll (Figure 1). They are remnants of once larger islands that have slowly eroded and subsided and that exist today as small land masses or coral atolls covering the remnants of volcanic islands (Department of Geography 1998; Service 1998).

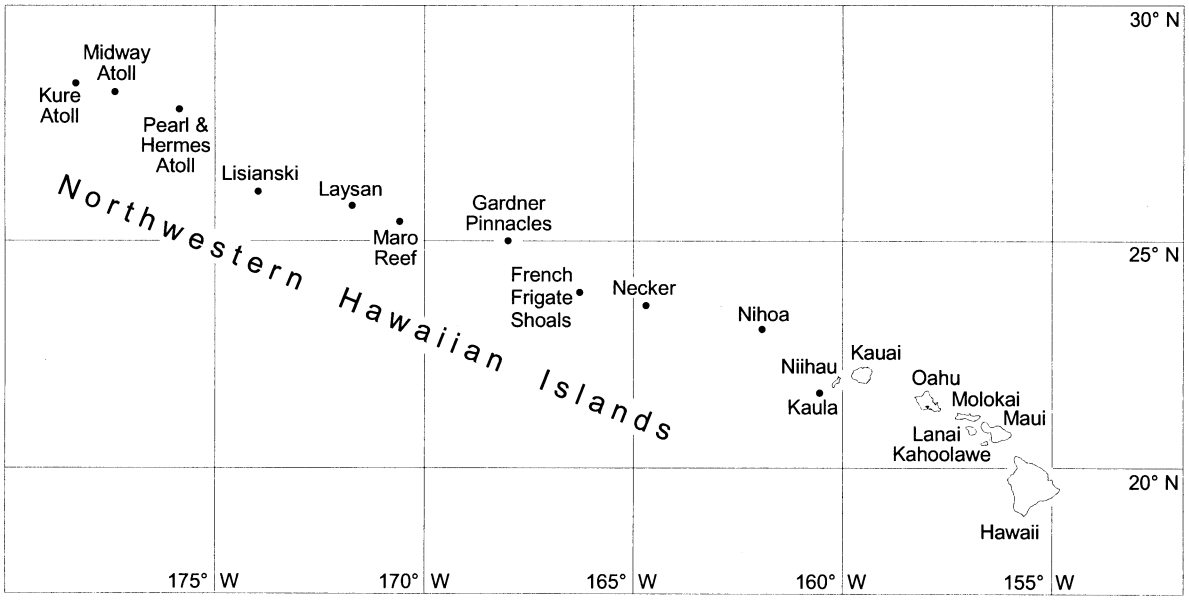


Figure 1. Northwestern Hawaiian Islands

Nihoa rises approximately 274 meters (m) (900 feet (ft)) above sea level and has an area of approximately 69 hectares (ha) (171 acres (ac)). Its steep topography and crater shape reveal its volcanic origin. Necker Island, less than 92 m (300 ft) in elevation and 19 ha (46 ac) in area, consists of thin-layered, weathered lava flows. La Perouse Pinnacles at French Frigate Shoals and Gardner Pinnacles are the last exposed volcanic remnants in the archipelago. French Frigate Shoals is a crescent-shaped atoll nearly 29 km (18 mi) across. More than a dozen small sandy islands dot the fringes of this atoll. Maro Reef is a largely submerged area marked by breakers and a few pieces of coral that intermittently protrude above the waterline. Laysan Island is approximately 405 ha (1,002 ac) in size and fringed by a reef. In the center of the island is a 52 ha (129 ac) hypersaline lagoon. Lisianski Island is 147 ha (364 ac) in size and bounded to the north by an extensive reef system. The central lagoon once found on this island has filled with sand. Pearl and Hermes Reef, an inundated atoll, includes nearly 40,469 ha (100,000 ac) of submerged reef and seven small sandy islets totaling less than 34 ha (85 ac). Midway Atoll is approximately 8 km (5 mi) in diameter and includes three islands: Sand, Eastern, and Spit. Both Sand and Eastern Islands have been highly altered by man. Kure Atoll is the northernmost exposed land in the Hawaiian archipelago. Two islands, Green and Sand, are found on the southern edge of the atoll and are included in the Hawaii State Seabird Sanctuary System. Green Island was altered considerably in the past and today suffers from enormous nonnative species problems (Elizabeth Flint, Service, pers. comm., 2000).

One of the six listed plants was historically known from Kure Atoll (*Cenchrus agrimonioides* var. *laysanensis*), two were known from Laysan (*C. agrimonioides* var. *laysanensis* and *Mariscus pennatiformis* ssp. *bryanii*), one from Midway (*C. agrimonioides* var. *laysanensis*), four from Nihoa (*Amaranthus brownii*, *Pritchardia remota*, *Schiedea verticillata*, and *Sesbania tomentosa*), and one from Necker (*Sesbania tomentosa*) (see Table 1 above).

Nihoa (209 km (140 mi) from Niihau) and Necker (an additional 290 km (180 mi) northwest of Nihoa) are the islands in the northwestern group that are closest to the main Hawaiian Islands. Both are small, residual fragments of volcanoes that formed approximately 7.2 and 10.3 million years ago, respectively (Service 1986). Although both of these islands were uninhabited at the time of their modern discovery in the late eighteenth century, there is an extensive heiau (indigenous place of worship or shrine) complex on Necker, and agricultural terraces and other Hawaiian archaeological features can be found on Nihoa (Cleghorn 1984; Department of Geography 1998; Service 1986).

In 1892, a guano mining business began operation on Laysan and flourished until 1904. During this time, rabbits were introduced to Laysan for a rabbit canning industry, and the rabbits were allowed to reproduce and roam freely (Morin and Conant 1998; Tomich 1986). This failed as a profitable business, and no attempt was made to control the number of rabbits on the island. The rabbits were finally eradicated from Laysan Island in the early 1920s, although not before the vegetation had been thoroughly devastated. Since then, the vegetation of Laysan has recovered to a remarkable degree, although some species, like the native palms (*Pritchardia* sp.) (lolou), are no longer naturally extant on the island (Tomich 1986; E. Flint, pers. comm., 2000).

Midway Atoll was discovered and named Middlebrook Islands in 1859 by Captain Nick Brooks. The atoll was taken into possession by the United States in 1867, and in 1903, President Theodore Roosevelt placed the atoll under the control of the U.S. Navy. In 1935, Pan American World Airways set up an airbase for the weekly Trans-Pacific Flying Clipper Seaplane service. In 1941, the Japanese attacked Midway Atoll on their return from the attack on Pearl Harbor. In 1942, the United States defeated the Japanese Fleet north of the atoll, turning the tide of World War II in the Pacific. In 1988, the atoll was added to the National Wildlife Refuge (NWR) system, and in 1996, the jurisdiction of Midway Atoll was transferred from the U.S. Navy to the Department of the Interior (Service 2000). Despite this evidence of human use, these islands continue to support an assemblage of endemic plants and animals not found elsewhere in the archipelago (Department of Geography 1998).

Kure Atoll was discovered and named in 1827 by the captain of a Russian vessel. Between 1876 and 1936, Australian Copra & Guano Ltd. mined guano from Green Island and Sand Island, the two islands that make up Kure Atoll. Military bases were built on the islands during World War II, and a Loran C station with two 158 m (518 ft) high masts was operated until 1998. The towers are no longer on the islands. The airstrip built on Green Island is no longer usable, and landing is only possible by boat (Service 1998a).

Hawaiian Islands National Wildlife Refuge

The reefs and islets of the Northwestern Hawaiian chain from Nihoa Island through Pearl and Hermes Atoll are protected as the Hawaiian Islands National Wildlife Refuge (HINWR). The HINWR was established in 1909 to protect the large colonies of seabirds, which were being slaughtered for the millinery trade, and a variety of other marine organisms, including sea turtles and the critically endangered Hawaiian monk seal (*Monachus schauinslandi*), as well as to address the commercial exploitation of wildlife resources (Executive Order 1019). Within the refuge's boundaries are eight islands and atolls: Nihoa, Necker, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan, Lisianski, and Pearl and Hermes Atoll. There is no public or recreational use allowed at HINWR. Access is strictly regulated through a permit system because of the sensitivity of the organisms on these islands to human disturbance and the high risk of importation of nonnative plant and invertebrate species. For those who do access the refuge, strict quarantine procedures are in effect. Other than the refuge staff, only individuals conducting scientific research or undertaking natural history film recording have been granted official permission to visit the HINWR (E. Flint, pers. comm., 2002).

Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

On December 4, 2000, President Clinton issued an Executive Order establishing the 33,993,594 ha (84 million ac) Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve. This reserve includes the marine waters and submerged lands of the NWHI and covers an area approximately 2,222 km (1,200 nautical mi) long and 185 km (100 nautical mi) wide. The reserve is adjacent to State of Hawaii waters and submerged lands and the Midway Atoll NWR and includes the HINWR outside of State waters.

Discussion of Plant Taxa

Species Endemic to the Northwestern Hawaiian Islands

Amaranthus brownii (No Common Name (NCN))

Amaranthus brownii, a member of the amaranth family (Amaranthaceae), is an herbaceous annual with leafy upright or ascending stems, 30 to 90 centimeters (cm) (1 to 3 ft) in length. The slightly hairy, alternate leaves are long, narrow, and more or less folded in half lengthwise. The species is monoecious, with male and female flowers being found on the same plant. *Amaranthus brownii* can be distinguished from other Hawaiian members of the genus by its spineless leaf axils (the points between the stem and a leaf branch), linear leaves, and indehiscent (remaining closed at maturity) fruits (Wagner *et al.,* 1999).

The growing season for *Amaranthus brownii* extends from December to June or July. Conant (1985) reported finding plants in an early flowering stage in February and collected seed from dead plants during June. Phenology may vary somewhat from year to year, depending on rainfall and climatic factors. Pollination vectors, seed dispersal agents, specific environmental requirements, and limiting factors for this species are unknown (Service 1998d).

Amaranthus brownii is currently the rarest native plant on Nihoa (Conant 1985). When it was first collected in 1923, it was ''most common on the ridge leading to Miller's Peak, but abundant also on the ridges to the east'' (Herbst 1977). In 1983, the two known groups of colonies were separated by a distance of 0.4 km (0.25 mi) and contained a total of approximately 35 plants: one occurrence of about 23 plants near Miller's Peak and a second occurrence of approximately a dozen plants in three small groups in Middle Valley. No plants have been seen at either location since 1983, even though Service staff have surveyed for the species annually (Service 1998d). None of the surveys conducted since 1983 have been conducted in the winter months when this annual species is easiest to find and identify. Access to the island is particularly limited during the winter due to difficult and dangerous landing conditions (Cindy Rehkemper, Service, pers. comm., 2001).

Amaranthus brownii typically grows in shallow soil on rocky outcrops. It is found in fully exposed locations at elevations between 30 and 242 m (100 and 800 ft). Associated native plant taxa include *Chenopodium oahuense* (aheahea), *Eragrostis variabilis* (kawelu), *Ipomoea indica* (koali awa), *Ipomoea pes-caprae* ssp. *brasiliensis* (pohuehue), *Panicum torridum* (kakonakona), *Scaevola sericea* (naupaka), *Schiedea verticillata* (NCN), *Sicyos pachycarpus* (kupala), *Sida fallax* (ilima), and *Solanum nelsonii* (akia) (Hawaii Natural Heritage Program (HINHP) Database 2000).

The threats to *Amaranthus brownii* on Nihoa include competition with the nonnative plant *Portulaca oleracea* (pigweed), alteration of substrate, fire, potential introduction of rats and mice, human disturbances, a risk of extinction from naturally occurring events (such as hurricanes), and reduced reproductive vigor due to the small number of extant individuals (Service 1998d).

Pritchardia remota (loulu)

Pritchardia remota, a member of the palm family (Arecaceae), is a tree 4 to 5 m (13 to 16 ft) tall with a ringed, wavy trunk about 15 cm (5.9 in) in diameter. The rather ruffled, fan-shaped leaves are approximately 80 cm (31 in) in diameter and somewhat waxy to pale green with a few tiny scales on the lower surface. The flowering stalks, which can be up to 30 cm (12 in) in length, are branched, and the flowers are arranged spirally along the hairless stalks. *Pritchardia remota* is the only species of *Pritchardia* on Nihoa and can be distinguished from other species in the genus by its wavy leaves; short, hairless inflorescences; and small, round fruits (Read and Hodel 1999; 61 FR 43178).

Pritchardia remota is a long-lived perennial, and populations on Nihoa have remained stable for several years. Conant (1985) reported finding plants with fruit and flowers in the spring and summer. Phenology may vary somewhat from year to year, depending on rainfall and climatic factors. Pollination vectors, seed dispersal agents, specific environmental requirements, and limiting factors for this species are unknown (Service 1998d).

Pritchardia remota occurs on Nihoa at elevations between 15 and 151 m (50 and 500 ft) and may have historically occurred on Laysan Island as well (Beccari and Rock 1921). Currently, *Pritchardia remota* is known from four colonies on Nihoa that are found along 0.2 km (0.1 mi) of the length of two valleys on opposite sides of the island, approximately 0.6 km (0.4 mi) apart. More than 680 plants, including seedlings, are found in West Palm Valley and at least 392 plants are found in East Palm Valley (HINHP Database 2000). A few individuals are also found at the bases of basalt cliffs on the steep outer slopes of each of the two valleys

(HINHP Database 2000). *Pritchardia remota* is also present in a shadehouse on Laysan Island as seedlings, from seeds collected at Nihoa for outplanting on Laysan as part of identified recovery efforts for this species (Service 1998d).

Pritchardia remota is one of the few Hawaiian members of the genus that occurs in relatively dry climates like that found on Nihoa. Its distribution on Nihoa, however, may be related to availability of water since many individuals are found in valleys and near freshwater seeps (Service 1998d). In the *Pritchardia remota* coastal forest community, this species assumes complete dominance, creating a closed canopy and understory of thick layers of fallen fronds (Gagne and Cuddihy 1999). Native plants which occur nearby include *Chenopodium oahuense, Sesbania tomentosa* (ohai), *Sida fallax,* and *Solanum nelsonii,* (Service 1998d).

The threats to *Pritchardia remota* on Nihoa include competition with nonnative plants, potential introduction of rats and mice, possible herbivory by nonnative insect species, fire, human disturbances, a risk of extinction from naturally occurring events (such as landslides), and reduced reproductive vigor due to the small number of extant individuals (Service 1998d).

Schiedea verticillata (NCN)

Schiedea verticillata, a member of the pink family (Caryophyllaceae), is a perennial herbaceous species, which dies back to an enlarged root during the dry season. Stems, which can reach 0.4 to 0.6 m (1.3 to 2 ft) in length, are both upright or pendant (drooping). The stalkless leaves are fleshy, broad, and pale green and are usually arranged in threes. *Schiedea verticillata,* the only member of its genus to grow in the NWHI, is distinguished from other species in the genus by its exceptionally large sepals and (usually) three leaves per node (Wagner *et al.,* 1999).

Schiedea verticillata is a short-lived perennial. Dr. Steve Weller, University of California at Irvine, found that *Schiedea verticillata* produces more seeds and more nectar than any other species in its genus. It also has the highest degree of genetic diversity among individuals of any species in the genus (Service 1998d). This species' reproductive cycle may not be seasonal, since Conant (1985) has found many life stages simultaneously throughout the year. Her observations also indicate that individual plants flower, set seed, and disperse seed in a relatively short period of time. Pollination vectors, seed dispersal agents, specific environmental requirements, and limiting factors for this species are unknown (Service 1998d).

All but one of the historic colonies of *Schiedea verticillata* are known to be extant on Nihoa. Colony locations and plant numbers appear to shift, but total numbers islandwide have remained relatively stable for several years. Seven colonies, containing a total of 497 individuals, were documented between 1980 and 1983 (HINHP Database 2000). In 1992, Service staff counted between 170 and 190 plants in 6 colonies. In 1996, a total of 359 plants, distributed in 10 colonies primarily on the western half of the island, were identified, with an occurrence of 13 plants on the east spur of the island near Tunnel Cave. Two previously unobserved colonies of 2 and 99 plants were located on the north cliffs above Miller's Valley. Other colonies included 24 plants at Dog's Head, 37 plants at Devil's Slide, 10 plants near Miller's Peak, a previously unknown occurrence of 62 plants on the ridge separating West and West Palm valleys, 80 plants near lower West Valley, 28 individuals near Pinnacle Peak, and 4 plants northeast of Pinnacle Peak (Service 1998).

Schiedea verticillata typically grows in rocky scree, soil pockets, and cracks in coastal cliff faces and in *Pritchardia remota* coastal mesic forest at elevations between 30 and 242 m (100 and 800 ft). Associated native plant taxa include *Eragrostis variabilis, Rumex albescens* (huahuako), *Tribulus cistoides* (nohu), and lichens (HINHP Database 2000).

The threats to *Schiedea verticillata* on Nihoa include competition with nonnative plant species, possible herbivory by nonnative insect species, potential introduction of rats and mice, human disturbances, a risk of extinction from naturally occurring events (such as rockslides), and reduced reproductive vigor due to the small number of individuals (Conant 1985; Service 1998d).

Multi-Island Species

*Cenchrus agrimonioides (*kamanomano*)*

Cenchrus agrimonioides, a short-lived perennial member of the grass family (Poaceae), has leaf blades that are flat or folded and a prominent midrib. The species is distinguished from others in the genus by a cylindrical to lance-shaped bur and the arrangement and position of the bristles on the bur (O'Connor 1999; Wagner *et al.,* 1999). The two varieties, *C. agrimonioides* var. *laysanensis* and *C. agrimonioides* var. *agrimonioides,* differ from each other in that *C. agrimonioides* var. *laysanensis* has smaller burs, shorter stems, and narrower leaves.

Little is known about the life history of *Cenchrus agrimonioides.* It has been observed to produce fruit year round (Service 1999), but other information about its flowering, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors is generally unknown.

Historically, *Cenchrus agrimonioides* var. *agrimonioides* was known from Oahu, Lanai, Maui, and (in an undocumented report) the island of Hawaii (61 FR 53108; 65 FR 79192). *Cenchrus agrimonioides* var. *laysanensis* was historically known from Laysan and Midway Islands and Kure Atoll in the NWHI but has not been seen there since about 1980 (HINHP Database 2000; O'Connor 1999). It occurred on coastal sandy substrate in *Scaevola sericea-Eragrostis variabilis* scrub at an elevation of 5 m (16 ft). Morin and Conant (1998) report that *C. agrimonioides* var. *laysanensis* disappeared from Laysan before 1923, from Midway Atoll sometime shortly after 1902, and was last seen on Green Island (Kure Atoll) in about 1980. *Cenchrus agrimonioides* var. *laysanensis* has not been relocated during periodic monitoring on Laysan for more than 20 years and has not been seen on Midway during recent surveys in 1995 and 1999. It has not been seen on Kure Atoll for over 20 years, in spite of DOFAW's annual seabird surveys and a botanical survey conducted there as recently as 2001. In addition, no viable genetic material of this variety is known to exist. We believe that it is extremely unlikely that individual plants will be rediscovered on these three islands and atolls.

Mariscus pennatiformis (NCN)

Mariscus pennatiformis is a member of the sedge family (Cyperaceae). It is a short-lived perennial with a woody root system covered with brown scales. The stout, three-angled stems are between 0.4 and 1.2 m (1.3 and 4 ft) tall. This species differs from other members of the genus by its slightly concave, smooth stems; the length and number of spikelets (elongated flower-clusters); leaf width; and the length and diameter of stems. The two subspecies, *M. pennatiformis* ssp. *bryanii* and *M. pennatiformis* ssp. *pennatiformis,* are distinguished by the length and width of the spikelets; shape and length of the fruit; and color, length, and width of the glumes (scaly floral bracts) (Koyama 1990).

At the time *Mariscus pennatiformis* was listed in 1994 (59 FR 94559), we followed the taxonomic treatments in the *Manual of the Flowering Plants of Hawaii* (Wagner *et al.* 1990). Subsequent

to this, we became aware of a new taxonomic treatment for the species and plan to publish a notice of taxonomic change to formalize this change after publication of this final rule.

Individuals of *Mariscus pennatiformis* on Laysan Island were closely monitored for 10 years, but the only flowering observed was of one individual from November to December, coinciding with record high rainfall (Service 1999). Little else is known about this plant's flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, or limiting factors (Service 1999).

Historically, *Mariscus pennatiformis* was found on Kauai, Oahu, Maui, Hawaii, and Laysan Island. Currently, *M. pennatiformis* ssp. *pennatiformis* is found on Maui while *M. pennatiformis* ssp. *bryanii* is known only from Laysan Island. This subspecies, *M. pennatiformis* ssp. *bryanii,* was found until recently on the southeast end of the central lagoon and the west and northeast sides of Laysan (HINHP Database 2000; Koyama 1990). Numbers have fluctuated from as many as 200 to only 1 individual over the past 10 years. Currently, a single occurrence of about 200 individuals of *M. pennatiformis* ssp. *bryanii* remains on the southeast end of the lagoon (Service 1999).

Mariscus pennatiformis ssp. *bryanii* is found on coastal sandy substrate at an elevation of 5 m (16 ft). Associated native species include *Cyperus laevigatus* (makaloa), *Eragrostis variabilis,* and *Ipomoea* sp. (HINHP Database 2000; Koyama 1990).

The threats to *Mariscus pennatiformis* ssp. *bryanii* on the island of Laysan include seed predation by the endangered Laysan finch (*Telespiza cantans*) and burrowing activities of nesting seabirds. The native plant *Ipomoea pes-caprae* (beach morning glory) is another possible threat since it periodically overgrows *Mariscus* individuals (Service 1999). In addition, native *Sicyos* spp. (anunu) vines, *Eragrostis variabilis,* and *Boerhavia repens* (alena) appear to impede natural dispersal of *M. pennatiformis* ssp. *bryanii* into other suitable locations (Schultz 2000).

Sesbania tomentosa (ohai)

Sesbania tomentosa, a member of the legume family (Fabaceae), is typically a sprawling short-lived perennial shrub to small tree. Each compound leaf consists of 18 to 38 oblong to elliptic leaflets that are usually sparsely to densely covered with silky hairs. The flowers are salmon-colored tinged with yellow, orange-red, scarlet, or, rarely, pure yellow. *Sesbania tomentosa* is the only endemic Hawaiian species in the genus, differing from the naturalized *Sesbania sesban* in flower color, petal and calyx length, and the number of seeds per pod (Geesink *et al.* 1999).

The pollination biology of *Sesbania tomentosa* has been studied by Dr. David Hopper as part of his dissertation research conducted at the University of Hawaii. His findings suggest that although many insects visit *Sesbania* flowers, the majority of successful pollination is accomplished by native bees of the genus *Hylaeus* and that colonies at Kaena Point on Oahu are probably pollinator-limited. Flowering at Kaena Point is highest during the winter-spring rains and gradually declines throughout the rest of the year. Other aspects of this plant's life history are unknown (Service 1999).

Currently, *Sesbania tomentosa* occurs on six of the eight main Hawaiian Islands (Kauai, Oahu, Molokai, Kahoolawe, Maui, and Hawaii) and on Nihoa and Necker. Although once found on Niihau and Lanai, it is no longer extant on those islands (Geographic Decision Systems International (GDSI) 2000; HINHP Database 2000; Service 1999; 54 FR 56333). On Nihoa, this species has been described as relatively common in some areas, with one population consisting of several thousand plants. On Necker Island, *S. tomentosa* is known from the tops of all hills of the main island. A few individuals are found on the Northwest Cape as well (Service 1999).

Sesbania tomentosa is found in shallow soil on sandy beaches and dunes in *Chenopodium oahuense* coastal dry shrubland or mixed coastal dry cliffs at elevations up to 84 m (276 ft) (HINHP Database 2000). Associated plant species include *Pritchardia remota, Scaevola sericea, Sida fallax,* and *Solanum nelsonii* (Geesink *et al.* 1999; HINHP Database 2000; Service 1999).

The primary threats to *Sesbania tomentosa* on Nihoa and Necker include competition with various nonnative plant species, lack of adequate pollination, potential introduction of rats and mice, predation by nonnative insects, and fire (Service 1999).

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document *Pritchardia remota* and *Sesbania tomentosa* (as *S. hobdyi* and *S. tomentosa* var. *tomentosa*) were considered endangered. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and we gave notice of our intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant taxa, including *Amaranthus brownii, Cenchrus agrimonioides* var. *laysanensis,* and *Sesbania tomentosa.* The list of 1,700 plant taxa was assembled on the basis of 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 (40 FR 27823).

General comments received in response to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, we published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published updated Notices of Review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), February 21, 1990 (55 FR 6183), and September 30, 1993 (58 FR 51144). We listed *Amaranthus brownii, Cenchrus agrimonioides, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa* as endangered between 1994 and 1996. A summary of the listing actions can be found in Table 2, and a summary of the critical habitat actions can be found in Table 3.

TABLE 2.—SUMMARY OF LISTING ACTIONS FOR SIX PLANT SPECIES FROM THE NWHI

Species	Federal status	Proposed rule		Final rule	
		Date	Federal Register	Date	Federal Register
Amaranthus brownii	Endangered	03/24/93	58 FR 15828	08/21/96	61 FR 43178
Cenchrus agrimonioides	Endangered	10/2/95	60 FR 51417	10/10/96	61 FR 53108
Mariscus pennatiformis	Endangered	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Pritchardia remota	Endangered	03/24/93	58 FR 15828	08/21/96	61 FR 43178
Schiedea verticillata	Endangered	03/24/93	58 FR 15828	08/21/96	61 FR 43178
Sesbania tomentosa	Endangered	09/14/93	58 FR 48012	11/10/94	59 FR 56333

TABLE 3.—SUMMARY OF CRITICAL HABITAT ACTIONS, TO DATE, FOR SIX PLANT SPECIES FROM THE NORTHWESTERN HAWAIIAN ISLANDS

Species	Proposed critical habitat designations or nondesignations		Final critical habitat	
	Date(s)	Federal Register	Date(s)	Federal Register
Amaranthus brownii	05/14/02	67 FR 34522	(1)	This final rule.
Cenchrus agrimonioides	12/18/00	65 FR 79192	05/14/03	68 FR 25934.
	04/03/02	67 FR 15856		
	03/04/02	67 FR 9806		
Mariscus pennatiformis	12/18/00	65 FR 79192	02/27/03	68 FR 9116.
	01/28/02	67 FR 3940	05/15/03	68 FR 25934.
	04/03/02	67 FR 15856		
	05/14/02	67 FR 34522		
	05/28/02	67 FR 15856		
	05/28/02	67 FR 36968		
Pritchardia remota	05/14/02	67 FR 34522	(1)	This final rule.
Schiedea verticillata	05/14/02	67 FR 34522	(1)	This final rule.
Sesbania tomentosa	11/07/00	65 FR 66808	02/27/03	68 FR 9116.
	12/18/00	65 FR 79192	03/18/03	68 FR 12982.
	12/29/00	65 FR 83158	05/14/03	68 FR 25934.
	01/28/02	67 FR 3940	(1)	This final rule.
	04/03/02	67 FR 15856		
	03/04/02	67 FR 9806		
	04/05/02	67 FR 16492		
	05/14/02	67 FR 34522		
	05/28/02	67 FR 37108		
	05/28/02	67 FR 36968		

[1] See **DATES** section of this rule.

At the time each of the six plants were listed, we determined that designation of critical habitat was not prudent because it would not benefit the plant or would increase the degree of threat to the species. The not prudent determinations for these species, along with others, were challenged in *Conservation Council for Hawaii* v. *Babbitt,* 2 F. Supp. 2d 1280 (D. Haw. 1998). On March 9, 1998, the United States District Court for the District of Hawaii directed us to review the prudency determinations for 245 listed plant species in Hawaii, including *Amaranthus brownii, Cenchrus agrimonioides, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa.* Among other things, the court held that in most cases we did not sufficiently demonstrate that the species are threatened by human activity or that such threats would increase with the designation of critical habitat. The court also held that we failed to balance any risks of designating critical habitat against any benefits (*id.* at 1283–85).

On August 10, 1998, the court ordered us to publish proposed critical habitat designations or nondesignations for at least 100 species by November 30, 2000, and to publish proposed designations or nondesignations for the remaining 145 species by April 30, 2002 (*Conservation Council for Hawaii* v. *Babbitt,* 24 F. Supp. 2d 1074 (D. Haw., 1998)).

On November 30, 1998, we published a notice in the **Federal Register** requesting public comments on our reevaluation of whether designation of critical habitat is prudent for the 245 Hawaiian plants at issue (63 FR 65805). The comment period closed on March 1, 1999, and was reopened from March 24, 1999, to May 24, 1999 (64 FR 14209). We received more than 100 responses from individuals, nonprofit organizations, county governments, the State's Division of Forestry and Wildlife (DOFAW), and Federal agencies (U.S. Department of Defense—Army, Navy, Air Force). Only a few responses offered information on the status of individual plant species or on current management actions for one or more of the 245 Hawaiian plants. While some of the respondents expressed support for the designation of critical habitat for 245 Hawaiian plants, more than 80 percent opposed the designation of critical habitat for these plants. In general, these respondents opposed designation because they believed it would cause economic hardship, chill cooperative projects, polarize relationships with hunters, or potentially increase trespass or vandalism on private lands. In addition, commenters also cited a lack of information on the biological and ecological needs of these plants, which, they suggested, may lead to designation based on guesswork. The respondents who supported the designation of critical habitat cited that designation

would provide a uniform protection plan for the Hawaiian Islands, promote funding for management of these plants, educate the public and State government, and protect partnerships with landowners and build trust.

On November 7, 2000, we published the first of the court-ordered proposed critical habitat designations or nondesignations for Kauai and Niihau plants (65 FR 66808). The proposed critical habitat designations or nondesignations for Maui and Kahoolawe plants were published on December 18, 2000 (65 FR 79192), for Lanai plants on December 27, 2000 (65 FR 82086), and for Molokai plants on December 29, 2000 (65 FR 83158). All of these proposed rules had been sent to the **Federal Register** by, or on, November 30, 2000, as required by the court's order. In those proposals, we proposed that critical habitat was prudent for three of the NWHI species (*Cenchrus agrimonioides, Mariscus pennatiformis,* and *Sesbania tomentosa*) that are reported from Kauai and/or Niihau, as well as from Maui and Molokai. Critical habitat was proposed for *Cenchrus agrimonioides* and *Mariscus pennatiformis* on Maui, and for *Sesbania tomentosa* on Kauai, Maui, and Molokai.

On October 3, 2001, we submitted a joint stipulation with Earthjustice to the U.S. District Court requesting extension of the court order for the final rules to designate critical habitat for plants from Kauai and Niihau (July 30, 2002), Maui and Kahoolawe (August 23, 2002), Lanai (September 16, 2002), and Molokai (October 16, 2002), citing the need to revise the proposals to incorporate or address new information and comments received during the comment periods. The joint stipulation was approved and ordered by the court on October 5, 2001.

On January 28, 2002, we published revised proposed critical habitat designations or nondesignations for plant species from Kauai and Niihau (67 FR 3940), for plant species from Lanai on March 4, 2002 (67 FR 9806), for plant species from Maui and Kahoolawe on April 3, 2002 (67 FR 15856), and for plant species from Molokai on April 5, 2002 (67 FR 16492); these proposals included critical habitat on one or more islands for three of the NWHI species: *Cenchrus agrimonioides, Mariscus pennatiformis,* and *Sesbania tomentosa.*

On May 14, 2002, we published the proposed critical habitat designations or nondesignations for plant species from the NWHI (67 FR 34522), for Hawaii Island plants on May 28, 2002 (67 FR 36968), and for Oahu plants on May 28, 2002 (67 FR 37108). These proposed rules were sent to the **Federal Register** by April 30, 2002, as required by the 1998 court order.

In the May 14, 2002, proposal, critical habitat was proposed for 493 ha (1,219 ac) on Nihoa, Necker, and Laysan Islands. In that proposed rule, we indicated that critical habitat was prudent, and we proposed critical habitat, for *Amaranthus brownii, Pritchardia remota,* and *Schiedea verticillata.* We also proposed critical habitat for *Mariscus pennatiformis* and *Sesbania tomentosa.* Critical habitat was not proposed for *Cenchrus agrimonioides* in the NWHI because the only variety of that species that occurs there, *C. a* var. *laysanensis,* has not been seen in the wild for over 20 years and no genetic material of this variety is known to exist. Publication of the proposed rule opened a 60-day public comment period.

On July 11, 2002, we submitted joint stipulations with Earthjustice to the U.S. District Court requesting extension of the court orders for the final rules to designate critical habitat for plants from Lanai (December 30, 2002), Kauai and Niihau (January 31, 2003), Molokai (February 28, 2003), Maui and Kahoolawe (April 18, 2003), the Northwestern Hawaiian Islands (April 30, 2003), Oahu (April 30, 2003), and the island of Hawaii (May 30, 2003), citing the need to conduct additional review of the proposals, address comments received during the public comment periods, and to conduct a series of public workshops on the proposals. The joint stipulations were approved and ordered by the court on July 12, 2002.

On September 12, 2002, we published a notice announcing the availability of the draft economic analysis on the proposed critical habitat for NWHI (67 FR 57784). We accepted comments on the draft analysis until the comment period closed on October 15, 2002.

Summary of Comments and Recommendations

In the proposed rule published on May 14, 2002 (67 FR 34522), we requested that all interested parties submit written comments on the proposed designation or nondesignation of critical habitat for six plant species from the NWHI. We also contacted all appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment. No request for a public hearing was received. We received individually written letters from 13 parties, including 4 of the 13 designated peer reviewers, 2 State agencies, 2 branches of the military, and 5 private organizations or individuals. The majority of commenters supported the designation of critical habitat for the NWHI, and no commenters were expressly opposed to the designation.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from 13 knowledgeable individuals with expertise in one or several fields, including familiarity with the species, the geographic region that the species occurs in, and knowledge of the principles of island conservation biology. We received comments from four of these individuals who generally supported our methods and conclusion and who provided additional information. Comments received from peer reviewers are summarized in the following section and were considered in the development of the final rule.

All comments received were reviewed for substantive issues, notation of errors, and new information regarding critical habitat for *Amaranthus brownii, Cenchrus agrimonioides, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa.* Similar comments received were grouped into four general issues and are addressed in the following summary.

Issue 1: Biological Justification and Methodology

(1) *Comment:* One peer reviewer questioned the Service for considering all three critical habitat units (Nihoa, Necker, and Laysan Islands) to be critical habitat for *Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa* as there is no record that any of these species occurred on all three islands and as at least one species (*i.e.*, *Mariscus pennatiformis* ssp. *bryanii*) is a single-island endemic.

Our Response: All three islands are not considered to be critical habitat for all five of the species. On Nihoa Island, critical habitat is designated for *Amaranthus brownii, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa.* On Necker Island, critical habitat is designated for *Sesbania tomentosa,* and on Laysan Island critical habitat is designated for *Mariscus pennatiformis* and *Pritchardia remota* (as a recovery population). The critical habitat units on each island are designated for species within extant or historic range or within areas identified in the recovery plans for conservation of the species.

Issue 2: Effects of Critical Habitat Designation

(2) *Comment:* One peer reviewer noted that while the designation of critical habitat is unlikely to have a major impact on the future of NWHI plant species, it would increase awareness of the unique biological attributes of these islands and ultimately increase the likelihood that these species will persist. Another reviewer supported the designation of critical habitat stating that such designation would provide an added, and much needed, layer of protection for plant habitat insofar as: (1) The Departments of the Interior and Commerce disagree on the seaward boundaries of the HINWR; (2) the State of Hawaii has overlapping jurisdiction with the HINWR; (3) a public process is currently in motion to establish a National Marine Sanctuary in the NWHI, which could create an increased commercial interest in eco-tourism in the area; and (4) the native Hawaiian community has expressed a desire for access to Nihoa and Necker Islands for ceremonial purposes. A final reviewer stated that, although the protection afforded by the designation of critical habitat is unclear, such designation has advocacy value because the courts are more likely to find violations of the Act for listed species within such habitat.

Our Response: Critical habitat is one of a number of conservation tools established in the Act.

(3) *Comment:* One reviewer commented that the Service should consider unoccupied, historic habitat that falls outside of the HINWR (*i.e.*, Kure Atoll) for designation as critical habitat as some plant species may need to be re-introduced into such habitat to avoid extinction. Another reviewer expressed concern that the Service was restricting the designation of critical habitat to areas within the HINWR in order to avoid public controversy.

Our Response: We recognize that the long-term conservation of the NWHI species is dependent upon the protection of existing populations and the establishment and protection of additional populations within the historic range (*i.e.,* unoccupied habitat) of each species or within areas identified in the recovery plans for conservation of the species. As such, we examined the current and historically occupied habitat, and areas identified in the recovery plans for conservation of the species. For *Amaranthus brownii, Pritchardia remota,* and *Schiedea verticillata,* species known only from the islands within the NWHI, we were able to locate sites within the HINWR that: (1) Contain the primary constituent elements that are essential to the conservation of one or more of the species; (2) are within the historical range or are identified in the recovery plans for conservation of one or more of the species; and (3) are sufficient to meet our overall recovery goals for these species. For *Mariscus pennatiformis,* the only subspecies known from the NWHI is *M. p.* ssp. *bryanii.* Critical habitat also is designated for this taxon on Laysan Island. Critical habitat also was designated for *M. p.* ssp. *pennatiformis* on Kauai and Maui (68 FR 9116, 68 FR 25934, May 14, 2003) and is proposed on Oahu (67 FR 37108). Critical habitat was designated on Nihoa and Necker for *Sesbania tomentosa* as well as Kauai, Molokai, and Maui (68 FR 9116, 68 FR 12982, 68 FR 25934, May 14, 2003) and is proposed on Oahu and the island of Hawaii (67 FR 37108, 67 FR 36968).

We are not designating critical habitat for *Cenchrus agrimonioides* at this time for the following reasons: *C. a.* var. *laysanensis,* the only variety of this species known from the NWHI, is historically known from Laysan, Midway, and Kure Atoll. This plant has not been reported on Laysan and Midway for over 70 and 100 years, respectively. A permanent year-round camp on Laysan, staffed by paid employees and volunteers, conducts periodic monitoring of both native and nonnative plant species, and *C. a.* var. *laysanensis* has not been seen during these monitoring efforts. On Midway, *C. a.* var. *laysanensis* was not seen during the most recent botanical surveys of 1995 and 1999. *Cenchrus agrimonioides* var. *laysanensis* has not been seen on Kure Atoll for over 20 years though the State DOFAW conducts annual seabird surveys and a botanical survey was conducted there as recently as 2001. In addition, no viable genetic material of this variety is known to exist (see D. *Criteria Used to Identify Critical Habitat*). The rediscovery of currently unknown individual plants on these three islands and atolls is believed to be extremely unlikely.

(4) *Comment:* The Office of Hawaiian Affairs, a State agency, commented that critical habitat must allow traditional cultural gathering rights of Native Hawaiians as reflected in Article XII of the State constitution and upheld by the Hawaii Supreme Court in the Public Access Shoreline Hawaii and Ka Pa akai o Ka Aina decisions.

Our Response: We understand and support the cultural significance of these islands to the Native Hawaiian people, and it is our policy to permit religious and ceremonial gatherings as long as they do not result in effects that are deleterious to habitat for listed species or biota of the islands or that could compromise human safety. Typically, access to Federal lands that are designated as critical habitat is not restricted unless access is determined to result in the destruction or adverse modification of the critical habitat. However, Nihoa, Necker, and Laysan Islands, and their surrounding reefs, are part of the HINWR, which we manage in accordance with the National Wildlife Refuge System Administration Act of 1966. There is no general public or recreational use allowed at HINWR. Access is strictly regulated through a permit system because of the sensitivity of the organisms on these islands to human disturbance and the high risk of importation of nonnative plant and invertebrate species. Other than the refuge staff, only individuals conducting scientific research or undertaking natural history film recording have been granted official permission to visit the HINWR, and these persons are required to apply for a Special Use Permit and abide by the terms and conditions set forth in this permit in order to ensure that the biological integrity, diversity, and environmental health of the refuge are maintained for the benefit of present and future generations of Americans (E. Flint, pers. comm., 2002). Examples of preventative measures put in place by the Special Use Permit program include quarantine protocols to prevent introduction of unwanted plants or insects, and a limitation on the number of people on the island(s) at any one time. In addition, through the Special Use Permit program, we are able to protect the cultural artifacts present on these islands.

Issue 3: Species-Specific Biological Comments

(5) *Comment:* One peer reviewer found it unlikely that the species of *Pritchardia* that once occurred on Laysan Island would have been *Pritchardia remota.* Species of this genus are single-island endemics, and no collections of *Pritchardia remota* are known from Laysan Island. This reviewer did feel that the introduction of Pritchardia remota to Laysan Island was ecologically appropriate given that there is suitable habitat for the species and that the species of *Pritchardia* that once occurred on Laysan Island is no longer extant.

Our Response: The now extinct species of *Pritchardia* that once occurred on Laysan Island was not clearly identified; however, the idea that *P. remota* did occur on Laysan was suggested by Joseph Rock in 1921. We have revised the text in the final rule to

reflect the uncertainty of the species that was once extant on Laysan. *Pritchardia remota* has been recommended as a replacement because it is believed to be closest to the species of *Pritchardia* that once was present on the island. The recovery plan prepared for three plant species on Nihoa Island, including *P. remota,* proposes establishing a population on Laysan Island as part of the recovery process for this species. HINWR staff are working with staff from our Ecological Services, Pacific Islands Office, in this effort. At one time, there were 11 palms outplanted on Laysan from seeds brought directly from Nihoa Island. These survived until they were flooded by high lake levels and died. HINWR staff now have approximately 400 seedlings (from seed gathered at Nihoa Island) in a shade house on Laysan Island. These will be outplanted to suitable habitat on Laysan (E. Flint, pers. comm., 2002).

(6) *Comment:* One peer reviewer commented that it is essential that surveys for *Amaranthus brownii* be conducted on Nihoa Island in the winter to maximize its detection. This reviewer feels that it is inappropriate to recommend protective measures for a plant whose population has not been assessed in 20 years.

Our Response: Amaranthus brownii was last seen on Nihoa Island in 1983 as two colonies that totaled 35 plants. We have surveyed Nihoa for this species for over 20 years. While we agree that the winter months are the optimal time to survey for this winter annual species, as it is more easily detected during this period, access to the island during this season is extremely limited. Landings during the winter months can be difficult and dangerous due to sea conditions that can change without warning, stranding visitors on an island with a limited source of fresh water and no regular food supply. Because *Amaranthus brownii* was detected on Nihoa Island in 1983 and habitat conditions are the same, we consider the species to be extant (as a seedbank) and have found it appropriate to designate critical habitat for this species on Nihoa Island.

(7) *Comment:* One peer reviewer requested that the Service use *Cyperus pennatiformis,* the currently accepted name for *Mariscus pennatiformis.* Concern was expressed, as the current nomenclature is what will be used in scientific and grey literature, that there could be confusion otherwise. The reviewer also noted that *Cyperus pennatiformis* ssp. *bryanii* occurs only on Laysan Island and that *C. p.* ssp. *pennatiformis* occurs on Kauai, Maui, Oahu, and Hawaii. As such, *C. p.* ssp. *bryanii* should be acknowledged as a distinct genetic population, even if the subspecies are not separately listed under the Act.

Our Response: We acknowledge that the current accepted nomenclature for this species has changed since the final rule listing *Mariscus pennatiformis* as endangered was published in 1994 (59 FR 94559). At that time, however, we followed the accepted taxonomic treatment in *The Manual of Flowering Plants of Hawaii* (Wagner *et al.* 1990). In the revised edition of the manual (Wagner *et al.* 1999), the species has been assigned to the genus *Cyperus,* and its subspecies are now varieties (Strong & Wagner 1997; Wagner *et al.* 1999). We plan to publish a notice revising the name for this species; however, this could not be accomplished prior to the completion of this final rule. The discussion of *Mariscus pennatiformis* in the section on Multi-Island Species under ''Discussion of Plant Taxa'' states that *M. p.* ssp. *bryanii* occurs only on Laysan Island. Listing as endangered at the species level provides protection for all varieties and subspecies of the species. Critical habitat is designated on Laysan Island for *M. p.* ssp. *bryanii.* Critical habitat was designated for *M. p.* ssp. *pennatiformis* on Kauai and Maui (68 FR 9116, 68 FR 25934, May 14, 2003) and is proposed on Oahu (67 FR 37108).

(8) *Comment:* One reviewer expressed concern regarding the Service's decision not to designate critical habitat for *Cenchrus agrimonioides* var. *laysanensis* because the taxon had not been seen in the wild for over 20 years and no viable genetic material is known to exist. The reviewer asserts that there have been no comprehensive botanical surveys of all of the islands where the taxon was known to exist, citing that the Service had made a similar decision for another plant species on Kauai, only to have it rediscovered.

Our Response: Critical habitat is not designated for *Cenchrus agrimonioides* var. *laysanensis,* the only variety of this species known from the NWHI, for the following reasons: *C. a.* var. *laysanensis* is historically known from Laysan, Midway, and Kure Atoll. This plant has not been reported on Laysan and Midway for over 70 and 100 years, respectively. A permanent year-round camp on Laysan, staffed by paid employees and volunteers, conducts periodic monitoring of both native and nonnative plant species, and *C. a.* var. *laysanensis* has not been seen during these monitoring efforts. On Midway, *C. a.* var. *laysanensis* was not seen during the most recent botanical surveys of 1995 and 1999. *Cenchrus agrimonioides* var. *laysanensis* has not been seen on Kure Atoll for over 20 years though the State DOFAW conducts annual seabird surveys and a botanical survey was conducted there as recently as 2001. In addition, no viable genetic material of this variety is known to exist. The rediscovery of currently unknown individual plants on these three islands and atolls is believed to be extremely unlikely (see D. *Criteria Used to Identify Critical Habitat*).

Issue 4: Nonnative Species

(9) *Comment:* One peer reviewer commented that the most important factor in maintaining biota on these remote islands is to have a vigorous and comprehensive quarantine system and a method to eliminate and investigate unauthorized landings. Additionally, the reviewer stressed the crucial nature of both an active and proactive eradication and management scheme for nonnative species.

Our Response: We have in place quarantine procedures for the HINWR, which include very strict measures to prevent the introduction of invasive invertebrate and vertebrate species. On islands where invasive nonnative species have already been introduced, we are implementing measures targeted at their eradication. In those areas where such eradication efforts have not yet been initiated, we are gathering information on methods by which we can best control and eliminate invasive taxa. Text was also provided in the ''Discussion of Plant Taxa'' to make it clear that the presence of rats and mice on Nihoa, Necker, and Laysan was a potential threat as these nonnative species are not currently present.

Summary of Changes From the Proposed Rule

Based on a review of public comments received on the critical habitat proposal, we have included the following several changes in this final rule:

(1) Based upon more refined GIS analysis, we corrected the total land area, 498 ha (1,232 ac) proposed as critical habitat for *Pritchardia remota* and *Mariscus pennatiformis* on Laysan Island to 493 ha (1,219 ac) designated as critical habitat for *Pritchardia remota* and *Mariscus pennatiformis* on Laysan Island.

(2) At the time we listed *Mariscus pennatiformis* (59 FR 94559), we followed the taxonomic treatment in the widely used and accepted *Manual of the Flowering Plants of Hawaii* (Wagner *et al.*, 1990). Since that time, the species has been assigned to the genus *Cyperus*

(Wagner *et al.*, 1999). We plan to publish a notice of name change for *Mariscus pennatiformis* subsequent to publishing this final rule.

(3) We revised the text to reflect that the species of *Pritchardia* historically extant on Laysan Island is uncertain but that it had been suggested that the species may have been *P. remota* (Wagner *et al.*, 1999). We have also revised the primary constituent elements for *P. remota* on Laysan and Nihoa.

(4) We revised the list of excluded, manmade features in the ''*Criteria Used to Identify Critical Habitat*'' and section 17.99 ''*Critical Habitat-Plants*'' to delete from the final rule reference to roads, aqueducts, radar, missile launch sites, airports, paved areas, or rural landscaping because these features either do not exist on these islands or do not contain primary constituent elements for these plants on these islands.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation,'' as defined by the Act, 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.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' The relationship between a species' survival and its recovery has been a source of confusion to some in the past. We believe that a species' ability to recover depends on its ability to survive into the future when its recovery can be achieved; thus, the concepts of long-term survival and recovery are intricately linked. However, in the March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434) regarding a not prudent finding, the court found our definition of destruction or adverse modification as currently contained in 50 CFR 402.02 to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

In order to be included in a critical habitat designation, habitat in areas known to be occupied at the time of listing must contain physical or biological features essential to the conservation of the species and which may require special management considerations or protection. Outside the areas known to have been occupied at the time of listing, an area must be essential to the conservation of the species in order to qualify for designation. Thus, 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 may not have sufficient information to identify all the areas essential for the conservation of the species. Nevertheless, we are required to designate those areas we believe to be critical habitat, using the best information available to us.

Our regulations state that ''The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not indicate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from 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.

It is important to clearly understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the Act's 7(a)(2) jeopardy standard and section 9 prohibitions, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome. 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.

A. Prudency

The designation of critical habitat is not prudent when the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species (50 CFR 424.12(a)(1)).

To determine whether critical habitat would be prudent for *Amaranthus brownii, Pritchardia remota,* and *Schiedea verticillata,* we analyzed the potential threats and benefits for each species in accordance with the court's order. Due to low numbers of individuals and populations and their inherent immobility, the three plants may be vulnerable to unrestricted collection, vandalism, or disturbance, though this is unlikely given their inaccessibility. Recently, we received information on the commercial trade in palms conducted through the Internet (Grant Canterbury, Service, *in litt.,* 2000). Several nurseries advertise and sell seedlings and young plants, including 13 species of Hawaiian *Pritchardia.* Seven of these species are federally protected, including *Pritchardia remota.* While we have determined that designation of critical habitat is not prudent for other species of *Pritchardia* because the benefits of designating critical habitat do not outweigh the potential increased threats from vandalism or collection (65 FR 66808, 65 FR 83158), we do not believe this species is threatened by these same activities because of its inaccessibility. Nihoa is more than 273 km (170 mi) from Lihue, Kauai, and more than 1,600 km (1,000 mi) from Midway. It is a part of the HINWR, and a permit is required for access to the island. Access to the island is further limited due to difficult and dangerous landing conditions. Passengers must be dropped off and the boat sent back out to sea, as there are no mooring docks or beaches. The boat must return later to pick up the passengers, when conditions allow. Sea conditions are apt to change without warning, stranding visitors on this inhospitable island that has no fresh water and no regular food supply (C. Rehkemper, pers. comm., 2001).

We examined the evidence available for *Amaranthus brownii* and *Schiedea verticillata* and have not, at this time, found specific evidence of taking, vandalism, collection, or trade of these taxa or of similar species. Therefore, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the court's discussion of these regulations, we do not believe that these three species are currently threatened by taking or other human activity, which would be exacerbated by the designation of critical habitat.

Therefore, we believe that designation of critical habitat is prudent for *Amaranthus brownii, Pritchardia remota,* and *Schiedea verticillata.* The reasons why we believe designation of critical habitat is prudent for *Sesbania tomentosa* and *Mariscus pennatiformis* are contained in the final rules published on January 9, 2003, and February 27, 2003, respectively (68 FR 1220 and 68 FR 9116). The reasons why we believe designation of critical habitat is prudent for *Cenchrus agrimonioides* are contained in the final rule published on January 9, 2003 (68 FR 1220). Although critical habitat for *Cenchrus agrimonioides* is not being designated on the NWHI (as it has not been seen there for over 20 years and no viable genetic material exists), we are designating critical habitat for this species on Maui (68 FR 25934, May 14, 2003).

B. Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of *Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa.* Using the best information available, we could not identify areas in the NWHI that are essential for *Cenchrus agrimonioides* for the reasons described in section D. *Criteria Used to Identify Critical Habitat.* This information included the known locations and site-specific species information from the HINHP database and our own rare plant database; species information from the Center for Plant Conservation's (CPC) rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; islandwide Geographic Information System (GIS) coverages (*e.g.,* vegetation, soils, annual rainfall, elevation contours, landownership); the final listing rules for these species; the May 14, 2002, proposal of critical habitat; information received during the public comment period; recent biological surveys and reports; recovery plans for these species; discussions with botanical experts; and recommendations from the Hawaii and Pacific Plant Recovery Coordinating Committee (HPPRCC) (see also the discussion below) (CPC *in litt.* 1999; GDSI 2000; HINHP Database 2000; HPPRCC 1998; Service 1998d, 1999; 59 FR 56333; 61 FR 43178; 61 FR 53108; 65 FR 83158; 67 FR 16492; 67 FR 34522).

In 1994, the HPPRCC initiated an effort to identify and map habitat it believed to be important for the recovery of 282 endangered and threatened Hawaiian plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in 1999, we published them in our *Recovery Plan for the Multi-Island Plants* (Service 1999). The HPPRCC expects that there will be subsequent efforts to further refine the locations of important habitat areas and that new survey information or research may also lead to additional refinement of identifying and mapping of habitat important for the recovery of these species.

The HPPRCC identified essential habitat areas for all listed, proposed, and candidate plants and evaluated species of concern to determine if essential habitat areas would provide for their habitat needs. However, the HPPRCC's mapping of habitat is distinct from the regulatory designation of critical habitat as defined by the Act. More data have been collected since the recommendations made by the HPPRCC in 1998. Much of the area that was identified by the HPPRCC as inadequately surveyed has now been surveyed to some degree. New location data for many species have been gathered. Also, the HPPRCC identified areas as essential based on species clusters (areas that included listed species, as well as candidate species and species of concern) while we have only delineated areas that are essential for the conservation of the specific listed species at issue. As a result, the critical habitat designations in this rule include not only some habitat that was identified as essential in the 1998 recommendations but also habitat that was not identified as essential in those recommendations.

C. Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These features include, but are not limited to: Space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Much of what is known about the specific physical and biological requirements of *Amaranthus brownii,*

Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata, and *Sesbania tomentosa* is described in the ''Background'' section of this final rule.

All areas designated as critical habitat are within the historical range or have been identified in the recovery plans for these species as sites for conservation of one or more of the five species at issue, and contain one or more of the physical or biological features (primary constituent elements) essential for the conservation of the species.

As described in the discussions for each of the five species for which we are designating critical habitat, we are defining the primary constituent elements on the basis of the habitat features of the areas from which the plant species are reported, as described by the type of plant community (*e.g., Pritchardia remota* mesic coastal forest), associated native plant species, locale information (*e.g.,* steep rocky cliffs, talus slopes, gulches), and elevation. The habitat features provide the ecological components required by the plant. The type of plant community and associated native plant species indicate specific microclimate (localized climatic) conditions, retention and availability of water in the soil, soil microorganism community, and nutrient cycling and availability. The locale indicates information on soil type, elevation, rainfall regime, and temperature. Elevation indicates information on daily and seasonal temperature and sun intensity. Therefore, the descriptions of the physical elements of the locations of each of these species, including habitat type, plant communities associated with the species, location, and elevation, as described in the **SUPPLEMENTARY INFORMATION:** *Discussion of Plant Taxa* section above, constitute the primary constituent elements for these species in the NWHI.

D. Criteria Used To Identify Critical Habitat

The Service considered a number of factors in the selection and proposal of specific boundaries for critical habitat. For each, the overall recovery strategy outlined in the recovery plans includes: (1) Stabilization of existing wild populations, (2) protection and management of habitat, (3) enhancement of existing small populations and reestablishment of new populations within historic range or within areas identified in the recovery plans for conservation of the species, and (4) research on species biology and ecology (Service 1998d, 1999). Thus, the long-term recovery of these species is dependent upon the protection of existing population sites and potentially suitable unoccupied habitat within their historic range.

The lack of detailed scientific data on the life history of these plant species makes it impossible for us to develop a robust quantitative model (*e.g.,* a population viability analysis) to identify the optimal number, size, and location of critical habitat units needed to achieve recovery (Beissinger and Westphal 1998; Burgman *et al.* 2001; Ginzburg *et al.* 1990; Karieva and Wennergren 1995; Menges 1990; Murphy *et al.* 1990; Taylor 1995). At this time, and consistent with the listing of these species and their recovery plans, the best available information leads us to conclude that the current size and distribution of the extant populations are not sufficient to expect a reasonable probability of long-term survival and recovery of these plant species. We used the same information, along with the opinions of scientists familiar with these species, to identify potentially suitable habitat within the known historic range of each species.

The recovery goals stated in the recovery plans for these species include the following: Establishment of 8 to 10 populations with a minimum of 300 mature, reproducing individuals per population for *Mariscus pennatiformis* and *Sesbania tomentosa* distributed among the islands of each species known historic range (Service 1999). For purposes of this discussion, a population, as defined in the recovery plan for these species, is a unit in which the individuals could be regularly cross-pollinated and influenced by the same small-scale events (such as landslides), and which contains a minimum of 300 mature, reproducing individuals for these short-lived perennial species (Service 1999).

Within the five species at issue, there are three exceptions to this general recovery goal of 8 to 10 populations for species that are believed to be very narrowly distributed. The recovery goals for *Amaranthus brownii, Pritchardia remota,* and *Schiedea verticillata* include one to three additional colonies of each species on an island other than Nihoa (Service 1998d). In the case of *Pritchardia remota,* Laysan Island should be considered, since a palm that may have been this species formerly occurred there. For *Amaranthus brownii* and *Schiedea verticillata,* Necker Island should be considered since it is adjacent to Nihoa, has similar habitat, and is protected as a U.S. Fish and Wildlife Service refuge (Service 1998d). Should establishment of one to three colonies of any or all of these taxa on an island other than Nihoa occur, delisting may be considered when they have reached a minimum of 100 mature individuals per colony for *Pritchardia remota,* a minimum of 300 mature individuals per colony for *Schiedea verticillata,* and a minimum of 500 mature individuals for *Amaranthus brownii.* Each colony should be stable or increasing for a minimum of five consecutive years. If the establishment of additional colonies on an island other than Nihoa proves infeasible for these taxa, they may be considered recovered if five colonies of each species reach the population targets described above (Service 1998d). The critical habitat designations reflect these exceptions for these species.

By adopting these specific recovery objectives, the adverse effects of genetic inbreeding and random environmental events and catastrophes, such as landslides, hurricanes, or tsunamis, which could destroy a large percentage of a species at any one time, may be reduced (Menges 1990; Podolsky 2001). These recovery objectives were initially developed by the HPPRCC and are found in all of the recovery plans for these species. While they are expected to be further refined as more information on the population biology of each species becomes available, the justification for these objectives is found in the current conservation biology literature addressing the conservation of rare and endangered plants and animals (Beissinger and Westphal 1998; Burgman *et al.* 2001; Falk *et al.* 1996; Ginzburg *et al.* 1990; Hendrix and Kyhl 2000; Karieva and Wennergren 1995; Luijten *et al.* 2000; Meffe and Carroll 1996; Menges 1990; Murphy *et al.* 1990; Podolsky 2001; Quintana-Ascencio and Menges 1996; Taylor 1995; Tear *et al.* 1995; Wolf and Harrison 2001). The overall goal of recovery in the short-term is a successful population that can carry on basic life history processes, such as establishment, reproduction, and dispersal, at a level where the probability of extinction is low. In the long-term, the species and its populations should be at a reduced risk of extinction and be adaptable to environmental change through evolution and migration.

Many aspects of species life history are considered to determine guidelines for species' interim stability and recovery, including longevity, breeding system, growth form, fecundity, ramet (a plant that is an independent member of a clone) production, survivorship, seed longevity, environmental variation, and successional stage of the habitat. Hawaiian species are generally poorly studied, and the only one of these characteristics that can be uniformly determined for all Hawaiian plant

species is longevity (*i.e.,* long-lived perennial, short-lived perennial, and annual). In general, long-lived woody perennial species would be expected to be viable at population levels of 50 to 250 individuals per population, while short-lived perennial species would be viable at population levels of 1,500 to 2,500 individuals or more per population. The HPPRCC revised these population numbers for Hawaiian plant species due to the restricted distribution of suitable habitat and the likelihood of smaller genetic diversity of several species that evolved from a single introduction. For recovery of Hawaiian plants, the HPPRCC recommended a general recovery guideline of 100 mature, reproducing individuals per population for long-lived perennial species, 300 mature, reproducing individuals per population for short-lived perennial species, and 500 mature, reproducing individuals per population for annual species (HPPRCC 1994).

The HPPRCC recommended the conservation and establishment of 8 to 10 populations of multi-island plant species and establishment of additional colonies on other islands for Nihoa plant species in order to address the numerous risks to the long-term survival and conservation of these species. Although absent the detailed information inherent to population viability analysis models (Burgman *et al.* 2001), this approach employs two widely recognized and scientifically accepted goals for promoting viable populations of listed species: (1) The creation or maintenance of multiple populations so that a single or series of catastrophic events cannot destroy the entire listed species (Luijten *et al.* 2000; Menges 1990; Quintana-Ascencio and Menges 1996); and (2) increasing the size of each population in the respective critical habitat units to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished (Hendrix and Kyhl 2000; Luijten *et al.* 2000; Meffe and Carroll 1996; Podolsky 2001; Service 1997; Tear *et al.* 1995; Wolf and Harrison 2001). In general, the larger the number of populations (or colonies) and the larger the size of each population (or colony), the lower the probability of extinction (Meffe and Carroll 1996; Raup 1991). This basic conservation principle of redundancy when applied to Hawaiian plant species reduces the threats represented by a fluctuating environment and offers the species a greater likelihood of achieving long-term survival and recovery. Conversely, loss of one or more of the plant populations (colonies) within any critical habitat unit could result in an increase in the risk that the entire listed species may not survive and recover. Similarly, actions that eliminate, or reduce the function of, a primary constituent element could result in an increase in the risk of adverse modification of critical habitat.

Due to the reduced size of suitable habitat areas for these Hawaiian plant species, they are more susceptible to the variations and weather fluctuations affecting quality and quantity of available habitat, as well as direct pressure from hundreds of species of nonnative plants and animals. Establishing and conserving the specific target number of populations or colonies on one or more islands within the historic range of the species will provide each species with a reasonable expectation of persistence and eventual recovery, even with the high potential that one or more of these populations will be eliminated by normal or random adverse events, such as the hurricanes which occurred in 1982 and 1992 on the island of Kauai, fires, and nonnative plant invasions (HPPRCC 1994; Luijten *et al.* 2000; Mangel and Tier 1994; Pimm *et al.* 1998; Stacey and Taper 1992). Based upon this information, we conclude that designation of adequate suitable habitat to meet recovery goals for these five plant species is essential to give each of the species a reasonable likelihood of long-term survival and recovery.

All currently or historically occupied sites or sites identified as conservation areas within the recovery plans for these species, containing one or more of the primary constituent elements considered essential to the conservation of the five plant species were examined to determine if special management considerations or protection are required. We reviewed all available management information on these plants at these sites including published and unpublished reports, surveys, and plans; internal letters, memos, trip reports; and, section 7 consultations. Additionally, we contacted staff of the HINWR to discuss their current management for these plants on national wildlife refuge lands.

Pursuant to the definition of critical habitat in section 3 of the Act, the primary constituent elements as found in any area so designated must require ''special management considerations or protections.'' In determining and weighing the relative significance of the threats that would need to be addressed in management plans or agreements, we considered the following:

—The factors that led to the listing of the species, as described in the final rules for listing each of the species. For all or nearly all endangered plants in the NWHI, the major threats include adverse impacts due to nonnative plants and invertebrates, seed or fruit predation by rats and mice, and fire (USFWS 1998d, 1999; 59 FR 56333; 61 FR 43178).

—The recommendations from the HPPRCC in their 1998 report to the Service (''Habitat Essential to the Recovery of Hawaiian Plants'').

—The management actions needed for assurance of survival and ultimate recovery of Hawaii's endangered plants. These actions are described in the Service's recovery plans for these five species (USFWS 1998d, 1999) and in the 1998 HPPRCC report to the Service (HPPRCC 1998). These actions include, but are not limited to, the following: (1) Nonnative plant control; (2) rodent control; (3) invertebrate pest control; (4) fire control; (5) maintenance of genetic material of the endangered plants species; (6) propagation, reintroduction, and/or augmentation of existing populations into areas deemed essential for the recovery of these species; (7) ongoing management of the wild, outplanted (the planting of propagated plants (material) into the wild)), and augmented populations; (8) habitat management and restoration in areas deemed essential for the recovery of these species; and (9) monitoring of the wild, outplanted, and augmented populations.

In general, taking all of the above recommended management actions into account, the following management actions are ranked in order of importance. It should be noted, however, that, on a case-by-case basis, some of these actions may rise to a higher level of importance for a particular species or area, depending on the biological and physical requirements of the species and the location(s) of the individual plants: (1) Nonnative plant control; (2) Rodent control; (3) Invertebrate pest control; (4) Fire control; (5) Maintenance of genetic material of the endangered plant species; (6) Propagation, reintroduction, and/or augmentation of existing populations into areas deemed essential for the recovery of the species; (7) Ongoing management of the wild, outplanted, and augmented populations; (8) Maintenance of natural pollinators and pollinating systems, when known; (9) Habitat management and restoration in areas deemed essential for the

recovery of the species; (10) Monitoring of the wild, outplanted, and augmented populations; (11) Rare plant surveys; and (12) Control of human activities/access.

All five species of plants are known from Federal lands within the HINWR. Management of the HINWR has been guided by the 1986 HINWR Master Plan/Environmental Impact Statement, which places primary emphasis on protecting and enhancing refuge wildlife resources, particularly threatened and endangered species (USFWS 1986). This plan does not specifically document management actions that maintain or enhance populations of endangered plants or their habitat on the islands of the HINWR. We are aware that current management actions within HINWR for these species include monitoring of populations and potential pests, and control or eradication of some alien plants (E. Flint, pers. comm., 2000; Morin and Conant 1998; Shultz 2000; USFWS 1998d). However, funding limitations and the difficulty of travel logistics allow only a maximum of one short visit per year to Nihoa Island, and less frequent visits to Necker.

Morin and Conant's draft ''Laysan Island Ecosystem Restoration Plan'' (1998), a long-term planning document that was developed as an integrated approach to managing the entire biota of Laysan Island, outlines conservation management actions for the endangered plant species on Laysan. These conservation management actions include the prevention of new plant or animal introductions to the island, restoration of the Laysan Island ecosystem that was present prior to major human-caused habitat modification, control/eradication of nonnative species, reintroduction of native species which are currently extinct on the island, and establishment of periodic comprehensive ecosystem monitoring (Morin and Conant 1998). A permanent year-round camp on Laysan, staffed by paid employees and volunteers, has enabled some control of nonnative plant species, propagation and outplanting of native plants for restoration efforts, and periodic monitoring of both native and nonnative plant species (E. Flint, pers. comm., 2000; Morin and Conant 1998). In the future, the plan may serve as a guiding document for endangered plant species management on other NWHI as well. However, because the plan is not fully funded or implemented yet, and because is has not yet been adopted for the other islands on which these plants occur, we know of no areas in the HINWR at this time that do not require special management or protection for the five species for which we have designated critical habitat.

In summary, the long-term conservation of Hawaiian plant species requires the designation of critical habitat units on one or more of the Hawaiian islands with suitable habitat in accordance with species-specific recovery goals as outlined in adopted recovery plans. Some of this designated critical habitat is currently unoccupied by these species but in order to recover the species, it is essential to conserve suitable habitat in these unoccupied units. This, in turn, will allow for the establishment of additional populations through natural recruitment or managed reintroduction. Establishment of these additional populations (colonies) will increase the likelihood that the species will survive and recover in the face of normal and stochastic events (Mangel and Tier 1994; Pimm *et al.*, 1998; Stacey and Taper 1992).

In this rule, we have defined the primary constituent elements based on the general habitat features of the areas from which the plants are reported, such as the type of plant community, the associated native plant species, the physical location (*e.g.*, steep rocky cliffs, talus slopes), and elevation. The areas we are designating as critical habitat provide some or all of the habitat components essential for the conservation of the five plant species.

Our approach to delineating critical habitat units was applied in the following manner:

(1) Critical habitat was proposed and will be designated on an island-by-island basis for ease of understanding for landowners and the public, for ease of conducting the public hearing process, and for ease of conducting public outreach. In Hawaii, landowners and the public are most interested and affected by issues centered on the island on which they reside.

(2) We focused on designating units representative of the known current and historical geographic and elevation range of each species; and

(3) Critical habitat units were designed to allow for expansion of existing wild populations and reestablishment of wild populations within the historic range, or within sites identified as conservation areas in the recovery plans for these species.

For *Amaranthus brownii, Mariscus pennatiformis, Prichardia remota, Schiedea verticillata*, and *Sesbania tomentosa*, currently and historically occupied habitat was examined in identifying and designating critical habitat. Critical habitat boundaries were delineated to include the entire island on which the species are found or were historically found.

Critical habitat is not designated for *Cenchrus agrimonioides* in the NWHI for the following reasons. In the NWHI, this taxon is historically known from only Laysan and Midway Islands, and Kure Atoll. It has not been reported on Laysan and Midway for over 70 and 100 years, respectively. A permanent year-round camp on Laysan, staffed by paid employees and volunteers, conducts periodic monitoring of both native and nonnative plant species, and *Cenchrus agrimonioides* has not been seen during these monitoring efforts (Morin and Conant 1998). On Midway, *Cenchrus agrimonioides* was not seen during the most recent botanical surveys conducted in 1995 and 1999 (Chris Swenson, Service, pers. comm., 2002). *Cenchrus agrimonioides* has not been seen on Kure Atoll for over 20 years even though DOFAW conducts annual seabird surveys and a botanical survey was conducted there as recently as 2001 (DOFAW 2001). In addition, no viable genetic material of this the specific variety that occurs in the NWHI is known to exist. The rediscovery of currently unknown individual plants on these three islands and atolls is believed to be extremely unlikely because we believe this perennial plant would have been seen during these surveys. Although genetic material of the closely related *Cenchrus agrimonioides* var. *agrimonioides* exists, this variety is known only from mountainous habitat on Oahu, which is very different from the habitat on the NWHI where *Cenchrus agrimonioides* var. *laysanensis* occurred. We would not use var. *agrimonioides* for restoration purposes in the NWHI because this variety is not known from the NWHI and its preferred habitat is not available in the NWHI.

Following publication of the proposed critical habitat rules for the 245 Hawaiian plants (67 FR 3940, 67 FR 9806, 67 FR 15856, 67 FR 16492, 67 FR 34522, 67 FR 36968, 67 FR 37108), some of which were revised, we reevaluated proposed critical habitat for *Mariscus pennatiformis* and *Sesbania tomentosa*, Statewide, using the recovery guidelines to determine if we had inadvertently proposed for designation too much or not enough habitat to meet the essential recovery goals for these species distributed among the islands of its known historic range (HINHP Database 2000, 2001; Wagner *et al.* 1990, 1999). We then further evaluated areas of the proposed critical habitat for all five species for the existing quality of the primary constituent elements (*i.e.*, intact native plant communities and

predominance of associated native plants versus nonnative plants), potential as a recovery area, and current or expected management of known threats (*e.g.*, weed control and nonnative insect, slug, and snail control). Areas that contain high quality primary constituent elements, are zoned or managed specifically for conservation, and have ongoing or expected threat abatement actions were considered the most essential within these areas, and we selected adequate area to meet recovery goals (*e.g.*, 8 to 10 populations).

Of the proposed critical habitat for *Mariscus pennatiformis* and *Sesbania tomentosa*, areas that did not contain high quality constituent elements and that may provide habitat for populations above the recovery goal of 8 to 10 populations were determined not essential for the conservation of the species and excluded from final designation. However, all of the proposed critical habitat for *Sesbania tomentosa* on Nihoa and Necker and all of the proposed critical habitat on Laysan for *Mariscus pennatiformis* was considered essential for conservation of these species and is designated as critical habitat. For *Amaranthus brownii, Pritchardia remota*, and *Schiedea verticillata*, taxa known only from the NWHI, we determined that critical habitat on the islands of Laysan and Nihoa was essential for their conservation because it contains occupied habitat important for the expansion of current colonies and the establishment of additional colonies. In addition, these areas may require special management considerations or protection in order to address the threats to each species.

Within the critical habitat boundaries, section 7 consultation is generally necessary, and adverse modification could occur only if the primary constituent elements are affected. Therefore, not all activities within critical habitat would trigger an adverse modification conclusion. In addition, existing manmade features and structures within boundaries of the mapped unit do not contain one or more of the primary constituent elements and would be excluded under the terms of this proposed regulation. Federal actions limited to those areas would not trigger a section 7 consultation unless they affect the species or primary constituent elements in adjacent critical habitat.

In summary, the critical habitat areas described below constitute our best assessment of the physical and biological features needed for the conservation of *Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata*, and *Sesbania tomentosa* and the special management needs of these species, and are based on the best scientific and commercial information available and described above. We publish this final rule acknowledging that we have incomplete information regarding many of the primary biological and physical requirements for these species. However, both the Act and the relevant court orders require us to proceed with designation at this time based on the best information available. As new information accrues, we may consider reevaluating the boundaries of areas that warrant critical habitat designation.

The approximate areas of the designated critical habitat by landownership or jurisdiction are shown in Table 4.

TABLE 4.—APPROXIMATE CRITICAL HABITAT DESIGNATED AREA BY UNIT AND LANDOWNERSHIP OR JURISDICTION, NORTHWESTERN HAWAIIAN ISLANDS, HAWAII

Unit name	State/local	Private	Federal	Total
Nihoa 1—*Amaranthus brownii*	none	none	69 ha (171 ac)	69 ha (171 ac)
Nihoa 2—*Pritchardia remota*	none	none	69 ha (171 ac)	69 ha (171 ac)
Nihoa 3—*Scheidea verticillata*	none	none	69 ha (171 ac)	69 ha (171 ac)
Nihoa 4—*Sesbania tomentosa*	none	none	69 ha (171 ac)	69 ha (171 ac)
Necker 1—*Sesbania tomentosa*	none	none	19 ha (46 ac)	19 ha (46 ac)
Laysan 1—*Mariscus pennatiformis*	none	none	405 ha (1,002 ac)	405 ha (1,002 ac)
Laysan 2—*Pritchardia remota*	none	none	405 ha (1,002 ac)	405 ha (1,002 ac)
Grand Total	none	none	493 ha (1,219 ac)	493 ha (1,219 ac)

Critical habitat includes habitat for these five species on the islands of Nihoa, Necker, and Laysan. Lands designated as critical habitat are under Federal ownership and managed by the Department of the Interior (the Service). The designated lands have been divided into seven units. A brief description of each unit is presented below.

Descriptions of Critical Habitat Units

Nihoa 1—*Amaranthus brownii*

This unit is critical habitat for *Amaranthus brownii* and is 69 ha (171 ac) on federally owned land. It includes the entire island, which is part of the HINWR. The unit is currently unoccupied but provides habitat that is essential to the conservation of up to 500 reproducing individuals of this annual species endemic to Nihoa. The area designated as critical habitat is considered to be the most likely to contain a viable seed bank of *Amaranthus brownii.* The habitat features contained in this unit that are essential for this species include, but are not limited to, shallow soil and rocky outcrops in fully exposed locations that contain one or more of the following associated native plant species: *Chenopodium oahuense, Eragrostis variabilis, Ipomoea indica, Ipomoea pes-caprae* ssp. *brasiliensis, Panicum torridum, Scaevola sericea, Schiedea verticillata, Sicyos pachycarpus, Sida fallax*, and *Solanum nelsonii.* This critical habitat unit is essential to the conservation of the species because it supports habitat for the re-establishment of populations of this endemic species.

Nihoa 2—*Pritchardia remota*

This unit is critical habitat for *Pritchardia remota* and is 69 ha (171 ac) on federally owned land. It includes the entire island, which is part of the HINWR. This unit, which contains at least 4 colonies that consist of at least 1,074 individuals (including seedlings) of *P. remota*, provides habitat that is essential to the conservation of 100 mature, reproducing individuals of this long-lived perennial species. The habitat features contained in this unit that are essential for this species include, but are not limited to, a coastal forest community that contains one or more of the following associated native plant species: *Chenopodium oahuense, Sesbania tomentosa, Solanum nelsonii*, and *Sida fallax.* This unit is essential to the conservation of the species because

it supports the only extant wild occurrence of this species and is geographically separated from the designated critical habitat unit on Laysan Island to avoid destruction by one naturally occurring catastrophic event.

Nihoa 3—*Schiedea verticillata*

This unit is critical habitat for *Schiedea verticillata* and is 69 ha (171 ac) on federally owned land. It includes the entire island, which is part of the HINWR. The unit provides habitat that is essential to the conservation of 300 mature, reproducing individuals of this short-lived perennial and, based on surveys conducted in 1996, contained at least 11 colonies and a total of at least 372 individuals. The habitat features contained in this unit that are essential for this species include, but are not limited to, rocky scree, soil pockets, and cracks on coastal cliff faces and in *Pritchardia remota* coastal mesic forest that contain one or more of the following associated native species and lichens: *Eragrostis variabilis, Rumex albescens*, and *Tribulus cistoides.* This critical habitat unit is essential to the conservation of the species because it supports extant colonies of *S. verticillata* and includes habitat that is important to the expansion of the present population on Nihoa.

Nihoa 4—*Sesbania tomentosa*

This unit is critical habitat for *Sesbania tomentosa* and is 69 ha (171 ac) on federally owned land. It includes the entire island, which is part of the HINWR. The unit contains habitat essential to the conservation of 300 mature, reproducing individuals of this short-lived perennial and contains one island-wide population of at least 1,000 individuals. The habitat features contained in this unit that are essential for this species include, but are not limited to, shallow sandy soils on beaches and dunes in *Chenopodium oahuense* coastal dry shrubland that contain one or more of the following associated native plant species: *Pritchardia remota, Scaevola sericea, Sida fallax*, and *Solanum nelsonii.* This critical habitat unit is essential to the conservation of the species because it supports extant colonies of *Sesbania tomentosa* and is also geographically separated from designated critical habitat on other islands to avoid destruction by one naturally occurring catastrophic event.

Necker 1—*Sesbania tomentosa*

This unit is critical habitat for *Sesbania tomentosa* and is 19 ha (46 ac) on federally owned land. It includes the entire island, which is part of the HINWR. The unit contains Annexation and Summit Hills, is occupied by one population of undetermined size, and provides habitat that is essential for the conservation of up to one population of 300 mature, reproducing individuals of this short-lived perennial species. The habitat features contained in this unit that are essential for this species include, but are not limited to, shallow sandy soils on beaches and dunes in *Chenopodium oahuense* coastal dry shrubland that contain one or more of the following associated native plant species: *Sida fallax, Scaevola sericea, Solanum nelsonii,* and *Pritchardia remota.* This unit is essential to the conservation of *Sesbania tomentosa* because it supports the only extant colony of the species on Necker. This unit also includes habitat that is important for the expansion of the present population, which is currently considered not viable. This unit is located at the westernmost range of this multi-island species and is geographically separated from designated critical habitat on other islands to avoid destruction by one naturally occurring catastrophic event.

Laysan 1—*Mariscus pennatiformis*

This unit is critical habitat for *Mariscus pennatiformis* and is approximately 405 ha (1,002 ac) in size, which includes a 52 ha (129 ac) hypersaline lagoon in its center. It is all on Federal land and is part of the HINWR. The unit is occupied by one occurrence of approximately 200 individuals and provides habitat essential to the conservation of 300 reproducing individuals. The habitat features contained in this unit that are essential for this species include, but are not limited to, coastal sandy substrate that contains one or more of the following associated native plant species: *Cyperus laevigatus, Eragrostis variabilis,* and *Ipomoea* sp. This critical habitat unit is essential to the conservation of *Mariscus pennatiformis* ssp. *bryanii* because it supports the only extant colony, which is currently considered not viable. It also contains habitat that is important to the expansion of this taxon.

Laysan 2—*Pritchardia remota*

This unit is critical habitat for *Pritchardia remota* and is approximately 405 ha (1,002 ac) in size, which includes a 52 ha (129 ac) hypersaline lagoon in its center. It is all on Federal land and is part of the HINWR. The unit is currently unoccupied but provides habitat essential to the conservation of 100 reproducing individuals of this long-lived perennial species. The habitat features contained in this unit that are essential for this species include, but are not limited to, the coastal strand community that contains one or more of the following associated native plant species: *Chenopodium oahuense* and *Solanum nelsonii.*

This unit is currently unoccupied but is essential to the conservation of *Pritchardia remota* because it provides habitat for the establishment of a new colony in order to achieve recovery goals for the species. This unit is also geographically separated from the occupied designated critical habitat unit on Nihoa, which serves to avoid the destruction of both colonies by one naturally occurring catastrophic event.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Destruction or adverse modification of critical habitat occurs when a Federal action directly or indirectly alters critical habitat to the extent that it appreciably diminishes the value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are directly affected by the designation of critical habitat when their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies (action agency) to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat.

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

enter into consultation with us. Through this consultation, the action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate formal consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement, or control has been retained or is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing 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.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide ''reasonable and prudent alternatives'' to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of resulting in 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.

Activities on Federal lands that may affect critical habitat of *Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* or *Sesbania tomentosa* will 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. 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) Activities that appreciably degrade or destroy habitat defined in the discussion of the primary constituent elements including, but not limited to: Clearing or cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (*e.g.*, woodcutting or herbicide application); introducing or enabling the spread of nonnative species; and taking actions that pose a risk of fire;

(2) Construction activities by the U.S. Department of the Interior (the Service);

(3) Research activities funded by the U.S. Department of the Interior (the Service) or National Oceanic and Atmospheric Administration (National Marine Sanctuaries Program, National Marine Fisheries Service); and

(4) Activities not mentioned above funded or authorized by the Department of the Interior (U.S. Geological Survey, National Park Service), Department of Commerce (National Oceanic and Atmospheric Administration), Western Pacific Regional Fisheries Council, or any other Federal Agency.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and plants, and inquiries about prohibitions and permits, may be addressed to the U.S. Fish and Wildlife Service, Division of Endangered Species, 911 N.E. 11th Ave., Portland, OR 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Economic Analysis

Exclusions Under Section 4(b)(2)

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 areas from critical habitat when the exclusion will result in the extinction of the species concerned.

Economic Impacts

Following the publication of the proposed critical habitat designation on May 14, 2002, a draft economic analysis was conducted to estimate the potential economic impact of the designation, in accordance with recent decisions in the *N.M. Cattlegrowers Ass'n* v. *U.S. Fish and Wildlife Serv.,* 248 F.3d 1277 (10th Cir. 2001). The draft analysis was made available for review on September 12, 2002 (67 FR 57784). We accepted comments on the draft analysis until the comment period closed on October 15, 2002.

No comments addressing the economic analysis were received, and no information has come to light that might change the conclusions of the draft economic analysis. Therefore, the draft analyses constitutes the final economic analysis for this rule. The economic analysis estimates that, over the next 10 years, the designation may result in potential economic effects of approximately $30,800, and that economic benefits from the designation of critical habitat would not be significant. A more detailed discussion of our economic analysis is contained in the draft economic analysis and the addendum. Both documents are included in our administrative record and are available for inspection at the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section). We do not believe the economic impacts of this designation, which would result primarily from section 7 consultations on FWS, NMS, and private research activities, would be significant. Therefore, no critical habitat units in the proposed rule were excluded or modified due to economic impacts.

As described above, section 4(b)(2) of the Act also requires us to consider other relevant impacts, in addition to economic impacts, of designating critical habitat. No critical habitat units were excluded or modified due to non-economic impacts.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this critical habitat designation is not a significant regulatory action. This rule will not have an annual economic effect of $100 million or more or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government. This designation will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. It will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Finally, this designation will not raise novel legal or policy issues. Accordingly, OMB has not reviewed this final critical habitat designation.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions).

However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

SBREFA does not explicitly define either ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in the area. Similarly, this analysis considers the relative cost of compliance on the revenues/profit margins of small entities in determining whether or not entities incur a ''significant economic impact.'' Only small entities that are expected to be directly affected by the designation are considered in this portion of the analysis. This approach is consistent with several judicial opinions related to the scope of the RFA. (*Mid-Tex Electric Co-Op, Inc.* v. *F.E.R.C.* and *America Trucking Associations, Inc.* v. *EPA*.)

In today's rule, we are certifying that the designation of critical habitat for the five plant species on the NWHI will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

Federal courts and Congress have indicated that an RFA/SBREFA analysis is appropriately limited to impacts to entities directly regulated by the requirements of the regulation (Service 2002). As such, entities not directly regulated by the critical habitat designation are not considered in this section of the analysis.

Small entities include small organizations, such as independent nonprofit organizations and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. 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. The RFA/SBREFA defines ''small organization'' as any not-for-profit enterprise that is independently owned and operated and is not dominant in its field (5 U.S.C. 601).

For the purposes of the RFA/SBREFA, Federal agencies (*e.g.*, the Service, U.S. Geological Survey, National Park Service, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, and Western Pacific Regional Fisheries Council) are not considered small governments and thus are not small entities. State governments are not considered small governmental entities and thus DLNR is not considered a small entity. The University of Hawaii is a large State university system, so it is also not a small entity. The Bishop Museum, which may sponsor research, is not likely to be considered a small organization because it is the largest museum in the State and thus is dominant in its field.

Thus, none of the entities potentially impacted by the designation of critical habitat are likely to be considered a small entity under the RFA/SBREFA. For these reasons, we are certifying that the designation of critical habitat for *Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa* will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. Our assessment of the economic effects of this designation are described in the economic analysis. Based on the effects identified in this analysis, we believe that this rule will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued 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. According to OMB, this rule is not a significant regulatory action under Executive Order 12866, and we do not expect it to significantly affect energy production supply and distribution facilities because no energy production, supply, and distribution facilities are included within designated critical habitat. Further, for the reasons described in the economic analysis, we do not believe the designation of critical habitat for the five NWHI plants will affect future energy production. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

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

(a) This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. All of the land being designated as critical habitat in this rule is owned by the Federal government and is managed as a National Wildlife Refuge by the Service. Small governments will not be affected unless they propose an action affecting the refuge and requiring Federal funds, permits, or other authorizations. Any such activities will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

(b) This rule will not produce a Federal mandate on State or local governments or the private sector of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. For the reasons described above, the designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings

implications of designating critical habitat for the five species from the NWHI 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, this final rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of Interior policy, we requested information from appropriate State agencies in Hawaii.

Because all of the designated critical habitat, including the unoccupied unit, is on Federal land, there should be no impact on State and local governments and their activities as a result of the designation of critical habitat in currently unoccupied areas of the NWHI.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We 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 the five plant species from the NWHI.

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

This rule does not contain any information collection requirements that require OMB approval under the Paperwork Reduction Act. 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 we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of these five plant species. Therefore, designation of critical habitat for these five species does not involve any Tribal lands.

References Cited

A complete list of all references cited in this final rule is available upon request from the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

Authors

The primary authors of this final rule are staff of the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

■ Accordingly, we hereby 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. Amend § 17.12(h) by revising the entries for *Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa* under FLOWERING PLANTS in the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
Amaranthus brownii.	None	U.S.A. (HI)	Amaranthaceae	E	587	17.99(g)	NA
Mariscus pentiformis.	None	U.S.A. (HI)	Cyperaceae	E	559	17.99(a)(1), (e)(1), (g).	NA
Pritchardia remota	Loulu	U.S.A. (HI)	Arecaceae	E	587	17.99(g)	NA
Schiedea verticillata.	None	U.S.A. (HI)	Caryophyllaceae	E	587	17.99(g)	NA
Sesbania tomentosa.	Ohai	U.S.A. (HI)	Fabaceae	E	559	17.99(a)(1), (c), (e)(1), (g).	NA
*	*	*	*	*		*	*

■ 3. Amend § 17.99 as set forth below:

■ (1) By revising the section heading to read as follows; and

■ (2) By adding new paragraphs (g) and (h) to read as follows:

§ 17.99 Critical habitat; plants on the islands of Kauai, Niihau, and Molokai, HI, and on the Northwestern Hawaiian Islands.

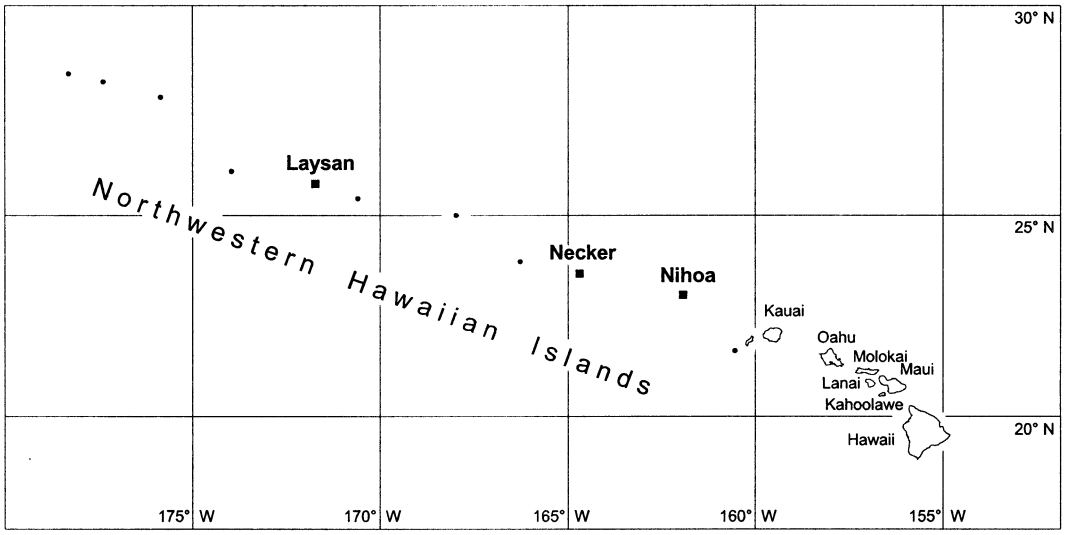
* * * * *

(g) *Maps and critical habitat unit descriptions for the Northwestern Hawaiian Islands.* The following paragraphs contain the legal descriptions of the critical habitat units

designated for the Northwestern Hawaiian Islands. Existing manmade features within boundaries of the mapped areas, such as water features, telecommunications equipment, arboreta and gardens, and heiau (indigenous places of worship or shrines) and other archaeological sites do not contain one or more of the primary constituent elements described for each species in paragraphs (h) of this section and therefore are not included in the critical habitat designations. Coordinates are in WGS84 datum. See Map 1 for the the general locations of the seven critical habitat units designated for the islands of Laysan, Nihoa, and Necker.

(1) Index map—Map 1—follows:

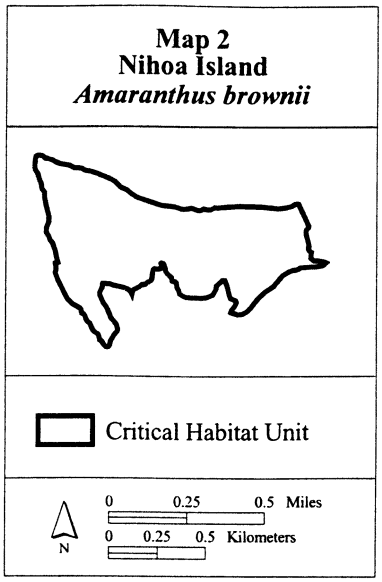
Map 1 - General Locations of Units for Five Species of Plants
Islands of Laysan, Necker, and Nihoa



(2) Nihoa 1—*Amaranthus brownii*—entire island (approximately 69 ha; 171 ac).

(i) Nihoa Island is located between 23°3′ N. and 23°4′ N. and between 161°54′ W. and 161°56′ W.

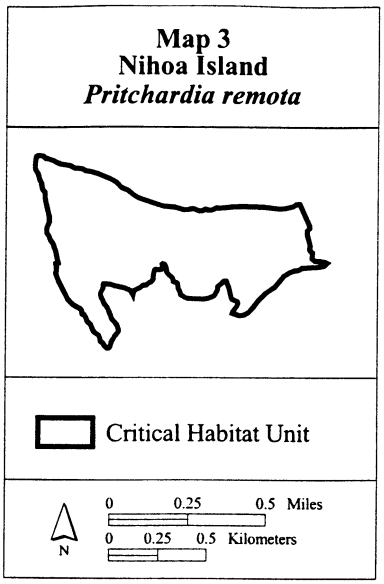
(ii) **Note:** Map 2 follows:



(3) Nihoa 2—*Pritchardia remota*—entire island (approximately 69 ha; 171 ac).

(i) Nihoa Island is located between 23°3′ N. and 23°4′ N. and between 161°54′ W. and 161°56′ W.

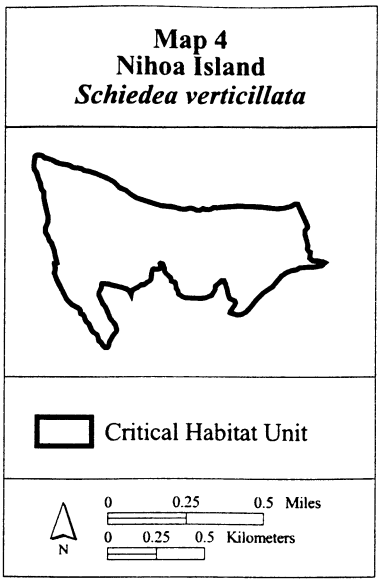
(ii) **Note:** Map 3 follows:



(4) Nihoa 3—*Schiedea verticillata*—entire island (approximately 69 ha; 171 ac).

(i) Nihoa Island is located between 23°3′ N. and 23°4′ N. and between 161°54′ W. and 161°56′ W.

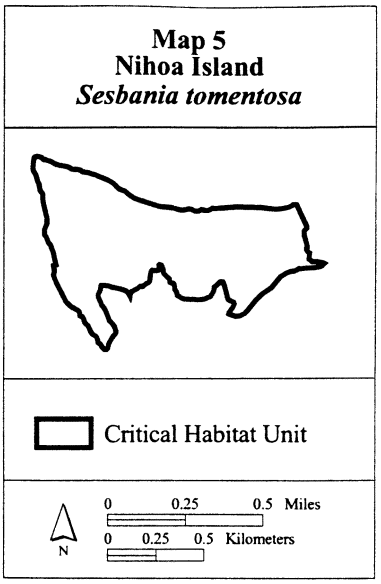
(ii) **Note:** Map 4 follows:



(5) Nihoa 4—*Sesbania tomentosa*—entire island (approximately 69 ha; 171 ac).

(i) Nihoa Island is located between 23°3′ N. and 23°4′ N. and between 161°54′ W. and 161°56′ W.

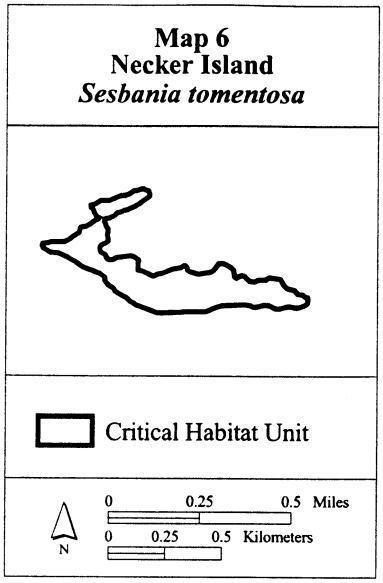
(ii) **Note:** Map 5 follows:



(6) Necker 1—*Sesbania tomentosa*—entire island (approximately 18 ha; 46 ac).

(i) Necker Island is located between 23°34′ N. and 23°35′ N. and between 164°41′ W. and 164°43′ W.

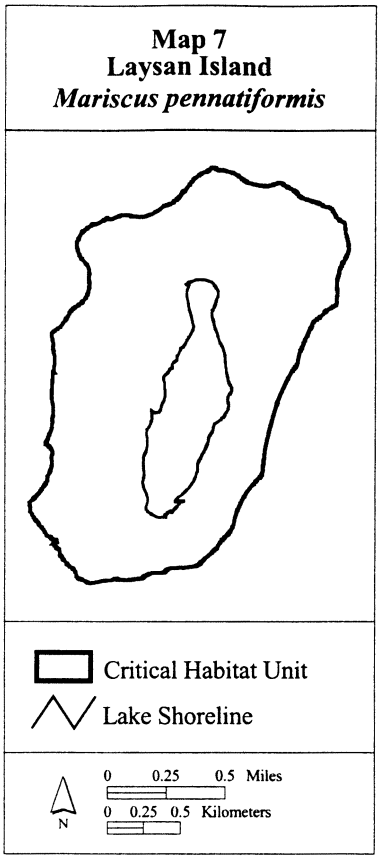
(ii) **Note:** Map 6 follows:



(7) Laysan 1—*Mariscus pennatiformis*—entire island (approximately 405 ha; 1,219 ac).

(i) Laysan Island is located between 25°45′ N. and 25°47′ N. and between 171°43′ W. and 171°45′ W.

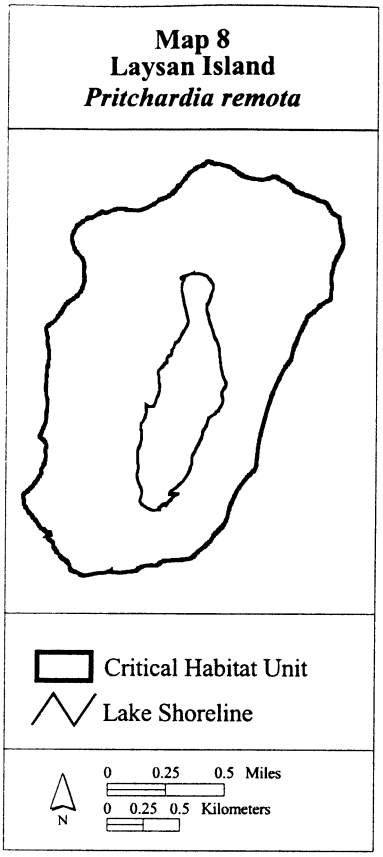
(ii) **Note:** Map 7 follows:



(8) Laysan 2—*Pritchardia remota*—entire island (approximately 405 ha; 1,219 ac).

(i) Laysan Island is located between 25°45′ N. and 25°47′ N. and between 171°43′ W. and 171°45′ W.

(ii) **Note:** Map 8 follows:



(9) Table of protected species within each critical habitat unit for the Northwestern Hawaiian Islands.

Island	Species—Occupied	Species—Unoccupied
Laysan	*Mariscus pennatiformis*	*Pritchardia remota*
Necker	*Sesbania tomentosa.*	
Nihoa	*Pritchardia remota, Schiedea verticillata, Sesbania tomentosa.*	*Amaranthus brownii*

(h) *Plants on the Northwestern Hawaiian Islands; Constituent elements.*

Family Amaranthaceae: *Amaranthus brownii* (NCN)

Nihoa 1—*Amaranthus brownii,* identified in the legal description in paragraph (g) of this section, constitutes critical habitat for *Amaranthus brownii.* On Nihoa, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(1) Shallow soil in fully exposed locations on rocky outcrops and containing one or more of the following associated native plant species: *Chenopodium oahuense, Eragrostis variabilis, Ipomoea indica, Ipomoea pes-caprae* ssp. *brasiliensis, Panicum torridum, Scaevola sericea, Schiedea verticillata, Sicyos pachycarpus, Sida fallax,* or *Solanum nelsonii;* and (2)

Elevations between 30 and 242 m (100 and 800 ft).

Family Arecaceae: *Pritchardia remota* (loulu)

Nihoa 2—*Pritchardia remota,* and Laysan 2— *Pritchardia remota,* identified in the legal descriptions in paragraph (g) of this section, consitute critical habitat for *Pritchardia remota.*

(1) On Nihoa, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) *Pritchardia remota* coastal forest community and containing one or more of the following associated native plant species: *Chenopodium oahuense, Sesbania tomentosa, Sida fallax,* or *Solanum nelsonii;* and

(ii) Elevations between sea level and 151 m (500 ft).

(2) On Laysan Island, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Coastal strand habitat with *Chenopodium oahuensee* and *Solanum nelsonii;* and

(ii) Elevations between sea level to 12 m (0 to 40 ft).

Family Caryophyllaceae: *Schiedea verticillata* (NCN)

Nihoa 3—*Schiedea verticillata,* identified in the legal description in paragraph (g) of this section, constitutes critical habitat for *Schiedea verticillata.* On Nihoa, the currently known primary constituent elements of critical habitat for *Schiedea verticillata* include, but are not limited to, the habitat components provided by:

(1) Rocky scree, soil pockets, and cracks on coastal cliff faces and in *Pritchardia remota* coastal mesic forest and containing one or more of the following associated native plant species: *Eragrostis variabilis, Rumex albescens, Tribulus cistoides,* or lichens; and

(2) Elevations between 30 and 242 m (100 and 800 ft).

Family Cyperaceae: *Mariscus pennatiformis* (NCN)

Laysan 1—*Mariscus pennatiformis,* identified in the legal description in paragraph (g) of this section, constitutes critical habitat for *Mariscus pennatiformis.* On Laysan Island, the currently known primary constituent elements of critical habitat for *Mariscus pennatiformis* include, but are not limited to, habitat components provided by:

(1) Coastal sandy substrate containing one or more of the following associated native plant species: *Cyperus laevigatus, Eragrostis variabilis,* or *Ipomoea* sp.; and

(2) Elevation of 5 m (16 ft).

Family Fabaceae: *Sesbania tomentosa* (ohai)

Nihoa 4—*Sesbania tomentosa,* and Necker 1—*Sesbania tomentosa,* identified in the legal descriptions in paragraph (g) of this section, constitute critical habitat for *Sesbania tomentosa.* On Nihoa and Necker, the currently known primary constituent elements of critical habitat for *Sesbania tomentosa* include, but are not limited to, habitat components provided by:

(1) Shallow soil on sandy beaches and dunes in *Chenopodium oahuense* coastal dry shrubland or mixed coastal dry cliffs and containing one or more of the following associated native plant species: *Pritchardia remota, Scaevola sericea, Sida fallax,* or *Solanum nelsonii;* and

(2) Elevations between sea level and 84 m (0 and 276 ft).

Dated: April 30, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–11157 Filed 5–21–03; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday,
May 22, 2003

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter I, et al.

Federal Acquistion Circular 2001–14; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2001–14; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules and technical amendments.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001–14. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.arnet.gov/far.*

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001–14 and specific FAR case number(s). Interested parties may also visit our Web site at *http://www.arnet.gov/far.*

Item	Subject	FAR case	Analyst
I	Geographic Use of the Term ''United States''	1999–400	Davis.
II	Miscellaneous Cost Principles	2001–029	Loeb.
III	Prompt Payment Under Cost-Reimbursement Contracts for Services	2000–308	Loeb.
IV	Electronic Signatures	2000–304	Smith.
V	Increased Federal Prison Industries, Inc. Waiver Threshold (Interim)	2003–001	Nelson.
VI	Past Performance Evaluation of Federal Prison Industries Contracts	2001–035	Smith.
VII	Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items.	2000–009	Moss.
VIII	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2001–14 amends the FAR as specified below:

Item I—Geographic Use of the Term ''United States'' (FAR Case 1999–400)

This final rule amends the FAR to clarify the use of the term ''United States,'' when used in a geographic sense. The term ''United States'' is defined in FAR 2.101 to include the 50 States and the District of Columbia. Where a wider area of applicability is intended, the term is redefined in the appropriate part or subpart of the FAR, or supplemented by listing the additional areas of applicability each time the term is used. This rule corrects and updates references to the United States throughout the FAR, including a new definition of ''outlying areas'' of the United States, a term that encompasses the named outlying commonwealths, territories, and minor outlying islands.

Item II—Miscellaneous Cost Principles (FAR Case 2001–029)

This final rule amends the FAR by deleting the cost principle at FAR 31.205–45, Transportation costs, and streamlining the cost principles at FAR 31.205–10, Cost of money; FAR 31.205–28, Other business expenses; and FAR 31.205–48, Deferred research and development costs. The rule will only affect contracting officers that are required by a contract clause to use cost principles for the determination, negotiation, or allowance of contract costs.

Item III—Prompt Payment Under Cost-Reimbursement Contracts for Services (FAR Case 2000–308)

The interim rule published in the **Federal Register** at 66 FR 53485, October 22, 2001, is converted to a final rule, without change, to implement statutory and regulatory changes related to late payment of an interim payment under a cost-reimbursement contract for services. The rule is of special interest to contracting officers that award or administer these type of contracts.

The **Federal Register** notice published in conjunction with the FAR interim rule stated that ''The policy and clause apply to all covered contracts awarded on or after December 15, 2000 * * * agencies may apply the FAR changes made by this rule to contracts awarded prior to December 15, 2000, at their discretion * * *.'' This was consistent with OMB regulations. Subsequently, as a result of enactment of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107) on December 28, 2001, agencies no longer have this discretion. Section 1007 of Public Law 107–107 states that this policy applies to cost-reimbursement contracts for services awarded before, on, or after December 15, 2000. Section 1007 retains the prohibition against payment of late payment interest penalty for any period prior to December 15, 2000.

Item IV—Electronic Signatures (FAR Case 2000–304)

Recent laws eliminate legal barriers to using electronic technology in business transactions, such as the formation and signing of contracts. This final rule furthers Government participation in electronic commerce when conducting Government procurements by adding a statement at FAR Subpart 4.5, Electronic Commerce in Contracting, clarifying that agencies are permitted to accept electronic signatures and records in connection with Government contracts.

Item V—Increased Federal Prison Industries, Inc. Waiver Threshold (FAR Case 2003–001)

This interim rule revises the Federal Acquisition Regulation to increase the Federal Prison Industries, Inc.'s (FPI) clearance exception threshold at 8.606(e) from $25 to $2,500 and eliminates the criterion that delivery is required within 10 days. Federal agencies will not be required to make purchases from FPI of products on FPI's Schedule that are at or below this threshold.

Item VI—Past Performance Evaluation of Federal Prison Industries Contracts (FAR Case 2001–035)

This final rule requires agencies to evaluate Federal Prison Industries (FPI) contract performance. This change will permit Federal customers to rate FPI performance, compare FPI to private sector providers, and give FPI important feedback on previously awarded contracts. It is expected that this change will give FPI the same opportunity that we give private sector providers, to improve their customer satisfaction, in general, and their performance on delivery, price, and quality, specifically.

Item VII—Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items (FAR Case 2000–009)

This final rule amends the clause at 52.212–5, Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items, to ensure that required statutes enacted subsequent to FASA that contain civil or criminal penalties or specifically cite their applicability to commercial items are included on the list, and to ensure that any post-FASA items that did not meet this criteria are deleted from the list. In addition, the pre-FASA clauses and alternates that were inadvertently left off the list are added. The date of each clause is added to the list to identify what revision of the listed clause applies when this clause is added to a contract.

Item VIII—Technical Amendments

These amendments update references and make editorial changes at FAR 52.213–4(a)(2)(vi), 52.244–6 section and clause headings, and 52.247–64(a).

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–14 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–14 are effective June 23, 2003, except for Items III, V and VIII which are effective May 22, 2003.

Dated: May 9, 2003.

Deidre A. Lee,

Director, Defense Procurement and Acquisition Policy.

Dated: May 5, 2003.

David A. Drabkin,

Deputy of Acquisition Policy, General Services Administration.

Dated: May 5, 2003.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 03–12300 Filed 5–21–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 3, 4, 5, 6, 8, 9, 14, 19, 22, 23, 25, 26, 28, 29, 31, 35, 36, 42, 45, 47, 52, and 53

[FAC 2001–14; FAR Case 1999–400; Item I]

RIN 9000–AI99

Federal Acquisition Regulation; Geographic Use of the Term ''United States''

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify the use of the term ''United States'' in the FAR, in accordance with the FAR Drafting Guide.

DATES: *Effective Date:* June 23, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2001–14, FAR case 1999–400.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends the FAR to clarify the use of the term ''United States,'' when used in a geographic sense. The term ''United States'' is defined in FAR 2.101 to include the 50 States and the District of Columbia. Where a wider area of applicability is intended, the term is redefined in the appropriate part or subpart of the FAR, or supplemented by listing the additional areas of applicability each time the term is used. This rule corrects and updates references to the United States throughout the FAR, including a new definition of ''outlying areas'' of the United States, a term that encompasses all outlying commonwealths, territories, and minor outlying islands.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 66 FR 39230, July 27, 2001. No public comments were received. The Councils have agreed to convert the proposed rule to a final rule with only minor editorial changes.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule simply standardizes terminology and clarifies existing meaning. This rule is not intended to make policy changes.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 3, 4, 5, 6, 8, 9, 14, 19, 22, 23, 25, 26, 28, 29, 31, 35, 36, 42, 45, 47, 52, and 53

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 3, 4, 5, 6, 8, 9, 14, 19, 22, 23, 25, 26, 28, 29, 31, 35, 36, 42, 45, 47, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 3, 4, 5, 6, 8, 9, 14, 19, 22, 23, 25, 26, 28, 29, 31, 35, 36, 42, 45, 47, 52, and 53 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 by adding, in alphabetical order, the definitions ''Contiguous United States (CONUS)'', ''Customs territory of the United States'', and ''Outlying areas''; by removing the definition ''Possessions''; and by revising the definition ''State and local taxes''. The added and revised text reads as follows:

2.101 Definitions.

* * * * *

Contiguous United States (CONUS) means the 48 contiguous States and the District of Columbia.

* * * * *

Customs territory of the United States means the 50 States, the District of Columbia, and Puerto Rico.

* * * * *

Outlying areas means—

(1) *Commonwealths.* (i) Puerto Rico.

(ii) The Northern Mariana Islands;

(2) *Territories.* (i) American Samoa.

(ii) Guam.

(iii) U.S. Virgin Islands; and

(3) *Minor outlying islands.* (i) Baker Island.

(ii) Howland Island.

(iii) Jarvis Island.

(iv) Johnston Atoll.

(v) Kingman Reef.

(vi) Midway Islands.

(vii) Navassa Island.

(viii) Palmyra Atoll.

(ix) Wake Atoll.

* * * * *

State and local taxes means taxes levied by the States, the District of Columbia, outlying areas of the United States, or their political subdivisions.

* * * * *

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.303 [Amended]

■ 3. Amend section 3.303 in paragraph (e) by removing the comma after the word ''States'' and adding ''and its outlying areas,'' in its place.

■ 4. Amend section 3.801 by revising the definition ''State'' to read as follows:

3.801 Definitions.

* * * * *

State, as used in this section, means a State of the United States, the District of Columbia, an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

PART 4—ADMINISTRATIVE MATTERS

■ 5. Amend section 4.603 in paragraph (a)(1) by removing ''The contracting officer shall insert'' and adding ''Insert'' in its place; and by revising paragraph (b) to read as follows:

4.603 Solicitation provisions.

* * * * *

(b) Insert the provision at 52.204–5, Women-Owned Business (Other Than Small Business), in solicitations that—

(1) Are not set aside for small business concerns;

(2) Exceed the simplified acquisition threshold; and

(3) Are for contracts that will be performed in the United States or its outlying areas.

PART 5—PUBLICIZING CONTRACT ACTIONS

■ 6. Amend section 5.202 by revising the first sentence of paragraph (a)(12) to read as follows:

5.202 Exceptions.

* * * * *

(a) * * *

(12) The proposed contract action is by a Defense agency and the proposed contract action will be made and performed outside the United States and its outlying areas, and only local sources will be solicited. * * *

* * * * *

5.303 [Amended]

■ 7. Amend section 5.303 in paragraph (a)(2) by removing ''or its possessions'' and adding ''and its outlying areas'' in its place.

PART 6—COMPETITION REQUIREMENTS

■ 8. Amend section 6.302–3 by revising paragraph (b)(1)(v) to read as follows:

6.302–3 Industrial mobilization; engineering, developmental, or research capability; or expert services.

* * * * *

(b) * * *

(1) * * *

(v) Create or maintain the required domestic capability for production of critical supplies by limiting competition to items manufactured in—

(A) The United States or its outlying areas; or

(B) The United States, its outlying areas, or Canada.

* * * * *

6.401 [Amended]

■ 9. Amend section 6.401 in the first sentence of paragraph (b)(2) by removing '', its possessions, or Puerto Rico'' and adding ''and its outlying areas'' in its place.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 10. Amend section 8.1100 by revising the last sentence to read as follows:

8.1100 Scope of subpart.

* * * It does not apply to motor vehicles leased outside the United States and its outlying areas.

8.1104 [Amended]

■ 11. Amend section 8.1104 in the introductory text by removing ''The contracting officer shall insert'' and adding ''Insert'' in its place; and in paragraph (d) by removing ''(see 41 CFR 101–38.6)'' and adding ''(see subpart B of 41 CFR 102–34)'' in its place.

PART 9—CONTRACTOR QUALIFICATIONS

9.102 [Amended]

■ 12. Amend section 9.102 in paragraph (a)(1) by removing '', its possessions, or Puerto Rico'' and adding ''or its outlying areas'' in its place.

■ 13. Amend section 9.406–2 by adding an introductory paragraph; revising the introductory text of paragraph (a), and paragraphs (a)(4), (b)(1) introductory text, (b)(1)(iii), the first sentence in (b)(2), and (c) to read as follows:

9.406–2 Causes for debarment.

The debarring official may debar—

(a) A contractor for a conviction of or civil judgment for—

* * * * *

(4) Intentionally affixing a label bearing a ''Made in America'' inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102–558)); or

* * * * *

(b)(1) A contractor, based upon a preponderance of the evidence for—

* * * * *

(iii) Intentionally affixing a label bearing a ''Made in America'' inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102–558)).

* * * * *

(2) A contractor, based on a determination by the Attorney General of the United States, or designee, that the contractor is not in compliance with Immigration and Nationality Act employment provisions (see Executive Order 12989). * * *

(c) A contractor or subcontractor based on any other cause of so serious or compelling a nature that it affects the present responsibility of the contractor or subcontractor.

■ 14. Amend section 9.407–2 by revising paragraph (a)(5) to read as follows:

9.407–2 Causes for suspension.

(a) * * *

(5) Intentionally affixing a label bearing a ''Made in America'' inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102–558));

* * * * *

PART 14—SEALED BIDDING

■ 15. Revise section 14.203–1 to read as follows:

14.203–1 Transmittal to prospective bidders.

Invitations for bids or presolicitation notices must be transmitted as specified in 14.205 and shall be provided to others in accordance with 5.102. When a contracting office is located in the United States, any solicitation sent to a prospective bidder located outside the United States shall be sent by electronic data interchange or air mail if security classification permits.

PART 19—SMALL BUSINESS PROGRAMS

■ 16. Amend section 19.000 by revising paragraph (b) to read as follows:

19.000 Scope of part.

* * * * *

(b) This part, except for subpart 19.6, applies only in the United States or its outlying areas. Subpart 19.6 applies worldwide.

■ 17. Amend section 19.001 by revising the definition ''Concern'' to read as follows:

19.001 Definitions.

* * * * *

Concern means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States or its outlying areas and that makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor, etc. ''Concern'' includes but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making affiliation findings (see 19.101), include any business entity, whether organized for profit or not, and any foreign business entity, *i.e.*, any entity located outside the United States and its outlying areas.

* * * * *

19.101 [Amended]

■ 18. In section 19.101, amend the last sentence of the definition ''Affiliates'' by removing ''inside the United States'' and adding ''in the United States or its outlying areas'' in its place.

■ 19. Amend section 19.102 by revising the introductory text of paragraph (f), (f)(1), and (f)(7) to read as follows:

19.102 Size standards.

* * * * *

(f) Any concern submitting a bid or offer in its own name, other than on a construction or service contract, that proposes to furnish an end product it did not manufacture (a ''nonmanufacturer''), is a small business if it has no more than 500 employees, and—

(1) Except as provided in paragraphs (f)(4) through (f)(7) of this section, in the case of Government acquisitions set-aside for small businesses, furnishes in the performance of the contract, the product of a small business manufacturer or producer. The end product furnished must be manufactured or produced in the United States or its outlying areas. The term ''nonmanufacturer'' includes a concern that can, but elects not to, manufacture or produce the end product for the specific acquisition. For size determination purposes, there can be only one manufacturer of the end product being acquired. The manufacturer of the end product being acquired is the concern that, with its own forces, transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into the end product. However, see the limitations on subcontracting at 52.219–14 that apply to any small business offeror other than a nonmanufacturer for purposes of set-asides and 8(a) awards.

* * * * *

(7) The SBA provides for an exception to the nonmanufacturer rule if—

(i) The procurement of a manufactured end product processed under the procedures set forth in part 13—

(A) Is set aside for small business; and

(B) Is not anticipated to exceed $25,000; and

(ii) The offeror supplies an end product that is manufactured or produced in the United States or its outlying areas.

* * * * *

■ 20. Amend section 19.307 by revising paragraphs (a)(1) and (c) to read as follows:

19.307 Solicitation provisions.

(a)(1) Insert the provision at 52.219–1, Small Business Program Representations, in solicitations exceeding the micro-purchase threshold when the contract will be performed in the United States or its outlying areas.

* * * * *

(c) When contracting by sealed bidding, insert the provision at 52.219–2, Equal Low Bids, in solicitations when the contract will be performed in the United States or its outlying areas.

■ 21. Amend section 19.702 by revising paragraph (b)(3) to read as follows:

19.702 Statutory requirements.

* * * * *

(b) * * *

(3) For contracts or contract modifications that will be performed entirely outside of the United States and its outlying areas; or

* * * * *

■ 22. Amend section 19.708 by—

■ a. Revising the introductory text of paragraph (a) and (a)(2);

■ b. Removing from the first sentence of paragraph (b)(1) the words ''The contracting officer shall, when contracting by negotiation, insert'' and adding ''Insert'' in its place; and

■ c. Removing from paragraph (b)(2) ''The contracting officer shall insert'' and adding ''Insert'' in its place. The revised text reads as follows:

19.708 Contract clauses.

(a) Insert the clause at 52.219–8, Utilization of Small Business Concerns, in solicitations and contracts when the contract amount is expected to exceed the simplified acquisition threshold unless—

* * * * *

(2) The contract, together with all of its subcontracts, will be performed entirely outside of the United States and its outlying areas.

* * * * *

■ 23. Amend section 19.1202–2 by revising paragraph (b)(4) to read as follows:

19.1202–2 Applicability.

* * * * *

(b) * * *

(4) Contract actions that will be performed entirely outside of the United States and its outlying areas.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.102–2 [Amended]

■ 24. Amend section 22.102–2 in the first sentence of paragraph (b) by adding ''U.S.'' before the word ''Virgin''.

■ 25. Amend section 22.103–1 by revising the introductory text of the definition ''Normal workweek'' to read as follows:

22.103–1 Definition.

Normal workweek, as used in this subpart, means, generally, a workweek of 40 hours. Outside the United States and its outlying areas, a workweek longer than 40 hours is considered normal if—

* * * * *

■ 26. Amend section 22.202 by revising the introductory paragraph to read as follows:

22.202 Contract clause.

Insert the clause at 52.222–3, Convict Labor, in solicitations and contracts above the micro-purchase threshold, when the contract will be performed in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands; unless—

* * * * *

■ 27. Revise section 22.305 to read as follows:

22.305 Contract clause.

Insert the clause at 52.222–4, Contract Work Hours and Safety Standards Act—Overtime Compensation, in solicitations and contracts (including, for this purpose, basic ordering agreements) when the contract may require or involve the employment of laborers or mechanics. However, do not include the clause in solicitations and contracts—

(a) Valued at or below the simplified acquisition threshold;

(b) For commercial items;

(c) For transportation or the transmission of intelligence;

(d) To be performed outside the United States, Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331) (29 CFR 5.15);

(e) For work to be done solely in accordance with the Walsh-Healey Public Contracts Act (see subpart 22.6);

(f) For supplies that include incidental services that do not require substantial employment of laborers or mechanics; or

(g) Exempt under regulations of the Secretary of Labor (29 CFR 5.15).

■ 28. Revise section 22.603 to read as follows:

22.603 Applicability.

The requirements in 22.602 apply to contracts (including for this purpose, indefinite-delivery contracts, basic ordering agreements, and blanket purchase agreements) and subcontracts under Section 8(a) of the Small Business Act, for the manufacture or furnishing of supplies that—

(a) Will be performed in the United States, Puerto Rico, or the U.S. Virgin Islands;

(b) Exceed or may exceed $10,000; and

(c) Are not exempt under 22.604.

■ 29. Amend section 22.604–2 by revising paragraph (a)(2) to read as follows:

22.604–2 Regulatory exemptions.

(a) * * *

(2) Supplies manufactured outside the United States, Puerto Rico, and the U.S. Virgin Islands.

* * * * *

■ 30. Amend section 22.801 by revising the definition ''United States'' to read as follows:

22.801 Definitions.

* * * * *

United States means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

■ 31. Amend section 22.1001 by revising the definition ''United States'' to read as follows:

22.1001 Definitions.

* * * * *

United States means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.,*) but does not include any other place subject to U.S. jurisdiction or any U.S. base or possession in a foreign country (29 CFR 4.112).

* * * * *

■ 32. Amend section 22.1408 by revising the introductory text of paragraph (a) and (a)(1) to read as follows:

22.1408 Contract clause.

(a) Insert the clause at 52.222–36, Affirmative Action for Workers with Disabilities, in solicitations and contracts that exceed or are expected to exceed $10,000, except when—

(1) Both the performance of the work and the recruitment of workers will occur outside the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island; or

* * * * *

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 33. Amend section 23.200 by revising paragraph (b) to read as follows:

23.200 Scope.

* * * * *

(b) This subpart applies to acquisitions in the United States and its outlying areas. Agencies conducting acquisitions outside of these areas must use their best efforts to comply with this subpart.

■ 34. Amend section 23.501 by revising the introductory paragraph and paragraphs (a), (b), and (c); and in paragraph (d) by removing ''Contracts by'' and adding ''By'' in its place. The revised text reads as follows:

23.501 Applicability.

This subpart applies to contracts, including contracts with 8(a) contractors under FAR subpart 19.8 and modifications that require a justification and approval (see subpart 6.3), except contracts—

(a) At or below the simplified acquisition threshold; however, the requirements of this subpart apply to all contracts of any value awarded to an individual;

(b) For the acquisition of commercial items (see part 12);

(c) Performed outside the United States and its outlying areas or any part of a contract performed outside the United States and its outlying areas;

* * * * *

■ 35. Revise section 23.505 to read as follows:

23.505 Contract clause.

Except as provided in 23.501, insert the clause at 52.223-6, Drug-Free Workplace, in solicitations and contracts.

■ 36. Amend section 23.804 by revising the introductory paragraph to reads as follows:

23.804 Contract clauses.

Except for contracts that will be performed outside the United States and its outlying areas, insert the clause at:

* * * * *

■ 37. Amend section 23.903 by revising paragraph (b)(2) to read as follows:

23.903 Applicability.

* * * * *

(b) * * *

(2) Contractor facilities located outside the United States and its outlying areas.

■ 38. Amend section 23.906 by revising paragraph (a)(2)(v) to read as follows:

23.906 Requirements.

(a) * * *

(2) * * *

(v) Are not located in the United States and its outlying areas.

* * * * *

■ 39. Revise section 23.1002 to read as follows:

23.1002 Applicability.

The requirements of this subpart apply to facilities owned or operated by an agency in the customs territory of the United States.

PART 25—FOREIGN ACQUISITION

■ 40. Amend section 25.003 by removing the definition ''Customs territory of the United States''; and revising the definition ''United States'' to read as follows:

25.003 Definitions.

* * * * *

United States means the 50 States, the District of Columbia, and outlying areas.

* * * * *

PART 26—OTHER SOCIOECONOMIC PROGRAMS

■ 41. Amend section 26.300 by revising paragraph (b) to read as follows:

26.300 Scope of subpart.

* * * * *

(b) This subpart does not pertain to contracts performed entirely outside the United States and its outlying areas.

PART 28—BONDS AND INSURANCE

28.202 [Amended]

■ 42. Amend section 28.202 in paragraph (a)(1) by removing '', its possessions, or Puerto Rico'' and adding ''or its outlying areas'' in its place.

■ 43. Amend section 28.203–2 by revising the first sentence of paragraph (b)(4) and paragraph (c)(3)(i) to read as follows:

28.203–2 Acceptability of assets.

* * * * *

(b) * * *

(4) Real property owned in fee simple by the surety without any form of concurrent ownership, except as provided in paragraph (c)(3)(iii) of this subsection, and located in the United States or its outlying areas. * * *

* * * * *

(c) * * *

(3) * * *

(i) Real property located outside the United States and its outlying areas.

* * * * *

28.301 [Amended]

■ 44. Amend section 28.301 in the introductory text by removing ''be required to''; and in the third sentence of paragraph (b) by removing '', its possessions, and Puerto Rico'' and adding ''and its outlying areas'' in its place.

■ 45. Amend section 28.310 by revising the introductory text of paragraph (a) and paragraph (a)(2) to read as follows:

28.310 Contract clause for work on a Government installation.

(a) Insert the clause at 52.228–5, Insurance—Work on a Government Installation, in solicitations and contracts if a fixed-price contract is contemplated, the contract amount is expected to exceed the simplified acquisition threshold, and the contract will require work on a Government installation, unless—

* * * * *

(2) All work on the Government installation will be performed outside the United States and its outlying areas.

* * * * *

PART 29—TAXES

■ 46. Amend section 29.202 by revising paragraph (b) to read as follows:

29.202 General exemptions.

* * * * *

(b) Shipment for export to a foreign country or an outlying area of the United States. Shipment must occur within 6 months of the time title passes to the Government. When the exemption is claimed, the words ''for export'' must appear on the contract or purchase document, and the contracting officer must furnish the seller proof of export (*see* 26 CFR 48.4221–3).

* * * * *

■ 47. Revise section 29.401–1 to read as follows:

29.401–1 Indefinite-delivery contracts for leased equipment.

Insert the clause at 52.229–1, State and Local Taxes, in solicitations and contracts for leased equipment when—

(a) A fixed-price indefinite-delivery contract is contemplated;

(b) The contract will be performed wholly or partly in the United States or its outlying areas; and

(c) The place or places of delivery are not known at the time of contracting.

■ 48. Amend section 29.401–3 by revising paragraph (a)(1) to read as follows:

29.401–3 Federal, State, and local taxes.

(a) * * *

(1) The contract is to be performed wholly or partly in the United States or its outlying areas;

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–46 [Amended]

■ 49. Amend section 31.205–46 in paragraph (a)(2)(i) by removing ''conterminous 48'' and adding ''contiguous'' in its place; and in paragraph (a)(2)(ii) by removing ''The Commonwealth of Puerto Rico, and territories and possessions'' and adding ''and outlying areas'' in its place.

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

35.014 [Amended]

■ 50. Amend section 35.014 in paragraph (d)(1) by removing from the quoted text ''States'' and adding ''States or its outlying areas'' in its place.

PART 36—CONSTRUCTION AND ARCHITECT–ENGINEER CONTRACTS

■ 51. Amend section 36.103 by revising paragraph (a) to read as follows:

36.103 Methods of contracting.

(a) The contracting officer shall use sealed bid procedures for a construction contract if the conditions in 6.401(a) apply, unless the contract will be performed outside the United States and its outlying areas. (See 6.401(b)(2).)

* * * * *

■ 52. Revise section 36.609–4 to read as follows:

36.609–4 Requirements for registration of designers.

Insert the clause at 52.236–25, Requirements for Registration of Designers, in architect-engineer

contracts, except that it may be omitted when the design will be performed—

(a) Outside the United States and its outlying areas; or

(b) In a State or outlying area of the United States that does not have registration requirements for the particular field involved.

■ 53. Amend section 36.702 by revising paragraph (a) to read as follows:

36.702 Forms for use in contracting for architect-engineer services.

(a) Contracting officers must use Standard Form 252, Architect-Engineer Contract, to award fixed-price contracts for architect-engineer services when the services will be performed in the United States or its outlying areas.

* * * * *

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.1402 Volume movements within the contiguous United States.

■ 54. Revise the heading of section 42.1402 to read as set forth above.

■ 55. Amend section 42.1404–1 by revising paragraph (c) to read as follows:

42.1404–1 Parcel post eligible shipments.

* * * * *

(c)(1) When a contractor uses its own label to ship to a post office servicing military and other agency consignees outside the customs territory of the United States, the contractor shall stamp or imprint the parcel immediately above the label in ¼-inch block letters with the—

(i) Name of the agency; and

(ii) Words ''Official Mail—Contents for Official Use— Exempt from Customs Requirements.''

(2) This marking permits identification and expedites handling within the postal system, but the contractor must pay postage if—

(i) Required by the contract; or

(ii) The contract provides for reimbursement for the cost of postage.

* * * * *

PART 45—GOVERNMENT PROPERTY

■ 56. Amend section 45.601 by revising the definition ''Public body'' to read as follows:

45.601 Definitions.

* * * * *

Public body means any State, any outlying area of the United States, any political subdivision thereof, the District of Columbia, any agency or instrumentality of any of the foregoing, any Indian tribe, or any agency of the Federal Government.

PART 47—TRANSPORTATION

47.001 [Amended]

■ 57. Amend section 47.001 by removing the definition ''CONUS'' or ''Continental United States''.

47.302 [Amended]

■ 58. Amend section 47.302 in the first sentence of paragraph (a) by removing ''Continental'' and adding ''Contiguous'' in its place.

47.304–1 [Amended]

■ 59. Amend section 47.304–1 in paragraphs (g)(1) and (g)(2) by removing ''the continental United States'' and adding ''CONUS'' in their place.

47.304–3 [Amended]

■ 60. Amend section 47.304–3 in the introductory text of paragraph (a) by removing ''the United States'' and adding ''CONUS'' in its place.

■ 61. Amend section 47.401 by revising the definitions ''United States'' and ''U.S.-flag air carrier'' to read as follows:

47.401 Definitions.

* * * * *

United States means the 50 States, the District of Columbia, and outlying areas of the United States.

U.S.-flag air carrier means an air carrier holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 41102).

■ 62. Revise section 47.402 to read as follows:

47.402 Policy.

Federal employees and their dependents, consultants, contractors, grantees, and others must use U.S.-flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, if available (section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act)).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 63. Amend section 52.203–12 by revising the date of the clause; and in paragraph (a) by revising the definition ''State'' to read as follows:

52.203–12 Limitation on Payments to Influence Certain Federal Transactions.

* * * * *

Limitation on Payments to Influence Certain Federal Transactions (June 2003)

(a) * * *

State, as used in this clause, means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

* * * * *

■ 64. Amend section 52.212–3 by revising the date of provision, the introductory text of paragraph (c), (f)(1), and (g)(1)(i) to read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (June 2003)

* * * * *

(c) Offerors must complete the following representations when the resulting contract will be performed in the United States or its outlying areas. Check all that apply.

* * * * *

(f) * * *

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products. The terms ''component,'' ''domestic end product,'' ''end product,'' ''foreign end product,'' and ''United States'' are defined in the clause of this solicitation entitled ''Buy American Act—Supplies.''

* * * * *

(g)(1) * * *

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms ''component,'' ''domestic end product,'' ''end product,'' ''foreign end product,'' and ''United States'' are defined in the clause of this solicitation entitled ''Buy American Act—North American Free Trade Agreement—Israeli Trade Act.''

* * * * *

■ 65. Amend section 52.213–4 by revising the date of clause and paragraphs (a)(1)(i), (a)(1)(iv) and the introductory text of paragraph (b)(1)(viii) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (June 2003)

(a) * * *

(1) * * *

(i) 52.222–3, Convict Labor (June 2003) (E.O. 11755).

* * * * *

(iv) 52.225–13, Restrictions on Certain foreign Purchases (June 2003) (E.O.'s 12722, 12724, 13059, 13067, 13121, 13129).

* * * * *

(b) * * *

(1) * * *

(viii) 52.225–1, Buy American Act—Supplies (June 2003) (41 U.S.C. 10a–10d) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use in the United States or its outlying areas, if the value of the supply contract or supply portion of a service contract exceeds the micro-purchase threshold and the acquisition—

* * * * *

■ 66. Amend section 52.219–5 by revising the date of the clause, paragraph (c), and Alternate II to read as follows:

52.219–5 Very Small Business Set-Aside.

* * * * *

Very Small Business Set-Aside (June 2003)

* * * * *

(c) *Agreement.* A very small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas.

(End of clause)

* * * * *

Alternate II (June 2003). As prescribed in 19.905(b), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Agreement.* A very small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by domestic firms in the United States or its outlying areas.

■ 67. Amend section 52.219–6 by revising the date of the clause and paragraph (c) to read as follows:

52.219–6 Notice of Total Small Business Set-Aside.

* * * * *

Notice of Total Small Business Set-Aside (June 2003)

* * * * *

(c) *Agreement.* A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed $25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(End of clause)

* * * * *

■ 68. Amend section 52.219–7 by revising the date of clause and paragraph (c) to read as follows:

52.219–7 Notice of Partial Small Business Set-Aside.

* * * * *

Notice of Partial Small Business Set-Aside (June 2003)

* * * * *

(c) *Agreement.* For the set-aside portion of the acquisition, a small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed $25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(End of clause)

* * * * *

■ 69. Amend section 52.219–18 by revising the date of clause and paragraph (d)(1) to read as follows:

52.219–18 Notification of Competition Limited to Eligible 8(a) Concerns.

* * * * *

Notification of Competition Limited to Eligible 8(a) Concerns (June 2003)

* * * * *

(d)(1) *Agreement.* A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed $25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

* * * * *

■ 70. Amend section 52.219–23 by revising the date of clause; removing from paragraph (a) the definition ''United States''; and by revising paragraph (d)(2) and Alternate I to read as follows:

52.219–23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

* * * * *

Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (June 2003)

* * * * *

(d) * * *

(2) A small disadvantaged business concern submitting an offer in its own name shall furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States or its outlying areas. This paragraph does not apply to construction or service contracts.

(End of clause)

Alternate I (June 2003). As prescribed in 19.1104, substitute the following paragraph (d)(2) for paragraph (d)(2) of the basic clause:

(2) A small disadvantaged business concern submitting an offer in its own name shall furnish in performing this contract only end items manufactured or produced by small business concerns in the United States or its outlying areas. This paragraph does not apply to construction or service contracts.

* * * * *

■ 71. Revise section 52.222–3 to read as follows:

52.222–3 Convict Labor.

As prescribed in 22.202, insert the following clause:

Convict Labor (June 2003)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Contractor is not prohibited from employing persons—

(1) On parole or probation to work at paid employment during the term of their sentence;

(2) Who have been pardoned or who have served their terms; or

(3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—

(i) The worker is paid or is in an approved work training program on a voluntary basis;

(ii) Representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

(End of clause)

■ 72. Revise section 52.222–29 to read as follows:

52.222–29 Notification of Visa Denial.

As prescribed in 22.810(g), insert the following clause:

Notification of Visa Denial (June 2003)

It is a violation of Executive Order 11246 for a Contractor to refuse to employ any

applicant or not to assign any person hired in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, or Wake Island, on the basis that the individual's race, color, religion, sex, or national origin is not compatible with the policies of the country where or for whom the work will be performed (41 CFR 60–1.10). The Contractor shall notify the U.S. Department of State, Assistant Secretary, Bureau of Political-Military Affairs (PM), 2201 C Street NW., Room 6212, Washington, DC 20520, and the U.S. Department of Labor, Deputy Assistant Secretary for Federal Contract Compliance, when it has knowledge of any employee or potential employee being denied an entry visa to a country where this contract will be performed, and it believes the denial is attributable to the race, color, religion, sex, or national origin of the employee or potential employee.

(End of clause)

■ 73. Amend section 52.223–13 by revising the date of the provision and paragraph (b)(2)(v) to read as follows:

52.223–13 Certification of Toxic Chemical Release Reporting.

* * * * *

Certification of Toxic Chemical Release Reporting (June 2003)

* * * * *

(b) * * *

(2) * * *

[ ] (v) The facility is not located in the United States or its outlying areas.

(End of provision)

■ 74. Amend section 52.223–14 by revising the date of the clause, and the introductory text of paragraph (b) and paragraph (b)(5) to read as follows:

52.223–14 Toxic Chemical Release Reporting.

* * * * *

Toxic Chemical Release Reporting (June 2003)

* * * * *

(b) A Contractor-owned or -operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if—

* * * * *

(5) The facility is not located in the United States or its outlying areas.

* * * * *

■ 75. Amend section 52.225–1 by revising the date of the clause; and in paragraph (a) by revising the definition ''United States'' to read as follows:

52.225–1 Buy American Act—Supplies.

* * * * *

Buy American Act—Supplies (June 2003)

(a) * * *

United States means the 50 States, the District of Columbia, and outlying areas.

* * * * *

■ 76. Amend section 52.225–2 by revising the date of the provision and paragraph (a) to read as follows:

52.225–2 Buy American Act Certificate.

* * * * *

Buy American Act Certificate (June 2003)

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products. The terms ''component,'' ''domestic end product,'' ''end product,'' ''foreign end product,'' and ''United States'' are defined in the clause of this solicitation entitled ''Buy American Act—Supplies.''

* * * * *

■ 77. Amend section 52.225–3 by revising the date of the clause; and in paragraph (a) by revising the definition ''United States'' to read as follows:

52.225–3 Buy American Act—North American Free Trade Agreement—Israeli Trade Act.

* * * * *

Buy American Act—North American Free Trade Agreement—Israeli Trade Act (June 2003)

(a) * * *

United States means the 50 States, the District of Columbia, and outlying areas.

* * * * *

■ 78. Amend section 52.225–4 by revising the date of the provision and paragraph (a) to read as follows:

52.225–4 Buy American Act—North American Free Trade Agreement—Israeli Trade Act Certificate.

* * * * *

Buy American Act—North American Free Trade Agreement—Israeli Trade Act Certificate (June 2003)

(a) The offeror certifies that each end product, except those listed in paragraph (b) or (c) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms ''component,'' ''domestic end product,'' ''end product,'' ''foreign end product,'' and ''United States'' are defined in the clause of this solicitation entitled ''Buy American Act—North American Free Trade Agreement—Israeli Trade Act.''

* * * * *

■ 79. Amend section 52.225–5 by revising the date of the clause; and in paragraph (a) by revising the definition ''United States'' to read as follows:

52.225–5 Trade Agreements.

* * * * *

Trade Agreements (June 2003)

(a) * * *

United States means the 50 States, the District of Columbia, and outlying areas.

* * * * *

■ 80. Amend section 52.225–9 by revising the date of the clause; and in paragraph (a) by revising the definition ''United States'' to read as follows:

52.225–9 Buy American Act—Construction Materials.

* * * * *

Buy American Act—Construction Materials (June 2003)

(a) * * *

United States means the 50 States, the District of Columbia, and outlying areas.

* * * * *

■ 81. Amend section 52.225–11 by revising the date of the clause; and in paragraph (a) by revising the definition ''United States'' to read as follows:

52.225–11 Buy American Act—Construction Materials under Trade Agreements.

* * * * *

Buy American Act—Construction Materials Under Trade Agreements (June 2003)

(a) * * *

United States means the 50 States, the District of Columbia, and outlying areas.

* * * * *

52.225–13 [Amended]

■ 82. Amend section 52.225–13 by revising the date of the clause to read ''(June 2003)''; and in the first sentence of paragraph (a) by removing ''States'' and adding ''States and its outlying areas'' in its place.

■ 83. Amend section 52.228–3 by revising the introductory paragraph to read as follows:

52.228–3 Workers' Compensation Insurance (Defense Base Act).

As prescribed in 28.309(a), insert the following clause:

* * * * *

■ 84. Amend section 52.228–4 by revising the introductory paragraph to read as follows:

52.228–4 Workers' Compensation and War-Hazard Insurance Overseas.

As prescribed in 28.309(b), insert the following clause:

* * * * *

■ 85. Amend section 52.229–1 by revising the introductory text to read as follows:

52.229–1 State and Local Taxes.

As prescribed in 29.401–1, insert the following clause:

* * * * *

■ 86. Amend section 52.229–6 by—
■ a. Revising the date of the clause;
■ b. Revising paragraph (a);
■ c. Removing the designation of paragraph (b);
■ d. Adding a new paragraph (b) introductory text; and
■ e. Removing ‘‘, as used in this clause,’’ from the definition ‘‘Contract date’’; revising the definition ‘‘Country concerned’’; and removing ‘‘, as used in this clause,’’ from the definitions ‘‘Tax’’ and ‘‘taxes’’, ‘‘All applicable taxes and duties’’, ‘‘After-imposed tax’’, ‘‘After-relieved tax’’, and ‘‘Excepted tax’’. The added and revised text reads as follows:

52.229–6 Taxes—Foreign Fixed-Price Contracts.

* * * * *

Taxes—Foreign Fixed-Price Contracts (June 2003)

(a) To the extent that this contract provides for furnishing supplies or performing services outside the United States and its outlying areas, this clause applies in lieu of any Federal, State, and local taxes clause of the contract.

(b) *Definitions.* As used in this clause—

* * * * *

Country concerned means any country, other than the United States and its outlying areas, in which expenditures under this contract are made.

* * * * *

■ 87. Revise section 52.236–25 to read as follows:

52.236–25 Requirements for Registration of Designers.

As prescribed in 36.609–4, insert the following clause:

Requirements for Registration of Designers (June 2003)

Architects or engineers registered to practice in the particular professional field involved in a State, the District of Columbia, or an outlying area of the United States shall prepare or review and approve the design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work.

(End of clause)

■ 88. Revise section 52.242–12 to read as follows:

52.242–12 Report of Shipment (REPSHIP).

As prescribed in 42.1406–2, insert the following clause:

Report of Shipment (REPSHIP) (June 2003)

(a) *Definition. Domestic destination,* as used in this clause, means—

(1) A destination within the contiguous United States; or

(2) If shipment originates in Alaska or Hawaii, a destination in Alaska or Hawaii, respectively.

(b) Unless otherwise directed by the Contracting Officer, the Contractor shall—

(1) Send a prepaid notice of shipment to the consignee transportation officer—

(i) For all shipments of—

(A) Classified material, protected sensitive, and protected controlled material;

(B) Explosives and poisons, classes A and B;

(C) Radioactive materials requiring the use of a III bar label; or

(ii) When a truckload/carload shipment of supplies weighing 20,000 pounds or more, or a shipment of less weight that occupies the full visible capacity of a railway car or motor vehicle, is given to any carrier (common, contract or private) for transportation to a domestic destination (other than a port for export);

(2) Transmit the notice by rapid means to be received by the consignee transportation officer at least 24 hours before the arrival of the shipment; and

(3) Send, to the receiving transportation officer, the Government bill of lading, commercial bill of lading or letter or other document containing the following information and prominently identified as a ‘‘Report of Shipment’’ or ‘‘REPSHIP FOR T.O.’’

Message Example:

REPSHIP FOR T.O. 81 JUN 01
TRANSPORTATION OFFICER
DEFENSE DEPOT, MEMPHIS, TENN.
SHIPPED YOUR DEPOT 1981 JUN 1 540 CTNS MENS COTTON TROUSERS, 30,240 LB, 1782 CUBE, VIA XX–YY*
IN CAR NO. XX 123456**–GBL***–C98000031**** CONTRACT DLA _____ ETA*****–JUNE 5 JONES & CO., JERSEY CITY, N.J.

* Name of rail carrier, trucker, or other carrier.
** Vehicle identification.
*** Government bill of lading.
**** If not shipped by GBL, identify lading document and state whether paid by contractor.
***** Estimated time of arrival.

(End of clause)

■ 89. Amend section 52.245–2 by revising the date and paragraph (1) of the clause; revising the date of Alternate II and amending paragraph (c)(5) of Alternate II by removing ‘‘States’’ and adding ‘‘States or its outlying areas’’ in its place. The revised text reads as follows:

52.245–2 Government Property (Fixed-Price Contracts).

* * * * *

Government Property (Fixed-Price Contracts) (June 2003)

* * * * *

(l) *Overseas contracts.* If this contract is to be performed outside of the United States and its outlying areas, the words ‘‘Government’’ and ‘‘Government-furnished’’ (wherever they appear in this clause) shall be construed as ‘‘United States Government’’ and ‘‘United States Government-furnished,’’ respectively.

(End of clause)

* * * * *

Alternate II (June 2003) * * *

* * * * *

■ 90. Amend section 52.245–4 by revising the date of the clause and paragraph (e) to read as follows:

52.245–4 Government-Furnished Property (Short Form).

* * * * *

Government-Furnished Property (Short Form) (June 2003)

* * * * *

(e) If this contract is to be performed outside the Untied States and its outlying areas, the words ‘‘Government’’ and ‘‘Government-furnished’’ (wherever they appear in this clause) shall be construed as ‘‘United States Government’’ and ‘‘United States Governmen-furnished,’’ respectively.

(End of clause)

■ 91. Amend section 52.245–5 by revising the date of the clause; amending paragraph (1) by removing ‘‘of America, its territories, or possessions’’ and adding ‘‘and its outlying areas’’ in its place; by revising the date of Alternate I; and amending paragraph (c)(5) of Alternate I by removing ‘‘States’’ and adding ‘‘States or its outlying areas’’ in its place. The revised text reads as follows:

52.245–5 Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts).

* * * * *

Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (June 2003)

* * * * *

(End of clause)

Alternate I (June 2003)

* * * * *

52.245–11 [Amended]

■ 92. Amend section 52.245–11 by revising the date of Alternate I to read ‘‘(*June 2003*)’’; and amending paragraph (c)(6) of Alternate I by removing ‘‘States’’ and adding ‘‘States or its outlying areas’’ in its place.

52.245–15 [Amended]

■ 93. Amend section 52.245–15 by revising the date of the clause to read ‘‘(June 2003)’’; and amending paragraph (b) by removing ‘‘States’’ and adding ‘‘States or its outlying areas’’ in its place.

52.246–17 [Amended]

■ 94. Amend section 52.246–17 by revising the date of the clause to read

''(June 2003)''; and amending paragraph (c)(3)(ii)(C) by removing ''continental'' and adding ''contiguous'' in its place.

■ 95. Revise section 52.247–47 to read as follows:

52.247–47 Evaluation—F.o.b. Origin.

As prescribed in 47.305–3(f)(2), insert the following provision. When it is appropriate to use methods other than land transportation in evaluating offers; *e.g.*, air, pipeline, barge, or ocean tanker, modify the provision accordingly.

Evaluation—F.o.b. Origin (June 2003)

(a) The Government normally uses land methods of transportation by regulated common carrier for shipment within the contiguous United States.

(b) To evaluate offers, the Government will consider only these methods to establish the cost of transportation between offeror's shipping point and destination (tentative or firm, whichever is applicable) in the contiguous United States.

(c) This transportation cost will be added to the offer price to determine the Government's overall cost.

(d) When tentative destinations are indicated, the Government will use them only for evaluation purposes. The Government has the right to use any other means of transportation or any other destination at the time of shipment.

(End of provision)

■ 96. Amend section 52.247–55 by revising the introductory text, the date of the clause, and paragraphs (a) and (b) of the clause to read as follows:

52.247–55 F.o.b. Point for Delivery of Government-Furnished Property.

As prescribed in 47.305–12(a)(2), insert the following clause:

F.o.b. Point for Delivery of Government-Furnished Property (June 2003)

(a) Unless otherwise specified in this solicitation, the Government will deliver any Government-furnished property for use within the contiguous United States or Canada to a point specified by the Contractor in the offer. If the Government makes delivery by railroad, the f.o.b. point will be private siding, Contractor's plant. If the Contractor's plant is not served by rail, the f.o.b. point will be railroad cars in the same or nearest city having rail service. The Government may choose the mode of transportation and the carriers and will bear the cost of all line-haul transportation to the specified destination.

(b) If the destination of the Government-furnished property is a Contractor's plant located outside the contiguous United States or Canada, the f.o.b. point for Government delivery of Government-furnished property will be a Contractor-specified location in the contiguous United States. If the Contractor fails to name a point, the Government will select as the f.o.b. point the port city in the contiguous United States nearest to the Government-furnished property that has regular commercial water transportation services to the offshore port nearest the Contractor's plant.

* * * * *

■ 97. Amend section 52.247–63 by revising the date of the clause and paragraphs (a) and (c) to read as follows:

52.247–63 Preference for U.S.—Flag Air Carriers.

* * * * *

Preference for U.S.—Flag Air Carriers (June 2003)

(a) *Definitions.* As used in this clause—

International air transportation means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

United States means the 50 States, the District of Columbia, and outlying areas.

U.S.-flag air carrier means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

* * * * *

(c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

* * * * *

PART 53—FORMS

53.228 [Amended]

■ 98. Amend section 53.228 in paragraph (e) by removing ''(*Rev. 6/96*)'' and adding ''(*Rev. 6/03*)'' in its place.

■ 99. Revise section 53.301–28 to read as follows:

53.301–28 Affidavit of Individual Surety.

BILLING CODE 6820–EP–P

AFFIDAVIT OF INDIVIDUAL SURETY

(See instructions on reverse)

OMB No.: 9000-0001

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Regulatory Secretariat (MVA), Office of Acquisition Policy, GSA, Washington, DC 20405.

STATE OF

COUNTY OF

SS.

I, the undersigned, being duly sworn, depose and say that I am: (1) the surety to the attached bond(s); (2) a citizen of the United States; and of full age and legally competent. I also depose and say that, concerning any stocks or bonds included in the assets listed below, that there are no restrictions on the resale of these securities pursuant to the registration provisions of Section 5 of the Securities Act of 1933. I recognize that statements contained herein concern a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious or fraudulent statement may render the maker subject to prosecution under Title 18, United States Code Sections 1001 and 494. This affidavit is made to induce the United States of America to accept me as surety on the attached bond.

1. NAME *(First, Middle, Last) (Type or Print)*	2. HOME ADDRESS *(Number, Street, City, State, ZIP Code)*
3. TYPE AND DURATION OF OCCUPATION	4. NAME AND ADDRESS OF EMPLOYER *(If Self-employed, so State)*
5. NAME AND ADDRESS OF INDIVIDUAL SURETY BROKER USED *(If any)* *(Number, Street, City, State, ZIP Code)*	6. TELEPHONE NUMBER HOME - BUSINESS -

7. THE FOLLOWING IS A TRUE REPRESENTATION OF THE ASSETS I HAVE PLEDGED TO THE UNITED STATES IN SUPPORT OF THE ATTACHED BOND:

(a) Real estate *(Include a legal description, street address and other identifying description; the market value; attach supporting certified documents including recorded lien; evidence of title and the current tax assessment of the property. For market value approach, also provide a current appraisal.)*

(b) Assets other than real estate *(describe the assets, the details of the escrow account, and attach certified evidence thereof).*

8. IDENTIFY ALL MORTGAGES, LIENS, JUDGEMENTS, OR ANY OTHER ENCUMBRANCES INVOLVING SUBJECT ASSETS INCLUDING REAL ESTATE TAXES DUE AND PAYABLE.

9. IDENTIFY ALL BONDS, INCLUDING BID GUARANTEES, FOR WHICH THE SUBJECT ASSETS HAVE BEEN PLEDGED WITHIN 3 YEARS PRIOR TO THE DATE OF EXECUTION OF THIS AFFIDAVIT.

DOCUMENTATION OF THE PLEDGED ASSET MUST BE ATTACHED.

10. SIGNATURE	11. BOND AND CONTRACT TO WHICH THIS AFFIDAVIT RELATES *(Where appropriate)*

12. SUBSCRIBED AND SWORN TO BEFORE ME AS FOLLOWS:

a. DATE OATH ADMINISTERED MONTH DAY YEAR	b. CITY AND STATE *(Or other jurisdiction)*		Official Seal
c. NAME AND TITLE OF OFFICIAL ADMINISTERING OATH *(Type or print)*	d. SIGNATURE	e. MY COMMISSION EXPIRES	

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STANDARD FORM 28 (REV. 6/2003)
Prescribed by GSA-FAR (48 CFR) 53.228(e)

INSTRUCTIONS

1. Individual sureties on bonds executed in connection with Government contracts must complete and submit this form with the bond. (See 48 CFR 28.203, 53.228(e).) The surety must have the completed form notarized.

2. No corporation, partnership, or other unincorporated association or firm, as such, is acceptable as an individual surety. Likewise, members of a partnership are not acceptable as sureties on bonds that a partnership or an association, or any co-partner or member thereof, is the principal obligor. However, stockholders of corporate principals are acceptable provided (a) their qualifications are independent of their stockholdings or financial interest therein, and (b) that the fact is expressed in the affidavit of justification. An individual surety will not include any financial interest in assets connected with the principal on the bond that this affidavit supports.

3. United States citizenship is a requirement for individual sureties for contracts and bonds when the contract is awarded in the United States. However, when the Contracting Officer is located in an outlying area or a foreign country, the individual surety is only required to be a permanent resident of the area or country in which the contracting officer is located.

4. All signatures of the affidavit submitted must be originals. Affidavits bearing reproduced signatures are not acceptable. An authorized person must sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of a firm, partnership, or joint venture, or an officer of the corporation involved.

STANDARD FORM 28 (REV. 6/2003) **BACK**

[FR Doc. 03–12301 Filed 5–21–03; 8:45 am]
BILLING CODE 6820–EP–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 31, 47, and 52

[FAC 2001–14; FAR Case 2001–029; Item II]

RIN 9000–AJ33

Federal Acquisition Regulation; Miscellaneous Cost Principles

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to delete the cost principle concerning transportation costs and to revise the cost principles concerning cost of money, other business expenses, and deferred research and development costs.

DATES: *Effective Date:* June 23, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb at (202) 501–1224. Please cite FAC 2001–14, FAR case 2001–029.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 13072, March 20, 2002, with request for comments. Two respondents submitted public comments. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule with the following changes to the proposed rule:

1. Revise the language at FAR 31.205–10(b)(1) to state that cost of money ''is measured, assigned, and allocated to contracts in accordance with 48 CFR 9904.414 or measured and added to the cost of capital assets under construction in accordance with 48 CFR 9904.417, as applicable.''

2. Change the word ''cost'' in paragraph 31.205–10(b)(3) to ''cost of money'' to maintain clarity and consistency at FAR 31.205–10. A discussion of the comments is provided below:

Comment: Respondent recommends that paragraph (a)(2) of FAR 31.205–10 be revised to state that cost of money ''shall be treated like an incurred cost for cost-reimbursement purposes.''

Councils' response: Do not concur. The Councils believe FAR 31.205–10(a)(1) of the proposed rule clearly specifies that cost of money is an imputed cost (as opposed to an incurred cost). Paragraph (a)(2) further states that, for cost-reimbursement purposes, this imputed cost is an ''incurred cost.'' The Councils do not believe this language would permit a contractor to argue that cost of money is not an imputed cost. In fact, the cost principle at FAR 31.205–10 has referred to cost of money as being, for cost-reimbursement purposes, an ''incurred cost'' since at least as early as 1984, but has also always specifically stated that it is actually an ''imputed cost.''

Comment: Respondent recommends revising the language in the proposed rule at FAR 31.205–10(b)(1) for cost of money that states ''it is measured, assigned, and allocated to contracts in accordance with 48 CFR 9904.414 or 48 CFR 9904.417, as applicable.'' Respondent notes that 48 CFR 9904.417—Cost of Money as an Element of the Cost of Capital Assets under Construction (CAS 417), addresses the measurement of cost of money attributable to assets being constructed rather than contract costs.

Councils' response: Concur. The Councils revised the rule at paragraph (b)(1) to state that cost of money ''is measured, assigned, and allocated to contracts in accordance with 48 CFR 9904.414 or measured and added to the cost of capital assets under construction in accordance with 48 CFR 9904.417, as applicable.''

Comment: Respondent recommends revising FAR 31.205–10(b)(1) by changing the word ''cost'' to ''imputed cost'' or ''cost of money,'' to make it consistent with the other language in the cost principle.

Councils' response: Concur. The Councils changed the word ''cost'' in paragraph (b)(3) to ''cost of money.''

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principles discussed in this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 31, 47, and 52

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 31, 47, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 31, 47, and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. In section 2.101, add the definition ''Facilities capital cost of money'', in alphabetical order, to read as follows:

2.101 Definitions.

* * * * *

Facilities capital cost of money means ''cost of money as an element of the cost of facilities capital'' as used at 48 CFR 9904.414—Cost Accounting Standard—Cost of Money as an Element of the Cost of Facilities Capital.

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.001 [Amended]

■ 3. In section 31.001, remove the definitions ''Cost of capital committed to facilities'' and ''Facilities capital.''

■ 4. Revise section 31.205–10 to read as follows:

31.205–10 Cost of money.

(a) *General.* Cost of money—

(1) Is an imputed cost that is not a form of interest on borrowings (see 31.205–20);

(2) Is an ''incurred cost'' for cost-reimbursement purposes under applicable cost-reimbursement contracts and for progress payment purposes under fixed-price contracts; and

(3) Refers to—

(i) Facilities capital cost of money (48 CFR 9904.414); and

(ii) Cost of money as an element of the cost of capital assets under construction (48 CFR 9904.417).

(b) Cost of money is allowable, provided—

(1) It is measured, assigned, and allocated to contracts in accordance with 48 CFR 9904.414 or measured and added to the cost of capital assets under construction in accordance with 48 CFR 9904.417, as applicable;

(2) The requirements of 31.205–52, which limit the allowability of cost of money, are followed; and

(3) The estimated facilities capital cost of money is specifically identified and proposed in cost proposals relating to the contract under which the cost is to be claimed.

(c) Actual interest cost in lieu of the calculated imputed cost of money is unallowable.

■ 5. In section 31.205–28, revise the introductory text to read as follows:

31.205–28 Other business expenses.

The following types of recurring costs are allowable:

* * * * *

31.205–45 [Reserved]

■ 6. Remove and reserve section 31.205–45.

31.205–48 Research and development costs.

■ 7. Amend section 31.205–48 by revising the section heading to read as set forth above; and in the first sentence by removing the word ''section'' and adding ''subsection'' in its place.

PART 47—TRANSPORTATION

47.300 [Amended]

■ 8. Amend section 47.300 in the introductory text of paragraph (b) by removing ''(see 31.205–45)''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 9. Amend section 52.215–16 by revising the date of the provision and paragraph (a) to read as follows:

52.215–16 Facilities Capital Cost of Money.

* * * * *

Facilities Capital Cost of Money (June 2003)

(a) Facilities capital cost of money will be an allowable cost under the contemplated contract, if the criteria for allowability in FAR 31.205–10(b) are met. One of the allowability criteria requires the prospective Contractor to propose facilities capital cost of money in its offer.

* * * * *

[FR Doc. 03–12302 Filed 5–22–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 32, and 52

[FAC 2001–14; FAR Case 2000–308; Item III]

RIN 9000–AJ17

Federal Acquisition Regulation; Prompt Payment Under Cost-Reimbursement Contracts for Services

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to adopt, as final, the interim rule published at 66 FR 53485, October 22, 2001. This rule requires an agency to pay an interest penalty whenever it makes an interim payment under a cost reimbursement contract for services more than 30 days after the agency receives a proper invoice from the contractor.

DATES: *Effective Date:* May 23, 2003.

Applicability Date: This final rule applies to cost-reimbursement contracts for services, irrespective of award date, if interim payments requests under such contracts are due on or after December 15, 2000. In no event may agencies pay late payment penalty interest for any delay in payment that occurred prior to December 15, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb at (202) 501–0650. Please cite FAC 2001–14, FAR case 2000–308.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 66 FR 53485, October 22, 2001, with request for comments. This FAR amendment eliminated the prior policy and contract clause prohibition on payment of late payment penalty interest for late interim finance payments under cost-reimbursement contracts for services. It added new policy and a contract clause, Alternate I to the FAR clause at 52.232–25, to provide for those penalty payments.

The interim FAR rule implemented section 1010 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398). Section 1010 requires an agency to pay an interest penalty, in accordance with regulations issued by the Office of Management and Budget (OMB), whenever an interim payment under a cost reimbursement contract for services is paid more than 30 days after the agency receives a proper invoice from the contractor. The Act does not permit payment of late payment interest penalty for any period prior to December 15, 2000. OMB published an interim rule in the **Federal Register** at 65 FR 78403, December 15, 2000, and a final rule at 67 FR 79515, December 30, 2002. OMB's rule revised the prompt payment regulations at 5 CFR part 1315 to implement section 1010 of Public Law 106–398.

The Councils received no public comments to the interim FAR rule and have agreed to convert the interim rule to a final rule without change. The applicability date, however, has changed as explained below. The **Federal Register** notice published in conjunction with the FAR interim rule stated that ''The policy and clause apply to all covered contracts awarded on or after December 15, 2000 * * * agencies may apply the FAR changes made by this rule to contracts awarded prior to December 15, 2000, at their discretion * * *.'' (66 FR 53485, October 22, 2001.) This was consistent with OMB regulations. Subsequently, as a result of enactment of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107) on December 28, 2001, agencies no longer have this discretion. Section 1007 of Public Law 107–107 states that this policy applies to cost-reimbursement contracts for services awarded before, on, or after December 15, 2000. Section 1007 retains the prohibition against payment of late payment interest penalty for any period prior to December 15, 2000. For this reason, the applicability of the rule has been revised to reflect this change.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to the very limited number of contractors that are awarded cost-reimbursement service contracts and that are paid more than 30 days after the agency receives a proper invoice.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 32, and 52

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 2, 32, and 52 which was published in the **Federal Register** at 66 FR 53485, October 22, 2001, as a final rule without change.

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 03–12303 Filed 5–22–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 4

[FAC 2001–14; FAR Case 2000–304; Item IV]

RIN 9000–AI94

Federal Acquisition Regulation; Electronic Signatures

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify that agencies are permitted to accept electronic signatures and records in connection with Government contracts.

DATES: *Effective Date:* June 23, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Laura Smith, Procurement Analyst, at (202) 501–7279. Please cite FAC 2001–14, FAR case 2000–304.

SUPPLEMENTARY INFORMATION:

A. Background

On October 21, 1998, the Government Paperwork Elimination Act (Title XVII of Division C of Public Law 105–277) was enacted. On June 30, 2000, the Electronic Signatures in Global and National Commerce Act (E–SIGN) (Pub. L. 106–229) was enacted. These laws eliminate legal barriers to using electronic technology in business transactions, such as the formation and signing of contracts. The Office of Management and Budget (OMB) has issued guidance on both of these laws. See Memorandum M–00–15, ''OMB Guidance on Implementing the Electronic Signatures in Global and National Commerce Act,'' dated September 25, 2000, and Memorandum M–00–10, ''OMB Procedures and Guidance on Implementing the Government Paperwork Elimination Act,'' dated April 25, 2000. These memoranda are available on the OMB Homepage at *http://www.omb.gov.*

This final rule furthers Government participation in electronic commerce when conducting Government procurements by adding a statement at FAR Subpart 4.5, Electronic Commerce in Contracting, clarifying that agencies are permitted to accept electronic signatures and records in connection with Government contracts.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 65698, November 1, 2000. In addition to proposing a policy statement recognizing the use of electronic signatures, the proposed rule would have revised the current FAR definitions of ''in writing'' and ''signature'' at FAR 2.101 to clarify that these terms include electronic, in addition to paper, transactions. It also would have made minor changes to the definition of electronic commerce. Twenty-five sources submitted comments in response to the proposed rule. All comments were considered in the development of the final rule.

Several surety companies expressed support for greater use of electronic technologies for the filing of bid, performance, and payment bonds and associated powers of attorney. They noted that such technologies will ''streamline the procurement process, reduce costs, and increase efficiency for all trading partners.'' However, they cautioned that FAR coverage should not result in reliance on a single proprietary system for electronic signatures for the entire Federal government. They further recommended a phase-in period so sureties that are not yet automated have alternative means of transacting with the Government in the near term.

With respect to the choice of technology, the final rule simply states, ''agencies may accept electronic signatures and records in connection with Government contracts.'' The choice of technology for implementing electronic signatures is left to each agency. As for the execution of bonds and powers of attorney, the rule does not require that these documents be submitted electronically, which will allow time for parties to effectively transition to electronic transactions.

One commenter made several recommendations regarding the definitions. In particular, the commenter asserted that—

- A definition for ''electronic commerce'' is unnecessary and should be removed from the FAR;
- The current FAR definition of ''signature'' should be replaced by the E–SIGN definition of ''electronic signature''; and
- The E–SIGN definition of electronic record should be substituted for the

current and proposed definitions of ''in writing,'' ''writing,'' and ''written,'' because the latter definitions are too narrow. The Councils disagree with the recommended changes to the definitions.

The current FAR definition of ''electronic commerce'' is consistent with that set forth in section 30 of the Office of Federal Procurement Policy Act. The Councils believe the statutory definition should be reflected in the FAR. At the same time, the Councils recognize the value in evaluating the continued need for, and appropriateness of this definition as electronic commerce continues to become more institutionalized in the Government.

The commenter's proposed definition of electronic signature does not reflect intention to authenticate. This concept is important to contracting-related transactions, electronic or otherwise. As noted in a September 12, 1951, Comptroller General decision (B–104590), courts have held that ''a signature consists of the writing of one's name and of the intention that it *authenticate* the instrument, and, therefore, any symbol adopted as one's signature when affixed with his knowledge and consent is a binding and legal signature * * *'' This was reiterated in a September 20, 1984, Comptroller General decision (B–216035). Consistent with this reasoning, FAR case 91–104 incorporated the concept of authentication into the definition of ''signature.'' That case established the premise that either hand scribed or other format signatures indicate an intent to authenticate (or be bound).

Similarly, the Councils believe that the proposed definition for ''electronic record'' is insufficient. The Councils maintain that the definition of ''in writing'' should reflect the requirement to store because agencies ask for information in writing when they intend to keep it as a record. Therefore, storage, reproduction, and later retrieval are all salient characteristics of a record. After further deliberation and consideration of the public comments regarding the proposed changes to the definitions, the Councils have determined that the current FAR definitions are sufficient and appropriately capture the necessary salient characteristics required of a ''writing'' and a ''signature.'' Likewise, the Councils concluded that there was no significant value achieved through the proposed change to the definition of ''electronic commerce.''

Therefore, this final rule makes no changes to the current FAR definitions.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule does not change the procedures for award or administration of contracts, but rather, clarifies that the use of electronic signatures and electronic methods are permitted in Government procurement.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 4

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 4 as set forth below:

PART 4—ADMINISTRATIVE MATTERS

■ 1. The authority citation for 48 CFR part 4 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 4.502 by adding paragraph (d) to read as follows:

4.502 Policy.

* * * * *

(d) Agencies may accept electronic signatures and records in connection with Government contracts.

[FR Doc. 03–12304 Filed 5–22–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 8

[FAC 2001–14; FAR Case 2003–001; Item V]

RIN 9000–AJ62

Federal Acquisition Regulation; Increased Federal Prison Industries, Inc. Waiver Threshold

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to increase the blanket waiver threshold for small dollar value purchases from Federal Prison Industries (FPI) by Federal agencies. By increasing this threshold to $2,500, Federal agencies will not be required to make purchases from FPI of products on FPI's Schedule that are at or below this threshold. Federal agencies, however, may continue to consider and purchase products from FPI that are at or below $2,500.

DATES: *Effective Date:* May 22, 2003.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before June 23, 2003 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2003–001@gsa.gov.* Please submit comments only and cite FAC 2001–14, FAR case 2003–001, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 2001–14, FAR case 2003–001.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Prison Industries (FPI) Board of Directors recently adopted a resolution increasing the blanket waiver threshold for small dollar-value purchases from Federal Prison Industries by Federal agencies. The resolution adopted by the FPI Board increases the FPI clearance exception threshold at 8.606(e) from $25 to $2,500 and eliminates the criterion that delivery is required within 10 days. The objective of the rule is to increase the dollar threshold necessary to obtain a clearance from FPI. By increasing this threshold to $2,500, Federal agencies will not be required to make purchases from FPI of products on FPI's Schedule that are at or below this threshold. Federal agencies, however, may continue to consider and purchase products from FPI that are at or below $2,500. FPI is a mandatory acquisition program established under 18 U.S.C. 4124. Agencies would still be required to purchase products on FPI's Schedule from FPI above the $2,500 threshold unless a clearance is obtained pursuant to FAR 8.605.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This interim rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR part 8, in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.,* (FAC 2001–14, FAR case 2003–001), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

There is no requirement to publish this rule for public comment, as it is not a significant FAR revision. This rule only covers very-small-dollar supply purchases now being made from Federal Prison Industries, part of the Department of Justice, another Federal executive agency. FPI will continue to be a source, but optional rather than mandatory, for these very-small-dollar purchases. This change does not originate from the FAR regulation, but is only an update to show a change in policy made by the Federal Prison Industries itself. No public comments are required under 41 U.S.C. 418b(a), and under (a) and (d) therefore no determination either for compelling circumstances, or for urgent and compelling circumstances needs to be made in order for the case to go into effect immediately. Even though not required to do so, the Councils would, nevertheless, like to obtain public comments. No determination of urgent and compelling circumstances is necessary under the statute to obtain optional public comments.

However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 8

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 8 as set forth below:

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 1. The authority citation for 48 CFR part 8 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 8.606 by revising paragraph (e) to read as follows:

8.606 Exceptions.

* * * * *

(e) Orders are for listed items totaling $2,500 or less.

[FR Doc. 03–12305 Filed 5–21–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8 and 42

[FAC 2001–14; FAR Case 2001–035; Item VI]

RIN 9000–AJ45

Federal Acquisition Regulation; Past Performance Evaluation of Federal Prison Industries Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to require evaluation of Federal Prison Industries (FPI) contract performance.

DATES: *Effective Date:* June 23, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Laura Smith, Procurement Analyst, at (202) 208–7279. Please cite FAC 2001–14, FAR case 2001–035.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Subparts 8.6 and 42.15 to require agencies to evaluate Federal Prison Industries (FPI) contract performance. This change will permit Federal customers to rate FPI performance, compare FPI to private sector providers, and give FPI important feedback on previously awarded contracts. It is expected that this change will give FPI the same opportunity that we give private sector providers to improve their customer satisfaction, in general, and their performance on delivery, price, and quality, specifically. While the change does not negate the requirements of FAR 8.602 or 8.605, it will allow the information to be used to support a clearance request per FAR 8.605.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 55680, August 29, 2002. Ten respondents submitted public comments. The Councils considered the

public comments before agreeing to convert the proposed rule to a final rule with minor changes. A summary of the comments is provided below:

Comment: To avoid potential misinterpretation, the rule should more clearly call attention to the mandatory source requirement for purchase of FPI products and more clearly point out that a negative past performance evaluation may be used as a basis for a waiver request.

Response: We agree. The intent of the rule is to ensure contracting officers understand that the waiver process is still in effect and that performance evaluations may be used to support future award decisions. Therefore, the final rule amends FAR 8.607 and 42.1503(b) to more clearly articulate that the waiver requirement, referred to at FAR 8.605 as a clearance, still applies and that a negative performance evaluation can be used to support clearance requests.

Comment: There is no basis for an assessment of FPI's past performance. FPI's past performance is irrelevant to whether an agency is required to obtain goods from FPI because of its mandatory source status. Therefore, the collection of data is a patent waste of Government resources since it cannot be used for source selection purposes.

Response: We believe that there is benefit to assessing FPI's performance. The May 2000 Office of Federal Procurement Policy (OFPP) guide ''Best Practices for Collecting and Using Current and Past Performance Information'' states that the active dialog that results from assessing a contractor's current performance results in better performance on the instant contract, and that such assessments are a basic best practice for good contract administration. As previously stated, this information can also be used to support FPI clearance requests.

Comment: What is the relationship between this rule and Section 811 of the National Defense Authorization Act of FY 2002? Section 811 does not apply to agencies outside of DoD.

Response: This rule has no relationship to Section 811 of the FY 2002 National Defense Authorization Act. The genesis of this case was a memorandum from FPI requesting past performance evaluations on their contracts.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because extending the collection of past performance data to include FPI contracts can be accomplished within our normal means of performing business and further serves to promote competition among offerors.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 8 and 42

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 8 and 42 as set forth below:

■ 1. The authority citation for 48 CFR parts 8 and 42 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 2. Add section 8.607 to read as follows:

8.607 Evaluating FPI performance.

Agencies shall evaluate FPI contract performance in accordance with subpart 42.15. Performance evaluations do not negate the requirements of 8.602 and 8.605, but they may be used to support a clearance request in accordance with 8.605.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.1502 [Amended]

■ 3. Amend section 42.1502 in the first sentence of paragraph (b) by removing ''subparts 8.6 and'' and adding ''subpart'' in its place.

■ 4. Amend section 42.1503 in paragraph (b) by adding a new seventh sentence to read as follows:

42.1503 Procedures.

* * * * *

(b) * * * Evaluation of Federal Prison Industries (FPI) performance may be used to support a clearance request (see 8.605) when FPI is a mandatory source in accordance with subpart 8.6. * * *

* * * * *

[FR Doc. 03–12306 Filed 5–21–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2001–14; FAR Case 2000–009; Item VII]

RIN 9000–AJ34

Federal Acquisition Regulation; Contract Terms and Conditions Required To Implement Statute or Executive Orders—Commercial Items

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to update the clause regarding commercial items contract terms and conditions required to implement statute or Executive orders.

DATES: Effective Date: June 23, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 2001–14, FAR case 2000–009.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Regulation Part 12, Acquisition of Commercial Items, was developed to implement Title VIII of the Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103–355). The regulations became effective on October 1, 1995. Several areas have been identified that need updating and clarification. This rule addresses some of those changes.

The list of contract terms and conditions required to implement statutes or Executive orders in the clause at FAR 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, is amended to ensure that required statutes enacted subsequent to FASA that contain civil or criminal penalties or specifically cite their applicability to commercial items are included on the list, and to ensure that any post-FASA items that did not meet this criteria are deleted from the list. In addition, the pre-FASA clauses and alternates that were inadvertently left off the list are added. The date of each clause is added to the list to identify what revision of the listed clause applies when this clause is added to a contract.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 13076, March 20, 2002. The 60-day comment period ended May 20, 2002. Two sources submitted comments on the proposed rule. Both comments suggested revisions to paragraph 52.212–5(e) to clarify flow-down requirements. Accordingly, paragraph 52.212–5(e) is revised in the final rule to flow down clauses that are applicable to the subcontract and required to implement statute or Executive order.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose a new policy requirement on small entities. The changes made by the rule update clause references, clarify language, and do not change existing policy.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 52.212–5 by revising the date of the clause and paragraphs (a), (b), (c), and (e) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (June 2003)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clause, which is incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items: 52.233–3, Protest after Award (AUG 1996) (31 U.S.C. 3553).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: [Contracting Officer check as appropriate.]

__(1) 52.203–6, Restrictions on Subcontractor Sales to the Government (JUL 1995), with Alternate I (OCT 1995) (41 U.S.C. 253g and 10 U.S.C. 2402).

__(2) 52.219–3, Notice of Total HUBZone Set-Aside (JAN 1999) (15 U.S.C. 657a).

__(3) 52.219–4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JAN 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

__(4)(i) 52.219–5, Very Small Business Set-Aside (JUNE 2003) (Pub. L. 103–403, section 304, Small Business Reauthorization and Amendments Act of 1994).

__(ii) Alternate I (MAR 1999) of 52.219–5.

__(iii) Alternate II (JUNE 2003) of 52.219–5.

__(5)(i) 52.219–6, Notice of Total Small Business Set-Aside (JUNE 2003) (15 U.S.C. 644).

__(ii) Alternate I (OCT 1995) of 52.219–6.

__(6)(i) 52.219–7, Notice of Partial Small Business Set-Aside (JUNE 2003) (15 U.S.C. 644).

__(ii) Alternate I (OCT 1995) of 52.219–7.

__(7) 52.219–8, Utilization of Small Business Concerns (OCT 2000) (15 U.S.C. 637 (d)(2) and (3)).

__(8)(i) 52.219–9, Small Business Subcontracting Plan (JAN 2002) (15 U.S.C. 637(d)(4)).

__(ii) Alternate I (OCT 2001) of 52.219–9.

__(iii) Alternate II (OCT 2001) of 52.219–9.

__(9) 52.219–14, Limitations on Subcontracting (DEC 1996) (15 U.S.C. 637(a)(14)).

__(10)(i) 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (JUNE 2003) (Pub. L. 103–355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

__(ii) Alternate I (JUNE 2003) of 52.219–23.

__(11) 52.219–25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (OCT 1999) (Pub. L. 103–355, section 7102, and 10 U.S.C. 2323).

__(12) 52.219–26, Small Disadvantaged Business Participation Program—Incentive Subcontracting (OCT 2000) (Pub. L. 103–355, section 7102, and 10 U.S.C. 2323).

__(13) 52.222–3, Convict Labor (JUNE 2003) (E.O. 11755).

__(14) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (SEP 2002) (E.O. 13126).

__(15) 52.222–21, Prohibition of Segregated Facilities (FEB 1999).

__(16) 52.222–26, Equal Opportunity (APR 2002) (E.O. 11246).

__(17) 52.222–35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212).

__(18) 52.222–36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).

__(19) 52.222–37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212).

__(20)(i) 52.223–9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (AUG 2000) (42 U.S.C. 6962(c)(3)(A)(ii)).

__(ii) Alternate I (AUG 2000) of 52.223–9 (42 U.S.C. 6962(i)(2)(C)).

__(21) 52.225–1, Buy American Act—Supplies (JUNE 2003) (41 U.S.C. 10a–10d).

__(22)(i) 52.225–3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act (JUNE 2003) (41 U.S.C. 10a–10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note).

__(ii) Alternate I (MAY 2002) of 52.225–3.

__(iii) Alternate II (MAY 2002) of 52.225–3.

__(23) 52.225–5, Trade Agreements (JUNE 2003) (19 U.S.C. 2501, *et seq.,* 19 U.S.C. 3301 note).

__(24) 52.225–13, Restrictions on Certain Foreign Purchases (JUNE 2003) (E.O. 12722, 12724, 13059, 13067, 13121, and 13129).

__(25) 52.225–15, Sanctioned European Union Country End Products (FEB 2000) (E.O. 12849).

__(26) 52.225–16, Sanctioned European Union Country Services (FEB 2000) (E.O. 12849).

__(27) 52.232–29, Terms for Financing of Purchases of Commercial Items (FEB 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

__(28) 52.232–30, Installment Payments for Commercial Items (OCT 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

__(29) 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration (MAY 1999) (31 U.S.C. 3332).

__(30) 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration (MAY 1999) (31 U.S.C. 3332).

__(31) 52.232–36, Payment by Third Party (MAY 1999) (31 U.S.C. 3332).

__(32) 52.239–1, Privacy or Security Safeguards (AUG 1996) (5 U.S.C. 552a).

__(33)(i) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631).

__(ii) Alternate I (APR 1984) of 52.247–64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: [Contracting Officer check as appropriate.]

__(1) 52.222–41, Service Contract Act of 1965, as Amended (MAY 1989) (41 U.S.C. 351, *et seq.*).

__(2) 52.222–42, Statement of Equivalent Rates for Federal Hires (MAY 1989) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

__(3) 52.222–43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (MAY 1989) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

__(4) 52.222–44, Fair Labor Standards Act and Service Contract Act—Price Adjustment (February 2002) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

__(5) 52.222–47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to PreDecemberessor Contractor Collective Bargaining Agreements (CBA) (May 1989) (41 U.S.C. 351, *et seq.*).

* * * * *

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (vi) of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) 52.219–8, Utilization of Small Business Concerns (October 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $500,000 ($1,000,000 for construction of any public facility), the subcontractor must include 52.219–8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222–26, Equal Opportunity (April 2002) (E.O. 11246).

(iii) 52.222–35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (December 2001) (38 U.S.C. 4212).

(iv) 52.222–36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(v) 52.222–41, Service Contract Act of 1965, as Amended (May 1989), flow down required for all subcontracts subject to the Service Contract Act of 1965 (41 U.S.C. 351, *et seq.*).

(vi) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (April 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247–64.

(2) While not required, the contractor May include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

* * * * *

[FR Doc. 03–12307 Filed 5–21–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2001–14; Item VIII]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to update references and make editorial changes.

DATES: *Effective Date:* June 23, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2001–14, Technical Amendments.

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

52.213–4 [Amended]

■ 2. Amend section 52.213–4 in paragraph (a)(2)(vi) by removing ''(Dec 2001)'' and adding ''(Apr 2003)'' in its place.

52.244–6 Subcontracts for Commercial Items.

■ 3. In section 52.244–6, revise the section heading to read as set forth above; and in the clause heading, remove the words ''and Commercial Components''.

52.247–64 [Amended]

■ 4. Amend section 52.247–64 in the first parenthetical in the introductory text of paragraph (a) by adding ''Appx'' after ''U.S.C.''.

[FR Doc. 03–12308 Filed 5–21–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2001–14 which amends the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 2001–14 which precedes this document. These documents are also available via the Internet at *http://www.arnet.gov/far.*

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content,

contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2001–14

Item	Subject	FAR case	Analyst
I	Geographic Use of the Term ''United States''	1999–400	Davis
II	Miscellaneous Cost Principles	2001–029	Loeb
III	Prompt Payment Under Cost-Reimbursement Contracts for Services	2000–308	Loeb
IV	Electronic Signatures	2000–304	Smith
V	Increased Federal Prison Industries, Inc. Waiver Threshold (Interim)	2003–001	Nelson
VI	Past Performance Evaluation of Federal Prison Industries Contracts	2001–035	Smith
VII	Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items	2000–009	Moss
VIII	Technical Amendments	.....	

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2001–14 amends the FAR as specified below:

Item I—Geographic Use of the Term ''United States'' (FAR Case 1999–400)

This final rule amends the FAR to clarify the use of the term ''United States,'' when used in a geographic sense. The term ''United States'' is defined in FAR 2.101 to include the 50 States and the District of Columbia. Where a wider area of applicability is intended, the term is redefined in the appropriate part or subpart of the FAR, or supplemented by listing the additional areas of applicability each time the term is used. This rule corrects and updates references to the United States throughout the FAR, including a new definition of ''outlying areas'' of the United States, a term that encompasses the named outlying commonwealths, territories, and minor outlying islands.

Item II—Miscellaneous Cost Principles (FAR Case 2001–029)

This final rule amends the FAR by deleting the cost principle at FAR 31.205–45, Transportation costs, and streamlining the cost principles at FAR 31.205–10, Cost of money; FAR 31.205–28, Other business expenses; and FAR 31.205–48, Deferred research and development costs. The rule will only affect contracting officers that are required by a contract clause to use cost principles for the determination, negotiation, or allowance of contract costs.

Item III—Prompt Payment Under Cost-Reimbursement Contracts for Services (FAR Case 2000–308)

The interim rule published in the **Federal Register** at 66 FR 53485, October 22, 2001, is converted to a final rule, without change, to implement statutory and regulatory changes related to late payment of an interim payment under a cost-reimbursement contract for services. The rule is of special interest to contracting officers that award or administer these type of contracts.

The **Federal Register** notice published in conjunction with the FAR interim rule stated that ''The policy and clause apply to all covered contracts awarded on or after December 15, 2000 * * * agencies may apply the FAR changes made by this rule to contracts awarded prior to December 15, 2000, at their discretion * * *.'' This was consistent with OMB regulations. Subsequently, as a result of enactment of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107) on December 28, 2001, agencies no longer have this discretion. Section 1007 of Public Law 107–107 states that this policy applies to cost-reimbursement contracts for services awarded before, on, or after December 15, 2000. Section 1007 retains the prohibition against payment of late payment interest penalty for any period prior to December 15, 2000.

Item IV—Electronic Signatures (FAR Case 2000–304)

Recent laws eliminate legal barriers to using electronic technology in business transactions, such as the formation and signing of contracts. This final rule furthers Government participation in electronic commerce when conducting Government procurements by adding a statement at FAR subpart 4.5, Electronic Commerce in Contracting, clarifying that agencies are permitted to accept electronic signatures and records in connection with Government contracts.

Item V—Increased Federal Prison Industries, Inc. Waiver Threshold (FAR Case 2003–001)

This interim rule revises the Federal Acquisition Regulation to increase the Federal Prison Industries, Inc.'s (FPI) clearance exception threshold at 8.606(e) from $25 to $2,500 and eliminates the criterion that delivery is required within 10 days. Federal agencies will not be required to make purchases from FPI of products on FPI's Schedule that are at or below this threshold.

Item VI—Past Performance Evaluation of Federal Prison Industries Contracts (FAR Case 2001–035)

This final rule requires agencies to evaluate Federal Prison Industries (FPI) contract performance. This change will permit Federal customers to rate FPI performance, compare FPI to private sector providers, and give FPI important feedback on previously awarded contracts. It is expected that this change will give FPI the same opportunity that we give private sector providers, to improve their customer satisfaction, in general, and their performance on delivery, price, and quality, specifically.

Item VII—Contract Terms and Conditions Required To Implement Statute or Executive Orders—Commercial Items (FAR Case 2000–009)

This final rule amends the clause at 52.212–5, Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items, to ensure that required statutes enacted subsequent to FASA that contain civil or criminal penalties or specifically cite their applicability to commercial items are included on the list, and to ensure that any post-FASA items that did not meet this criteria are deleted from the list. In addition, the pre-FASA clauses and alternates that were inadvertently left off the list are added. The date of each clause is added to the list to identify what revision of the listed clause applies when this clause is added to a contract.

Item VIII—Technical Amendments

These amendments update references and make editorial changes at FAR

52.213–4(a)(2)(vi), 52.244–6 section and clause headings, and 52.247–64(a).

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

[FR Doc. 03–12309 Filed 5–21–03; 8:45 am]

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Federal Register

Thursday,
May 22, 2003

Part IV

Department of Housing and Urban Development

24 CFR Part 5

Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR–4695–I–01]

RIN 2501–AC98

Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule provides for codification of the requirements of Executive Order 13202 (the Executive Order), entitled ''Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.'' The Executive Order provides that, to the extent permitted by law, agencies may not permit inclusion of contract conditions requiring or prohibiting entering into or adhering to agreements with a labor organization, or otherwise discriminating against parties entering into or adhering to such agreements, as a condition for award of any federally funded contract or subcontract for construction. The purpose of this rule is to ensure compliance by all HUD grantees, recipients of financial assistance, parties to cooperative agreements, contractors, and subcontractors with the requirements of open competition and government neutrality in awarding federally funded contracts or subcontracts for construction.

DATES: *Effective Date:* June 23, 2003.

Comment Due Date: July 21, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Aaron Santa Anna, Assistant General Counsel for Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On February 17, 2001, President George W. Bush signed Executive Order 13202, entitled ''Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects'' (Executive Order 13202 was published in the **Federal Register** on February 22, 2001, at 66 FR 11225). The Executive Order prohibits the inclusion of requirements for affiliation with a labor organization as a condition for award of any federally funded contract or subcontract for construction.

Executive Order 13202 was amended by Executive Order 13208, issued on April 6, 2001. The amendment was to add a paragraph (c) to section 5 of Executive Order 13202. New paragraph (c) addresses exemption of a project from the provisions of sections 1 and 3 of the Executive Order. (Executive Order 13208 was published in the **Federal Register** on April 11, 2001, at 66 FR 18717.)

In issuing Executive Order 13202, the President revoked Executive Order 12836 of February 1, 1993, and the Presidential Memorandum of June 5, 1997, entitled ''Use of Project Labor Agreements for Federal Construction Projects.''

The purposes of Executive Order 13202 are to:

- Promote and ensure open competition on federal and federally funded or assisted construction projects;
- Maintain government neutrality toward government contractors' labor relations on federal and federally funded or assisted construction projects;
- Reduce construction costs to the federal government and to the taxpayers;
- Expand job opportunities, especially for small and disadvantaged businesses;
- Prevent discrimination against government contractors or their employees based upon labor affiliation or lack thereof; thereby promoting the economical, nondiscriminatory, and efficient administration and completion of federal and federally funded or assisted construction projects.

The Executive Order is intended to improve the internal management of the Executive Branch. The Executive Order provides that agencies may not require or prohibit bidders, offerors, contractors, or subcontractors from entering into or adhering to agreements with one or more labor organizations. The Executive Order also permits agency heads to exempt a project from its requirements under special circumstances, but the exemption may not be related to the possibility of or an actual labor dispute.

II. This Interim Rule

This interim rule provides for the codification of the requirements of Executive Order 13202 for HUD programs. The interim rule adds a new § 5.108 to HUD's regulations in 24 CFR part 5, subpart A. The regulations in subpart A of part 5 contain the definitions and federal requirements generally applicable to all of HUD's programs. By placing the requirements of the Executive Order in those HUD regulations that contain across-the-board requirements, HUD is ensuring the broadest applicability of the requirements of Executive Order 13202. The specific regulatory amendments that are being made by this interim rule are as follows:

A. Scope of Interim Rule Limited to Federally Funded Contracts

As noted above, Executive Order 13202 applies to both construction contracts awarded by a federal agency as well as to federally funded construction contracts awarded by the recipient of federal financial assistance. This interim rule codifies the requirements for HUD-funded construction contracts, but not for construction contracts awarded by HUD. The Federal Acquisition Regulatory (FAR) Council has issued government-wide regulations implementing the requirements regarding federal construction contracts contained in Executive Order 13202 (see the final rule published on November 22, 2002, at 67 FR 70518). The regulations issued by the FAR Council apply to construction contracts awarded by federal agencies, including those awarded by HUD. Interested readers should refer to the November 22, 2002, final rule for additional information regarding the requirements applicable to federal construction contracts.

B. Neutrality Towards Government Contractors' Labor Relations on Federally Funded Construction Projects

The new § 5.108 provides that, to the extent permitted by law, the bid specifications, project agreements, or other controlling documentation for a construction contract awarded by a HUD grantee, recipient of financial assistance from HUD, or party to a cooperative agreement with HUD for a

construction project (or a construction manager acting on their behalf) shall not:

1. Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations on the same or other related federally funded construction project; or

2. Otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories, or otherwise adhere to agreements with one or more labor organizations, on the same or other related federally funded construction project.

C. Definitions

The Executive Order defines several of the terms used throughout the Order, such as ''construction contract'' and ''labor organization,'' and the interim rule adopts these definitions. Accordingly, the new § 5.108 provides that the term ''construction contract'' means a contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property, including any subcontracts awarded pursuant to such a contract. The interim rule also provides, in accordance with the Executive Order, that the term ''labor organization'' has the same meaning it has in 42 U.S.C. 2000e(d).

The Executive Order, however, does not establish a definition of the term ''financial assistance.'' The term ''financial assistance'' is a key term used throughout the Executive Order, and HUD believes that a definition is required to ensure the clarity and uniform enforcement of the new § 5.108. HUD is adopting, for purposes of § 5.108, a definition of the term ''federal financial assistance'' that is based on the definition of that term contained in other HUD regulations. These other regulations include 24 CFR part 1, regarding nondiscrimination in HUD programs under title VI of the Civil Rights Act of 1964 (*see* 24 CFR 1.2), 24 CFR part 3, regarding nondiscrimination on the basis of sex in education programs or activities receiving federal financial assistance (*see* 24 CFR 3.105), and 24 CFR part 8, regarding nondiscrimination based on handicap in federally assisted HUD programs and activities (*see* 24 CFR 8.3). HUD believes that the adoption of a similar definition will help to ensure consistency throughout HUD's programs and facilitate compliance with the new regulatory requirements.

The interim rule defines the term ''financial assistance'' to include:

1. Grants, loans, and advances of federal funds; or

2. Proceeds from loans guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*) and title VI of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*). The term ''financial assistance'' does not include any other contract of insurance or guaranty.

Under the section 108 and Title VI loan guarantee programs, recipients must pledge a portion of their block grant formula allocations as security for the guaranteed loans. Accordingly, the proceeds from the loan guarantees are appropriately considered part of the recipient's grant, and within the scope of the definition of ''financial assistance.'' Other HUD loan insurance programs (such as those of the Federal Housing Administration) are not dependent on the provision of a HUD grant, and therefore not considered to be ''financial assistance'' for purposes of this interim rule.

D. Exemptions

As noted above in this preamble, the Executive Order authorizes HUD to exempt a construction project from the requirements under certain circumstances, and the interim rule contains comparable provisions tracking this language.

E. Sanctions

The interim rule provides that if HUD determines that a HUD grantee, recipient of financial assistance from HUD, or party to a cooperative agreement with HUD (or a construction manager acting on their behalf), performs in a manner contrary to the requirements of the Executive Order, HUD will take such action, consistent with law and regulations, as HUD determines appropriate.

F. Voluntary Project Labor Agreements

In accordance with the Executive Order, the interim rule specifies that nothing in § 5.108 prohibits contractors or subcontractors from voluntarily entering into project labor agreements.

III. Justification for Interim Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advanced notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impractical, unnecessary, or contrary to the public interest'' (*see* 24 CFR 10.1). For the following reasons, HUD has determined that it is unnecessary to delay the effectiveness of this rule in order to solicit prior public comments.

To a large extent, the new § 5.108 repeats the language of Executive Order 13202, and does not elaborate on or modify these provisions. The Executive Order contains specific and detailed requirements concerning the use of project labor agreements in federally funded construction projects, leaving few areas to the discretion of individual federal agencies. Accordingly, HUD's authority to revise these provisions of the interim rule in response to public comment would be limited. Where Executive Order 13202 provides room for agency flexibility (such as, for example, in the definition of the term ''financial assistance''), HUD has exercised its discretion narrowly, in order to ensure consistency throughout its programs and facilitate compliance with the new regulatory requirements. For example, the interim rule contains a definition of ''financial assistance'' that is based on the definition of that term contained in other HUD program regulations.

Although HUD believes that good cause exists to publish this rule for effect without prior public comment, HUD recognizes the value of public comment in the development of its regulations. HUD has, therefore, issued these regulations on an interim basis and has provided the public with a 60-day comment period. HUD welcomes comments on the regulatory amendments made by this interim rule. The public comments will be addressed in the final rule.

IV. Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The interim rule implements Executive Order 13202, which revokes previous requirements encouraging the inclusion of project labor agreements as a condition for award of federally funded contracts or subcontracts on construction projects. The Executive Order directs government neutrality towards the use of such agreements, thus placing the decision of whether to enter into a project labor

agreement with individual contractors and subcontractors.

This applies equally to large and small entities that seek federally funded construction contracts and does not establish requirements applicable to entities based on their size. Further, HUD neither requires nor prohibits the use of project labor agreements on HUD-funded construction projects. Although some HUD-funded construction projects are subject to project labor agreements, in many instances this is due to the voluntary decision of individual contractors and subcontractors. Therefore, the interim rule will not significantly revise existing practices or hiring costs for small contractors and subcontractors participating in HUD's construction programs. To the extent the rule has an impact on small entities, it should be a positive economic impact on those small entities that are not union shops, because the rule may provide additional opportunities to work on federally funded construction projects by non-union small businesses.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This interim rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the UMRA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

List of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 5 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

■ 2. Add § 5.108 to read as follows:

§ 5.108 Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federally Funded Construction Projects.

(a) *Purpose.* This section implements Executive Order 13202 (issued on February 17, 2001), as amended by Executive Order 13208 (issued on April 6, 2001), entitled ''Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.''

(b) *Definitions.* For purposes of this section:

Construction contract means a contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property, including any subcontracts awarded pursuant to such a contract.

Financial assistance includes:

(i) Grants, loans, and advances of federal funds; or

(ii) Proceeds from loans guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*) and title VI of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*). The term ''financial assistance'' does not include any other contract of insurance or guaranty.

Labor organization has the same meaning it has in 42 U.S.C. 2000e(d).

(c) *Neutrality towards government contractors' labor relations.* To the extent permitted by law, the bid specifications, project agreements, or other controlling documents for a construction contract awarded on or after June 23, 2003, by a HUD grantee, recipient of financial assistance from HUD, or party to a cooperative agreement with HUD, for a construction project (or a construction manager acting on their behalf) shall not:

(1) Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations on the same or other related federally funded construction project; or

(2) Otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories, or otherwise adhere to agreements with one or more labor organizations, on the same or other related federally funded construction project.

(d) *Exemptions*—(1) *Exemptions due to special circumstances.* HUD may exempt a particular construction project, construction contract, subcontract, grant, or cooperative agreement from any requirement of this section, if HUD determines that special circumstances require an exemption in order to avert an imminent threat to public health or safety or to serve the national security. HUD will not base a finding of ''special circumstances'' on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are non-signatories to, or otherwise do not adhere to, agreements with one or more labor organizations, or concerning employees on the construction project who are not members of, or affiliated with, a labor organization.

(2) *Exemption of construction projects subject to project labor agreements entered into as of June 23, 2003.* HUD may exempt a particular construction project from any requirement of this section upon written request from the HUD grantee, recipient of financial assistance from HUD, or party to a cooperative agreement with HUD (or a

construction manager acting on their behalf), if HUD determines that:

(i) The HUD grantee, recipient of financial assistance from HUD, or party to the cooperative agreement with HUD (or a construction manager acting on their behalf) issued, or was a party to, as of June 23, 2003, bid specifications, project agreements, agreements with one or more labor organizations, or other controlling documents with respect to a particular construction project, that contain any of the requirements or prohibitions contained in paragraph (c) of this section; and

(ii) One or more construction contracts subject to such requirements or prohibitions was awarded as of June 23, 2003.

(e) *Sanctions.* If HUD determines that a HUD grantee, recipient of financial assistance from HUD, or party to a cooperative agreement with HUD (or a construction manager acting on their behalf) performs in a manner contrary to the requirements of this section, HUD will take such action, consistent with law and regulations, as HUD determines appropriate.

(f) Voluntarily entering into project labor agreements. Nothing in this section prohibits contractors or subcontractors from voluntarily entering into project labor agreements.

Dated: April 30, 2003.

Mel Martinez,

Secretary.

[FR Doc. 03–12798 Filed 5–21–03; 8:45 am]

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Federal Register

Thursday,
May 22, 2003

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 31

Federal Acquisition Regulation; Application of Cost Principles and Procedures and Accounting for Unallowable Costs; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 2002–006]

RIN: 9000–AJ65

Federal Acquisition Regulation; Application of Cost Principles and Procedures and Accounting for Unallowable Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) sections relating to accounting for unallowable costs and application of cost principles and procedures.

DATES: Interested parties should submit comments in writing on or before July 21, 2003 to be considered in the formulation of a final 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—*farcase.2002–006@gsa.gov.*

Please submit comments only and cite FAR case 2002–006 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. Edward Loeb at (202) 501–0650. Please cite FAR case 2002–006.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD Director of Defense Procurement established a special interagency ad hoc committee to perform a comprehensive review of policies and procedures in FAR Part 31, Contract Cost Principles and Procedures, related to cost measurement, assignment, and allocation to evaluate the need for each specific requirement in light of the evolution of generally accepted accounting principles and experience gained from implementation.

The Director of Defense Procurement announced a series of public meetings in the **Federal Register** at 66 FR 13712, March 7, 2001 (with a ''correction to notice'' published in the **Federal Register** at 66 FR 16186, March 23, 2001). Attendees at the public meetings (held on April 19, 2001, May 10–11, 2001, and June 12, 2001) included representatives from industry, Government, and other interested parties who provided views on potential areas for revision in FAR part 31. The ad hoc committee reviewed the cost principles and procedures and the public comments; identified potential changes to the FAR; and submitted several reports, including draft proposed rules for consideration by the Councils.

The Councils have reviewed the reports related to FAR 31.201–6, Accounting for unallowable costs, and FAR 31.204, Application of principles and procedures, and propose the following revisions:

- Add paragraph (c)(2) to FAR 31.201–6 to provide specific criteria on the use of sampling as a method to identify unallowable costs and the acceptability of contractor sampling methods.
- Revise the current paragraph (b) of FAR 31.204, which addresses the allowability of subcontract costs, to clarify the language.
- Make a number of editorial changes.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis and do not require application of the cost principles and procedures that are discussed in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR part 31 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2002–006), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: May 16, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 31 as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Revise section 31.201–6 to read as follows:

31.201–6 Accounting for unallowable costs.

(a) Costs that are expressly unallowable or mutually agreed to be unallowable, including mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any billing, claim, or proposal applicable to a Government contract. A directly associated cost is any cost that is generated solely as a result of incurring another cost, and that would not have been incurred had the other cost not been incurred. When an unallowable cost is incurred, its directly associated costs are also unallowable.

(b) Costs that specifically become designated as unallowable or as unallowable directly associated costs of unallowable costs as a result of a written decision furnished by a contracting officer shall be identified if included in or used in computing any billing, claim, or proposal applicable to a Government contract. This identification requirement applies also to any costs incurred for the same purpose under like circumstances as the costs specifically identified as unallowable under either this paragraph or paragraph (a) of this subsection.

(c)(1) The practices for accounting for and presentation of unallowable costs must be those described in 48 CFR 9904.405, Accounting for Unallowable Costs.

(2) Statistical sampling is an acceptable practice for accounting and

presenting unallowable costs provided—

(i) The statistical sampling results in an unbiased sample that accurately represents the sampling universe; and

(ii) The statistical sampling permits audit verification.

(d) If a directly associated cost is included in a cost pool that is allocated over a base that includes the unallowable cost with which it is associated, the directly associated cost shall remain in the cost pool. Since the unallowable costs will attract their allocable share of costs from the cost pool, no further action is required to assure disallowance of the directly associated costs. In all other cases, the directly associated costs, if material in amount, must be purged from the cost pool as unallowable costs.

(e)(1) In determining the materiality of a directly associated cost, consideration should be given to the significance of—

(i) The actual dollar amount;

(ii) The cumulative effect of all directly associated costs in a cost pool; and

(iii) The ultimate effect on the cost of Government contracts.

(2) Salary expenses of employees who participate in activities that generate unallowable costs shall be treated as directly associated costs to the extent of the time spent on the proscribed activity, provided the costs are material in accordance with paragraph (f)(1) of this subsection (except when such salary expenses are, themselves, unallowable). The time spent in proscribed activities should be compared to total time spent on company activities to determine if the costs are material. Time spent by employees outside the normal working hours should not be considered except when it is evident that an employee engages so frequently in company activities during periods outside normal working hours as to indicate that such activities are a part of the employee's regular duties.

(3) When a selected item of cost under 31.205 provides that directly associated costs be unallowable, such directly associated costs are unallowable only if determined to be material in amount in accordance with the criteria provided in paragraphs (f)(1) and (f)(2) of this subsection, except in those situations where allowance of any of the directly associated costs involved would be considered to be contrary to public policy.

3. Amend section 31.204 in the first sentence of paragraph (a) by removing ''shall be allowed'' and adding ''are allowable'' in its place; revising paragraph (b); and redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

31.204 Application of principles and procedures.

* * * * *

(b)(1) For the following subcontract types, costs incurred as reimbursements or payments to a subcontractor are allowable to the extent the reimbursements or payments are for costs incurred by the subcontractor that are consistent with part 31:

(i) Cost-reimbursement.

(ii) Fixed-price incentive.

(iii) Price redeterminable (*i.e.*, fixed-price contracts with prospective price redetermination and fixed-ceiling-price contracts with retroactive price redetermination).

(2) The requirements of paragraph (b)(1) of this section apply to any tier above the first firm-fixed-price subcontract or fixed-price subcontract with economic price adjustment provisions.

(c) Costs incurred as payments under firm-fixed-price subcontracts or fixed-price subcontracts with economic price adjustment provisions or modifications thereto, for which subcontract cost analysis was performed, are allowable if the price was negotiated in accordance with 31.102.

* * * * *

[FR Doc. 03–12892 Filed 5–21–03; 8:45 am]

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- Federal Prison Industries, Inc.; increased waiver threshold; published 5-22-03
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- Excess DOD aircraft sales to persons or entities providing oil spill response services; published 5-22-03

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Ottawa National Wildlife Refuge Complex Expansion and Detroit River International Wildlife Refuge Expansion Act (May 19, 2003; 117 Stat. 704)

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