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Contents

Federal Register

Vol. 68, No. 106

Tuesday, June 3, 2003

Agriculture Department
See Animal and Plant Health Inspection Service
See Farm Service Agency
See Forest Service

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33181–33183

Animal and Plant Health Inspection Service
PROPOSED RULES
Exportation and importation of animals and animal products:
Cattle from Mexico; importation into U.S. prohibited due to tuberculosis, 33028–33030

Antitrust Division
NOTICES
National cooperative research notifications:
Salutation Consortium, Inc., 33183

Census Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33094–33095

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33149–33150

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Family Support Demonstration Projects, 33150–33161

Coast Guard
RULES
Ports and waterways safety:
Columbia River, Vancouver, WA; safety zone, 32996
Delaware River, Salem County, NJ; security zone, 32996–32998
Siuslaw and Willamette Rivers, OR; safety zones, 32998–33000

Commerce Department
See Census Bureau
See International Trade Administration

Consumer Product Safety Commission
NOTICES
Settlement agreements:
TGH International Trading, Inc., 33105–33108

Court Services and Offender Supervision Agency for the District of Columbia
RULES
Freedom of Information Act, Privacy Act, et al.; implementation, 32985–32996

Defense Department
See Navy Department
RULES
Acquisition regulations:
Transportation of supplies by sea; commercial items, 33026–33027
Federal Acquisition Regulation (FAR):
Cost-reimbursement contracts for services; prompt payment
Correction, 33231
PROPOSED RULES
Acquisition regulations:
Follow-on production contracts for products developed pursuant to prototype projects, 33057–33058
Federal Acquisition Regulation (FAR):
Deferred compensation and postretirement benefits other than pensions, 33325–33327
Unsolicited proposals, 33329–33330

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Innovation and improvement—
Parental Information and Resource Centers Program, 33331–33333
Safe and drug-free schools—
Life Skills for State and Local Prisoners Program, 33108–33111
Vocational and adult education—
Community Technology Centers Program, 33317–33323

Employee Benefits Security Administration
NOTICES
Employee benefit plans; class exemptions:
Acquisition and sale of REIT shares by individual account plans sponsored by trust REITS, 33185–33194

Employment and Training Administration
NOTICES
Adjustment assistance:
Apone's T-Shirt Cache, 33198
Bike Athletic Co., 33198–33199
Black & Decker, North American Power Tools, 33199
Fisher-Rosemount Systems, Inc., 33199
H&L Tool Co., 33199–33200
Harriet & Henderson Yarns, Inc., 33200
Hess-Armaclad, Inc., 33200
Honeywell Airframe Systems, 33200
Jabil Circuit, Inc., 33200
Keykert USA Inc., 33201
McKittrick & Assoc., Inc., et al., 33201–33202
MeadWestvaco, 33202
Oregon Screw Machine Products, Inc., 33202
P.C. Cutting & Apparel, 33202–33203
Sterling Diagnostics Imaging, Inc., 33203
Viceroy Gold Corp. et al., 33203
Adjustment assistance and NAFTA transitional adjustment assistance:
Georgia-Pacific Corp. et al., 33194–33196
Radisys Corp. et al., 33196–33198
Committees; establishment, renewal, termination, etc.:
Native American Employment and Training Council, 33203–33204

NAFTA transitional adjustment assistance:
Jabil Circuit, Inc., 33204

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission
See Western Area Power Administration
RULES
Active uranium and thorium processing sites; reimbursement for costs of remedial action; technical and administrative amendments, 32955–32958
NOTICES
Environmental statements; notice of intent:
Western Greenbrier Co-Production Demonstration Project, WV; facility for co-production of electricity, steam, and structural brick, 33111–33113

Energy Information Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33113–33114

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 33005–33020
Georgia, 33014–33018
Maryland, 33000–33002
Pennsylvania, 33012–33014
Tennessee, 33008–33010
West Virginia, 33002–33012
PROPOSED RULES
Air programs:
Stratospheric ozone protection—
Ozone-depleting substance; substitutes list, 33283–33316
Air quality implementation plans; approval and promulgation; various States:
California, 33042
Maryland, 33041
Pennsylvania, 33043
Tennessee, 33042
West Virginia, 33041–33043
NOTICES
Meetings:
Hazardous waste management in research and/or academic laboratories; stakeholders, 33121–33123
Science Advisory Board, 33123–33124
Superfund; response and remedial actions, proposed settlements, etc.:
Great Lakes Container Corp. Site, MO, 33124–33125
Superfund program:
Prospective purchaser agreements—
Des Moines TCE Site, IA, 33124
Toxic and hazardous substances control:
1,2-ethylene dichloride testing; enforceable consent agreement, 33125–33129
Chemical substances release and detection in environmental media; substantial risk reporting; policy clarification and guidance, 33129–33140
Water pollution control:
Great Lakes System; water quality guidance—
Bioaccumulative chemicals of concern; Pennsylvania mixing zones prohibition; submissions approval, 33141–33142

Executive Office of the President
See Presidential Documents

Farm Service Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33090–33091

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 32968–32971
Eurocopter France, 32967–32968
Class E airspace; correction, 33231
PROPOSED RULES
Airworthiness directives:
New Piper Aircraft, Inc., 33030–33032
NOTICES
Meetings:
Aviation Rulemaking Advisory Committee, 33220–33221

Federal Communications Commission
RULES
Radio services, special:
Amateur service—
5250-5400 kHz band, secondary access; 2400-2402 MHz band, upgrade to primary status, 33020–33026
PROPOSED RULES
Frequency allocations and radio treaty matters:
76-81 GHz frequency and frequency bands above 95 GHz reallocation; domestic and international consistency realignment, 33043–33057
NOTICES
Common carrier services:
Telecommunications relay services—
State certification and renewal applications, 33142–33143

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Ohio Power Co. et al., 33114–33115
Environmental statements; availability, etc.:
Orion Power New York GP II, Inc., 33115
Environmental statements; notice of intent:
Eastern Shore Natural Gas Co., 33115–33117
Hydroelectric applications, 33117–33118
Reports and guidance documents; availability, etc.:
Electric Quarterly Reports; public utility filing requirements and software demonstrations, 33118–33119

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Montgomery and Prince George's Counties, MD, 33221

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 33143
Formations, acquisitions, and mergers, 33143–33144

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Critical habitat designations—
Braun's rock-cress, 33058–33089
Cumberland elktoe, etc.; mussels in Tennessee and Cumberland River Basins, 33233–33282

NOTICES
Endangered and threatened species and marine mammal permit applications, 33179–33180
Environmental statements; availability, etc.:
Incidental take permits—
Denver (City and County), CO; Preble's meadow jumping mouse, 33180

Food and Drug Administration
RULES
Human drugs:
Opthalmic products (OTC); final monograph; technical amendment, 32981–32983
Total parenteral nutrition; aluminum in large and small volume parenterals; labeling requirements; effective date delay, 32979–32981
Medical devices:
General and plastic surgery devices—
Surgical suture devices; special control designation, 32983–32985
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33161–33162
Meetings:
Arthritis Advisory Committee, 33162
Drug manufacturing inspections; public workshops, 33162–33163
Harmonisation International Conference—
Brussels, Belgium, and Osaka, Japan; preparation for international meetings and conference, 33163–33164
Reports and guidance documents; availability, etc.:
Drug products containing ensulizole, hypromellose, meradimate, octinoxate, and octisalate; labeling enforcement policy, 33164–33165
Medical devices—
Surgical sutures; Class II special controls, 33165–33166
Pediatric Expertise for Advisory Panels, 33166

Forest Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33091–33092
Environmental statements; notice of intent:
Colville National Forest, WA, 33092–33093
Meetings:
National Urban and Community Forestry Advisory Council, 33093
Resource Advisory Committees—
Flathead County, 33093
Southwest Idaho, 33093
Willamette Provincial Advisory Committee, 33093–33094

General Services Administration
RULES
Federal Acquisition Regulation (FAR):
Cost-reimbursement contracts for services; prompt payment
Correction, 33231
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Deferred compensation and postretirement benefits other than pensions, 33325–33327
Unsolicited proposals, 33329–33330
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33144

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
See Public Health Service
See Substance Abuse and Mental Health Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Medical Reserve Corps demonstration project programs, 33144–33149
Meetings:
Physical Fitness and Sports, President's Council, 33149

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Comprehensive Geriatrics Education Program; correction, 33167
Medicare Rural Hospital Flexibility Program, 33167–33168

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33176–33178
Environmental statements; notice of intent:
Yonkers, NY; affordable housing project, 33178–33179
Organization, functions, and authority delegations:
Assistant Chief Financial Officer for Budget, 33179

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Meetings:
Taxpayer Advocacy Panels, 33226

International Trade Administration
NOTICES
Antidumping:
Brake rotors from—
China, 33095–33098
Freshwater crawfish tail meat from—
China, 33098–33099
Honey from—
China, 33099–33103
Iron construction castings from—
China, 33103–33104
Steel concrete reinforcing bars from—
Korea, 33105

International Trade Commission
RULES
Practice and procedure:
General application rules, safeguard investigations, and antidumping and countervailing duty investigations and reviews; technical corrections, etc., 32971–32979

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau

See Antitrust Division

Labor Department
See Employee Benefits Security Administration
See Employment and Training Administration
See Mine Safety and Health Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33183–33184
Committees; establishment, renewal, termination, etc.:
Labor Research Advisory Council, 33184–33185

Land Management Bureau
NOTICES
Public land orders:
Arizona, 33180–33181

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Canyon Fuel Co., LLC, et al., 33204–33205

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation (FAR):
Cost-reimbursement contracts for services; prompt payment
Correction, 33231
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Deferred compensation and postretirement benefits other than pensions, 33325–33327
Unsolicited proposals, 33329–33330
NOTICES
Inventions, Government-owned; availability for licensing, 33205–33207

National Archives and Records Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33207

National Credit Union Administration
RULES
Credit unions:
Investment and deposit activities and Regulatory Flexibility Program, 32958–32967

National Highway Traffic Safety Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Child passenger protection education programs, 33221–33225

National Institutes of Health
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33168–33169
Meetings:
National Center on Minority Health and Health Disparities, 33169–33170
National Heart, Lung, and Blood Institute, 33170
National Institute of Allergy and Infectious Diseases, 33171
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 33171
National Institute of Child Health and Human Development, 33170

Navy Department
NOTICES
Inventions, Government-owned; availability for licensing, 33108
Meetings:
Ocean Research Advisory Panel, 33108

Nuclear Regulatory Commission
NOTICES
Environmental statements; notice of intent:
Nuclear power plant operating license renewal; review process, 33209–33211
Meetings; Sunshine Act, 33211–33212
Operating licenses, amendments; no significant hazards considerations; biweekly notices; correction, 33212
Applications, hearings, determinations, etc.:
AmerGen Energy Co., LLC, 33207–33208
Pacific Gas & Electric Co., 33208–33209

Overseas Private Investment Corporation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33212–33213

Presidential Documents
EXECUTIVE ORDERS
Bob Hope American Patriot Award; establishment (EO 13306), 33335–33337
European Central Bank; designation under the International Organizations Immunities Act (EO 13307), 33338

Presidio Trust
NOTICES
Meetings:
Board of Directors, 33213

Public Health Service
NOTICES
Reports and guidance documents; availability, etc.:
National Toxicology Program—
Potential endocrine disruptors detection; In Vitro test methods; alternative methods validation, 33171–33172

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Order applications—
Diamond Hill Funds et al., 33213–33216
Regulatory responsibility allocation program:
National Association of Securities Dealers, Inc., et al.; correction, 33231
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 33216–33217

Small Business Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33217–33218
Disaster loan areas:
Alabama, 33218
Georgia, 33218–33219
Illinois, 33219
Mississippi, 33219
Oklahoma, 33219
Tennessee, 33219–33220
Meetings:
Regulatory Fairness Boards—
Region V; hearing, 33220

Region VII; hearing, 33220

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33172–33173
Federal agency urine drug testing; certified laboratories meeting minimum standards, list, 33173–33175
Grants and cooperative agreements; availability, etc.:
Mental Health Services Center—
Comprehensive Community Mental Health Services Program for Children and Their Families, 33175
Reports and guidance documents; availability, etc.:
Appeals policy; replacement with applicant inquiry process for grants and cooperative agreements, 33176

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Colorado, 33032–33035
North Dakota, 33035–33037
Pennsylvania, 33037–33039

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Dallas Area Rapid Transit, 33225
Regional Rail Right of Way Co., 33225–33226

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service

Veterans Affairs Department
PROPOSED RULES
Board of Veterans Appeals:
Appeals regulations and rules of practice—
Representative services withdrawal; notice procedures, 33040–33041
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33226–22230

Western Area Power Administration
NOTICES
Power rate adjustments:
Loveland Area Projects, 33119–33120
Pick-Sloan Missouri Basin Program, Eastern Division, 33120–33121

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 33233–33282

Part III
Environmental Protection Agency, 33283–33316

Part IV
Education Department, 33317–33323

Part V
Defense Department; General Services Administration; National Aeronautics and Space Administration, 33325–33327

Part VI
Defense Department; General Services Administration; National Aeronautics and Space Administration, 33329–33330

Part VII
Education Department, 33331–33333

Part VIII
Executive Office of the President, Presidential Documents, 33335–33338

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

9 CFR

Proposed Rules:

93 33028

10 CFR

765 32955

12 CFR

703 32958
742 32958

14 CFR

39 (2 documents) 32967, 32968
71 (2 documents) 33231

Proposed Rules:

39 33030

19 CFR

201 32971
204 32971
206 32971
207 32971
210 32971
212 32971

21 CFR

201 32979
349 32981
878 32983

28 CFR

802 32985

30 CFR

Proposed Rules:

906 33032
934 33035
938 33037

33 CFR

165 (3 documents) 32996, 32998

38 CFR

Proposed Rules:

20 33040

40 CFR

52 (8 documents) 33000, 33002, 33005, 33008, 33010, 33012, 33014, 33018

Proposed Rules:

52 (6 documents) 33041, 33042, 33043
82 33284

47 CFR

2 33020
97 33020

Proposed Rules:

2 33043

48 CFR

2 33231
32 33231
52 33231
252 33026

Proposed Rules:

15 33330
31 33326
52 33326
206 33057

50 CFR

Proposed Rules:

17 (2 documents) 33058, 33234

Rules and Regulations

Federal Register
Vol. 68, No. 106
Tuesday, June 3, 2003

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

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DEPARTMENT OF ENERGY

10 CFR Part 765

RIN 1901–AA88

Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Final rule; Technical and administrative amendments.

SUMMARY: The Department of Energy (DOE) adopts several technical and administrative amendments to its procedural regulations governing the reimbursement of remedial action costs at active uranium and thorium processing sites. Since it was enacted in 1992, the original legislation authorizing the program has been amended four times to increase the amounts authorized for reimbursement and to make technical changes. Today's regulatory amendments reflect the legislative amendments and make other technical corrections that have been identified since the original rule was issued. None of the amendments raise substantive issues or represent changes in policy.

DATES: This rule will be effective July 3, 2003.

FOR FURTHER INFORMATION CONTACT: David E. Mathes, Office of Environmental Management, EM–30, U.S. Department of Energy, Germantown, Maryland 20874–1290. Telephone: (301) 903–7222. Internet: *david.mathes@em.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

The Secretary of Energy has approved today's technical and administrative regulatory amendments in order to conform 10 CFR part 765 to legislative amendments to Title X of the Energy Policy Act of 1992 (sections 1001–1004 of Pub. L. 102–486) and the need to make other corrections to the original rule published on May 23, 1994 (59 FR 26714). Congress has amended the original legislation four times since it was enacted on October 24, 1992. In 1996, Public Law 104–259 amended Title X to increase the authorized reimbursement amounts for uranium and thorium licensees from $270 million and $40 million to $350 million and $65 million, respectively, for an aggregate authorized reimbursement amount of $415 million; and to increase the maximum amount that may be reimbursed to uranium licensees per dry short ton of Federal-related byproduct material from $5.50 to $6.25. In 1998, Public Law 105–388 further amended Title X to increase the authorized reimbursement amount for the thorium licensee from $65 million to $140 million, for an aggregate authorized reimbursement amount to uranium and thorium licensees of $490 million. In 2000, Public Law 106–317 amended Title X to change the date for determining the availability of excess funds for reimbursement to uranium licensees from July 31, 2005, to December 31, 2008; to change the date after which work must be completed in accordance with an approved plan for subsequent remedial action to be eligible for reimbursement from December 31, 2002, to December 31, 2007; and to eliminate the requirement for the Department to place certain reimbursement funds in escrow. In 2002, Public Law 107–222 amended Title X to increase the authorized reimbursement amount for the thorium licensee from $140 million to $365 million, for an aggregate authorized reimbursement amount to uranium and thorium licensees of $715 million.

Part 765 is amended in several places to reflect these statutory provisions. Other technical corrections to the original rule are discussed in the following paragraphs.

Section 765.21(e) is revised to provide a licensee with an additional opportunity to provide reasonable documentation, as specified in § 765.20, for claims or portions of claims that DOE has denied during the claim year. The revised rule now gives a licensee 45 days after DOE issues a written decision to deny the claim, in which to provide the documentation for DOE reconsideration of the claim. If a licensee chooses not to submit the documentation, the licensee still has the right to file a formal appeal to the DOE's claim denial in accordance with § 765.22. If a licensee chooses to submit the documentation, DOE will consider whether the documentation results in the DOE's reversal of its initial decision to deny the claim and will inform the licensee of the DOE's subsequent decision. A licensee may also appeal that decision in accordance with § 765.22. By providing this additional opportunity to a licensee, DOE believes that both DOE and the licensee may save time and money by minimizing the number of appeals.

Section 765.23 is amended to indicate the new address for obtaining copies of the DOE status report on the reimbursement program.

Section 765.30(b) presents the procedure for submitting a plan for subsequent remedial action. The original rule indicated that licensees may submit this plan any time after January 1, 2000, but no later than December 31, 2001. Because Congress changed the date after which work must be completed in accordance with an approved plan for subsequent remedial action to be eligible for reimbursement from December 31, 2002, to December 31, 2007, this final rule correspondingly changes the dates for submitting a plan to DOE to any time after January 1, 2005, but no later than December 31, 2006.

Section 765.30(d) outlines the process for resubmitting a revised plan for subsequent remedial action if the original plan is rejected by DOE. The original rule indicated that a licensee may continue to submit revised plans for subsequent remedial action until DOE approves a plan, or September 30, 2002, whichever occurs first. This final rule changes the September 30, 2002, deadline to September 30, 2007, to correspond with the new statutory deadline for making reimbursements in accordance with a subsequent plan for remedial action.

Section 765.30(e) presents the procedures for determining the maximum amounts for which licensees may be eligible for reimbursement for work performed as described in their plans for subsequent remedial action submitted to and approved by DOE. The original rule indicated that a licensee is

eligible for the lesser of two amounts: (1) The total cost of remedial action multiplied by the Federal reimbursement ratio; or (2) $5.50, as adjusted for inflation, multiplied by the number of Federal-related dry short tons of byproduct material. As drafted, the original rule could have been construed to apply the per dry short ton limit to both uranium and thorium licensees. Since Title X (42 U.S.C. § 2296a(b)(2)(A)) limits the applicability of the per dry short ton limit to uranium licensees, this final rule amends § 765.30(e)(2) to clarify that the per dry short ton limit only applies to uranium licensees.

In accordance with § 765.30(b), because licensees' plans for subsequent remedial action are now due no later than December 31, 2006, this final rule amends § 765.30(e)(2) to clarify that the potential additional reimbursement for which a licensee may be entitled will be adjusted after the approval of claims for work performed through December 31, 2007, to account for the actual approved costs of work performed through 2007.

As originally prescribed, § 765.31(a) outlined the procedures for designating specific amounts on deposit in the Uranium Enrichment Decontamination and Decommissioning Fund established at the United States Department of the Treasury for reimbursement of costs incurred in accordance with an approved plan for subsequent remedial action. The purpose of this paragraph was to implement the original requirement of § 1001(b)(1)(B)(ii) of Pub. L. 102–486 that funds be placed in escrow not later than December 31, 2002, in accordance with an approved plan for subsequent remedial action. Because Pub. L. 106–317 amended the original legislation by striking the requirement to place funds in escrow, this final rule removes this paragraph and renumbers the subsequent paragraphs in this section.

II. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be ''a significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' (61 FR 4729, February 7, 1996) imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. There is no legal requirement to propose today's rule for public comment, and therefore, the Regulatory Flexibility Act does not apply to this rulemaking proceeding.

D. Review Under the Paperwork Reduction Act

No new collection of information or recordkeeping requirements is imposed by this final rule. Accordingly, no clearance by OMB is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

E. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

F. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR parts 1500—1508), DOE has established guidelines for compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). This rule makes technical corrections to procedures for the reimbursement of eligible remedial action costs incurred by licensees at active uranium and thorium processing sites. Implementation of this rule will not affect the legally required cleanup of the sites or result in any other environmental impacts. The Department has therefore determined that this rule is covered under the Categorical Exclusion found at paragraph A6 of Appendix A to subpart D, 10 CFR part 1021, which applies to the establishment of procedural rulemakings such as procedures for the review and approval of applications for grants and cooperative agreements. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulations on States, local, and tribal governments and the private sector. DOE has determined that today's regulatory action does not impose a Federal mandate on State, local, or tribal governments or on the private sector.

H. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of the rule prior to its effective date. The report will state that it has been

determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(3).

List of Subjects in 10 CFR Part 765

Radioactive materials, Reclamation, Reporting and record keeping requirements, Uranium.

Issued in Washington, DC, on May 23, 2003.

Jessie Hill Roberson,

Assistant Secretary for Environmental Management.

■ For the reasons set forth in the preamble, part 765 of chapter III of title 10 of the Code of Federal Regulations is amended as set forth below.

PART 765—REIMBURSEMENT FOR COSTS OF REMEDIAL ACTION AT ACTIVE URANIUM AND THORIUM PROCESSING SITES

■ 1. The authority citation for part 765 is revised to read as follows:

Authority: 42 U.S.C. 2296a *et seq.*

■ 2. In the table below, for each section indicated in the left column remove the language indicated in the middle column and add in its place the language indicated in the right column.

Section	Remove	Add
765.2(c)	''December 31, 2002''	''December 31, 2007''
765.2(e)	''$5.50''	''$6.25''
765.2(f)	''$270 million''	''$350 million''
765.2(g)	''$40 million''	''$365 million''
765.2(i)	''$310 million''	''$715 million''
765.11(b)	''December 31, 2002''	''December 31, 2007''
765.11(c)(1)	''$5.50''	''$6.25''
765.11(c)(2)	''$270 million''	''$350 million''
765.11(c)(3)	''$40 million''	''$365 million''
765.12(a)	a. ''$5.50''	a. ''$6.25''
	b. ''$270 million''	b. ''$350 million''
	c. ''$40 million''	c. ''$365 million''
	d. ''$310 million''	d. ''$715 million''
765.12(c)	''$5.50''	''$6.25''
765.23	''Uranium Mill Tailings Remedial Action Project Office, 2155 Louisiana NE., Suite 10000, Albuquerque, NM 87110''.	''National Nuclear Security Administration Service Center, Office of Technical Services, Environmental Programs Department, P.O. Box 5400, Albuquerque, NM 87185–5400''
765.30(b)	a. ''December 31, 2002''	a. ''December 31, 2007''
	b. ''January 1, 2000''	b. ''January 1, 2005''
	c. ''December 31, 2001''	c. ''December 31, 2006''
765.30(b)(2)	''December 31, 2002''	''December 31, 2007''
765.30(d)	a. ''September 30, 2002''	a. ''September 30, 2007''
	b. ''December 31, 2002''	b. ''December 31, 2007''
765.32(a)	''July 31, 2005''	''December 31, 2008''
765.32(c)	''$5.50''	''$6.25''

■ 3. In §765.3, the definitions are amended by revising the introductory text and paragraph (2) of *Maximum reimbursement amount* or *maximum reimbursement ceiling* and *Plan for subsequent remedial action* to read as follows:

§ 765.3 Definitions.

* * * * *

Maximum reimbursement amount or maximum reimbursement ceiling means the smaller of the following two quantities:

* * * * *

(2) $6.25, as adjusted for inflation, multiplied by the number of Federal-related dry short tons of byproduct material.

* * * * *

Plan for subsequent remedial action means a plan approved by the Department which includes an estimated total cost and schedule for remedial action, and all applicable requirements of remedial action established by NRC or an Agreement State to be performed after December 31, 2007, at an active uranium or thorium processing site.

* * * * *

■ 4. In §765.21, paragraph (e) is revised to read as follows:

§ 765.21 Procedures for processing reimbursement claims.

* * * * *

(e) A written decision regarding the Department's determination to approve, approve in part, or deny a claim will be provided to the licensee within 10 days of completion of the claim review. Within 45 days after the Department's issuance of a written decision to deny the claim due to inadequate documentation, the licensee may request the Department to reconsider its decision if the licensee provides reasonable documentation in accordance with § 765.20. If a licensee chooses not to submit the documentation, the licensee has the right to file a formal appeal to a claim denial in accordance with § 765.22. If a licensee chooses to submit the documentation, the Department will consider whether the documentation results in the Department's reversal of the initial decision to deny the claim and will inform the licensee of the Department's subsequent decision. The licensee may appeal that decision in accordance with § 765.22.

* * * * *

■ 5. In § 765.30, paragraph (e)(2) is revised to read as follows:

§ 765.30 Reimbursement of costs incurred in accordance with a plan for subsequent remedial action.

* * * * *

(e) * * *

(1) * * *

(2) For the uranium site licensees only, $6.25, as adjusted for inflation, multiplied by the number of Federal-related dry short tons of byproduct material. For all licensees, the

Department shall subtract from the maximum reimbursement amount any reimbursement already approved to be paid to the licensee. The resulting sum shall be the potential additional reimbursement to which the licensee may be entitled. This resulting sum will be adjusted after the approval of claims for work performed through December 31, 2007, to reflect the actual approved costs of work performed through that date.

§ 765.31 [Amended]

■ 6. Section 765.31 is amended by removing paragraph (a) and redesignating paragraphs (b) through (d) as paragraphs (a) through (c).

[FR Doc. 03–13858 Filed 6–2–03; 8:45 am]

BILLING CODE 6450–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 703 and 742

Investment and Deposit Activities and Regulatory Flexibility Program

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its rule regarding the investment activities of Federal Credit Unions (FCUs). The amendments clarify and reformat the rule to make it easier to read and locate information. The amendments expand FCU investment authority to include purchasing equity-linked options for certain purposes and exempt RegFlex eligible FCUs from several investment restrictions. NCUA is also amending the Regulatory Flexibility Program to conform to the revisions to the investment rule.

DATES: The final rule is effective July 3, 2003.

FOR FURTHER INFORMATION CONTACT: Scott Hunt, Senior Investment Officer, Office of Strategic Program Support and Planning (OSPSP) at the above address or telephone (703) 518–6620; Dan Gordon, Senior Investment Officer, OSPSP at the above address or telephone; Kim Iverson, Program Officer, Office of Examination and Insurance, at the above address or telephone (703) 518–6360; or Frank Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

NCUA identified part 703 of its rules as in need of revision. To that end, NCUA issued an advance notice of proposed rulemaking (ANPR) on October 18, 2001. 66 FR 54168 (October 26, 2001). After considering the comments to the ANPR submitted by 38 commenters, NCUA issued a proposed rule on December 19, 2002. 67 FR 78996 (December 27, 2002). NCUA received 14 comment letters regarding the proposed rule: five from FCUs, one from a State credit union, five from financial services entities, and three from credit union trade organizations. The comments were generally supportive of the proposal.

B. Summary of Comments

1. Broker-dealers and Safekeeping of Investments

Throughout the rulemaking process, NCUA has expressed concern about the purchase of some brokered certificates of deposit (CDs). Deceptive practices or outright fraud on the part of some broker-dealers and safekeepers have caused losses for FCUs. NCUA does not believe, however, that more stringent standards on broker-dealers or safekeepers, such as those contemplated by the ANPR, would prevent losses. NCUA believes continued guidance to FCUs and prudent due diligence by FCUs is the best course of action. Therefore, NCUA is not making any substantive changes to broker-dealer and safekeeping requirements in this regard. The commenters generally supported this position.

The proposed rule permits the use of depository institutions whose broker-dealer activities are regulated by a State regulatory agency. This provides FCUs with greater access to broker-dealers. NCUA also believes additional broker-dealer competition promotes improved service, better execution, and reduced costs. The commenters supported this proposal. The Board adopts this proposed revision in the final rule.

Former § 703.50(c) exempts CD finders from the broker-dealer requirements. It was always NCUA's intent to carry this exemption forward in proposed § 703.8 as indicated in the preamble to the proposed rule. 67 FR 78996, 78996–97 (December 27, 2002). Specifically, if an FCU purchases a CD or share certificate directly from a bank, credit union, or other depository institution that issues the certificate, the FCU will not be bound by the broker-dealer requirements. This exemption was inadvertently omitted in the regulatory language in § 703.8 of the proposed rule through a clerical error. As stated in the proposal's preamble, NCUA indicated it was making no changes to the broker-dealer section of the rule in this regard. Thus, the inclusion of this exemption in the final rule will not change the requirements pertaining to the use of broker-dealers.

To be consistent with the broker-dealer requirements, the proposed rule added a due diligence requirement that calls for an FCU to review a safekeeper's financial condition, in addition to its registration status, and retain the documentation used to approve a safekeeper. NCUA believes these requirements represent prudent, minimum practices that FCUs should follow when evaluating a safekeeper. In addition, the proposed rule permitted State-regulated trust companies to be safekeepers for FCUs. NCUA recognizes these firms can provide a sound alternative for FCUs.

The commenters overwhelmingly concurred with this aspect of the proposed rule. NCUA adopts this proposal in the final rule.

2. Expanded Investment Authorities

The Federal Credit Union Act (Act) enumerates FCU investment powers. 12 U.S.C. 1757(7), (8), and (15). NCUA has adopted regulatory prohibitions against certain investments and investment activities permitted by the Act on the basis of safety and soundness concerns. In revising the rule, NCUA has explored ways to expand FCU investment powers. Generally, those investments currently prohibited by regulation exhibit high risks or are unsuitable for many FCUs, such as stripped mortgage-backed securities or variable rate investments tied to non-domestic interest rates.

As one means of expanding investment powers, the proposed rule permits some FCUs to purchase commercial mortgage related securities (CMRS), subject to certain restrictions. Specifically, the proposed rule limits the purchase of CMRS, which are not otherwise permitted by § 107(7)(E) of the Act, 12 U.S.C. 1757(7)(E), to RegFlex eligible FCUs. 12 CFR part 742. Further, a RegFlex eligible FCU may purchase CMRS if the CMRS: (1) Are rated in one of the two highest rating categories by at least one nationally-recognized statistical rating organization; (2) otherwise meet the definitions of mortgage related security as defined in 15 U.S.C. 78c(a)(41) and CMRS as defined in proposed § 703.2; and (3) have an underlying pool of loans containing more than 50 loans with no one loan representing more than 10 percent of the pool. A RegFlex eligible FCU is limited to purchasing CMRS in an aggregate amount of up to 50 percent of its net worth. Most commenters supported NCUA's proposal to permit RegFlex eligible FCUs to purchase

CMRS with certain limitations. NCUA adopts this proposal as final.

A few commenters suggested NCUA should adopt additional requirements or restrictions to address sound risk management practices for CMRS. NCUA believes no changes are necessary in this regard, but reminds FCUs that former § 703.30 already requires FCUs to develop investment policies that address credit, liquidity, interest rate, and concentration risks. 12 CFR 703.30. The policy must also stipulate the characteristics of any investments that are suitable for the FCU. These requirements carry over to the final rule. Thus, FCUs that purchase CMRS must develop sound risk management policies and construct limits that represent the FCU board's risk tolerance.

NCUA also proposed to permit FCUs to purchase equity options for the sole purpose of offering dividends based on the performance of an equity index. This proposal evolved from the experience gained monitoring an investment pilot program. The pilot program enabled NCUA to review the demands and risks associated with such a program before developing a regulation. Commenters agreed that the proposed regulatory language was prudent and would not pose any undue burden on FCUs. NCUA adopts the proposal.

NCUA has determined that other currently prohibited investments should remain prohibited due to the complexity of the instruments or the difficulty in managing their associated risks. However, NCUA encourages FCUs that believe they possess the skills and resources to manage such investments to apply for a pilot program. The commenters generally supported this approach to expanding investment powers. NCUA remains committed to publishing standards for pilot programs that have been approved to facilitate future applications. These guidelines will be available on the NCUA website or by contacting the appropriate NCUA regional office. Additionally, investment pilot program applicants are encouraged to submit alternative proposals for NCUA's consideration.

3. Discretionary Control of Investments and Investment Advisers

Former § 703.40(c)(6) authorizes an FCU to delegate to an outside third party discretionary control over the purchase and sale of investments, up to 100 percent of the FCU's net capital at the time of delegation. 12 CFR 703.40(c)(6). RegFlex eligible FCUs are exempt from this cap. 12 CFR 742.4.

NCUA proposed that FCUs conduct an annual evaluation of the amount of investments under discretionary control. Further, the proposal required an FCU to notify its board of directors and the appropriate regional director if the amount under discretionary control exceeds the cap at the time of the annual evaluation. An FCU must develop a plan to bring itself into compliance with the cap within a reasonable period of time.

Generally, commenters supported this proposal, although a few commenters suggested that NCUA permit all FCUs to exceed the cap, not just RegFlex eligible FCUs. These commenters stated that FCUs not meeting RegFlex eligibility may benefit most from having an investment professional manage an FCU's investments. NCUA has determined not to lift the cap for FCUs ineligible for RegFlex. NCUA notes that an FCU currently not meeting RegFlex eligibility requirements may petition its regional director for a RegFlex designation. The Board adopts the proposed revisions.

Commenters also questioned whether it was reasonable for an FCU board to be required to notify the appropriate regional director of any violation of the cap within five business days of exceeding the cap. NCUA believes this is reasonable. The regulation stipulates that an FCU only notify its regional director within five business days. An FCU is not required to submit a plan to bring it into compliance within this time frame. An FCU must develop a plan within a reasonable period of time after notification. A reasonable period of time will be decided by the regional director after considering an FCU's circumstances, including the materiality of the breach and the risk to the FCU's earnings and capital.

In response to a commenter's question, NCUA clarifies that mutual funds are not included in the calculation of funds under discretionary control.

As part of the background check of an investment advisor, the proposed rule required that an FCU analyze the background of the firm for whom an investment adviser works, in addition to the investment adviser and his or her associated personnel. No commenters objected to this requirement. This proposed change is adopted in the final rule. Several commenters urged NCUA to clarify the meaning of ''associated personnel'' as it is used in proposed §§ 703.5 and 703.8. NCUA notes that the proposed rule included a definition for ''associated personnel'' in proposed § 703.2 and it is adopted in the final.

4. Borrowing Repurchase Transaction

Borrowing repurchase transactions, formerly referred to as reverse repurchase transactions, enable an FCU to sell securities under an agreement to repurchase in order to borrow funds. 12 CFR 703.100(j). Section 703.100(j)(2) prohibits an FCU from purchasing an investment with the proceeds from a reverse repurchase agreement if the purchased investment matures after the maturity of the reverse repurchase agreement. 12 CFR 703.100(j)(2). NCUA proposed to permit RegFlex eligible FCUs to purchase securities with maturities exceeding the maturity of the borrowing repurchase transaction in an amount not to exceed the FCU's net worth.

Most of the commenters supported the proposal. Three commenters objected to the proposed rule because they believed there should be no restrictions on the maturity of any investment purchased by any FCU. These commenters indicated there are no similar restrictions applicable to other types of borrowing. NCUA believes the limitation is prudent and does not unduly impede any FCU's ability to manage its balance sheet and, therefore, adopts the proposed revision in the final rule.

5. Investment Repurchase Transaction

The proposed rule changed the term ''repurchase transactions'' to ''investment repurchase transactions'' and revised the requirements for investment repurchase transactions to be consistent with those of securities lending transactions. Other than these revisions, the proposal did not make any substantive amendments in this regard. No commenter objected. NCUA adopts the proposed revisions.

6. Securities Lending Transaction

Former § 703.100(k) addresses securities lending transactions and requires an FCU to take a perfected first priority security interest in all collateral the FCU receives. 12 CFR 703.100(k). Proposed § 703.13 removes the word ''perfected'', but still requires a first priority security interest through possession or control of the collateral. In addition, the proposed rule clarifies that an FCU's agent may act in its place in these transactions. No commenter objected. NCUA adopts the proposed revisions as final.

7. Recordkeeping and Generally Accepted Accounting Principles

The Act provides that the accounting principles applicable to reports or statements required to be filed with NCUA by insured credit unions, except

those with total assets of less than $10 million, must be uniform and consistent with generally accepted accounting principles (GAAP). 12 U.S.C. 1782a(a)(6)(C). NCUA proposed to revise part 703 to clarify that FCUs having total assets of $10 million or more must comply with all GAAP provisions related to the accounting principles applicable to reports or statements required to be filed with NCUA, not just selected ones. While not mandatory for FCUs with total assets of less than $10 million, NCUA encourages them also to comply with GAAP or to account for their investments consistent with the NCUA Accounting Manual for Federal Credit Unions, which can be found on the NCUA website. No commenters objected. NCUA adopts this amendment.

8. Net Worth

To be consistent with changes in the Act and NCUA's rules, NCUA proposed to replace the term ''net capital'' with ''net worth.'' No commenter objected to this change. NCUA adopts it in the final rule.

9. Format

The proposal changed the question and answer format to a more traditional format to make the rule easier to read and more conducive to finding information quickly. Many commenters supported this amendment and no commenters objected to it. NCUA adopts it in the final rule.

10. State-Chartered Credit Unions

One commenter noted that State-chartered credit unions that make investments that are impermissible for FCUs must reserve for those non-conforming investments. 12 CFR 741.3. The commenter questioned whether State-chartered credit unions need to reserve for non-conforming investments that are permissible for RegFlex eligible FCUs. NCUA believes that, if a State-chartered credit union meets all the criteria for RegFlex eligibility as detailed in § 742.2, then it is not required to reserve for non-conforming investments that are permissible for RegFlex eligible FCUs. 12 CFR 742.2. If at any time a State-chartered credit union fails to meet the RegFlex eligibility criteria, then it must reserve for any non-conforming investments it owns.

Another commenter urged NCUA to revise proposed § 703.1, the purpose and scope section, to clarify that State-chartered credit unions, in addition to complying with the reserve requirement for non-conforming investments in § 741.3, must also comply with the requirements of part 703 concerning transacting business with corporate credit unions, as provided in § 741.219. 12 CFR 741.219. NCUA believes it will be helpful to include this reference in the purpose and scope section and is including it in the final rule as a technical correction.

11. Other Technical Corrections

Proposed § 703.16(a) incorrectly references § 703.14(h). The correct and intended reference, reflected in the final rule, is to § 703.14(g).

Proposed § 703.3(g) stated that only ''*those individuals with investment authority* may be voting members of an investment-related committee.'' (Emphasis added.) The former version of the rule requires that only ''*officials and employees of the Federal credit union* may be voting members of an investment-related committee.'' (Emphasis added.) This was an unintended change in language. NCUA received no comment on this but wishes to clarify that the prior language in part 703 remains unchanged as intended by the proposal.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under $1 million in assets). This rule clarifies the investment authority granted to FCUs and conforms the Regulatory Flexibility Program to the investment rule. The final amendments will not have a significant economic impact on a substantial number of small credit unions and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The current Office of Management and Budget control number assigned to part 703 is 3133–0133. NCUA has determined that the final rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on State and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The final rule would not have substantial direct effects on the States, on the connection between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this final rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects

12 CFR part 703

Credit unions, Investments.

12 CFR part 742

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on May 22, 2003.

Becky Baker,

Secretary of the Board.

■ Accordingly, NCUA amends 12 CFR parts 703 and 742 as follows:

PART 703—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 703 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15).

■ 2. Revise part 703 to read as follows:

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

Sec.

703.1 Purpose and scope.
703.2 Definitions.
703.3 Investment policies.

703.4 Recordkeeping and documentation requirements.
703.5 Discretionary control over investments and investment advisers.
703.6 Credit analysis.
703.7 Notice of non-compliant investments.
703.8 Broker-dealers.
703.9 Safekeeping of investments.
703.10 Monitoring non-security investments.
703.11 Valuing securities.
703.12 Monitoring securities.
703.13 Permissible investment activities.
703.14 Permissible investments.
703.15 Prohibited investment activities.
703.16 Prohibited investments.
703.17 Conflicts of interest.
703.18 Grandfathered investments.
703.19 Investment pilot program.

§ 703.1 Purpose and scope.

(a) This part interprets several of the provisions of Sections 107(7), 107(8), and 107(15) of the Federal Credit Union Act (Act), 12 U.S.C. 1757(7), 1757(8), 1757(15), which list those securities, deposits, and other obligations in which a Federal credit union may invest. Part 703 identifies certain investments and deposit activities permissible under the Act and prescribes regulations governing those investments and deposit activities on the basis of safety and soundness concerns. Additionally, part 703 identifies and prohibits certain investments and deposit activities. Investments and deposit activities that are permissible under the Act and not prohibited or otherwise regulated by part 703 remain permissible for Federal credit unions.

(b) This part does not apply to:

(1) Investment in loans to members and related activities, which is governed by §§ 701.21, 701.22, 701.23, and part 723 of this chapter;

(2) The purchase of real estate-secured loans pursuant to Section 107(15)(A) of the Act, which is governed by § 701.23 of this chapter;

(3) Investment in credit union service organizations, which is governed by part 712 of this chapter;

(4) Investment in fixed assets, which is governed by § 701.36 of this chapter;

(5) Investment by corporate credit unions, which is governed by part 704 of this chapter; or

(6) Investment activity by State-chartered credit unions, except as provided in § 741.3(a)(3) and § 741.219 of this chapter.

§ 703.2 Definitions.

The following definitions apply to this part:

Adjusted trading means selling an investment to a counterparty at a price above its current fair value and simultaneously purchasing or committing to purchase from the counterparty another investment at a price above its current fair value.

Associated personnel means a person engaged in the investment banking or securities business who is directly or indirectly controlled by a National Association of Securities Dealers (NASD) member, whether or not this person is registered or exempt from registration with NASD. Associated personnel includes every sole proprietor, partner, officer, director, or branch manager of any NASD member.

Banker's acceptance means a time draft that is drawn on and accepted by a bank and that represents an irrevocable obligation of the bank.

Bank note means a direct, unconditional, and unsecured general obligation of a bank that ranks equally with all other senior unsecured indebtedness of the bank, except deposit liabilities and other obligations that are subject to any priorities or preferences.

Borrowing repurchase transaction means a transaction in which the Federal credit union agrees to sell a security to a counterparty and to repurchase the same or an identical security from that counterparty at a specified future date and at a specified price.

Call means an option that gives the holder the right to buy the underlying security at a specified price during a fixed time period.

Collective investment fund means a fund maintained by a national bank under 12 CFR part 9 (Comptroller of the Currency's regulations).

Commercial mortgage related security means a mortgage related security, as defined below, except that it is collateralized entirely by commercial real estate, such as a warehouse or office building, or a multi-family dwelling consisting of more than four units.

Counterparty means the party on the other side of the transaction.

Custodial agreement means a contract in which one party agrees to exercise ordinary care in protecting the securities held in safekeeping for others.

Delivery versus payment means payment for an investment must occur simultaneously with its delivery.

Deposit note means an obligation of a bank that is similar to a certificate of deposit but is rated.

Derivatives means financial instruments or other contracts whose value is based on the performance of an underlying financial asset, index or other investment that have the three following characteristics:

(1) It has one or more underlyings and one or more notional amounts or payment provisions or both that determine the amount of the settlement or settlements, and, in some cases, whether or not a settlement is required;

(2) It requires no initial net investment or an initial net investment that is less than would be required for other types of contracts that would be expected to have a similar response to changes in market factors; and

(3) Its terms require or permit net settlement, it can readily be settled net by means outside the contract, or it provides for delivery of an asset that puts the recipient in a position not substantially different from net settlement.

Embedded option means a characteristic of an investment that gives the issuer or holder the right to alter the level and timing of the cash flows of the investment. Embedded options include call and put provisions and interest rate caps and floors. Since a prepayment option in a mortgage is a type of call provision, a mortgage-backed security composed of mortgages that may be prepaid is an example of an investment with an embedded option.

Eurodollar deposit means a U.S. dollar-denominated deposit in a foreign branch of a United States depository institution.

European financial options contract means an option that can be exercised only on its expiration date.

Fair value means the amount at which an instrument could be exchanged in a current, arms-length transaction between willing parties, as opposed to a forced or liquidation sale.

Financial options contract means an agreement to make or take delivery of a standardized financial instrument upon demand by the holder of the contract as specified in the agreement.

Immediate family member means a spouse or other family member living in the same household.

Industry-recognized information provider means an organization that obtains compensation by providing information to investors and receives no compensation for the purchase or sale of investments.

Investment means any security, obligation, account, deposit, or other item authorized for purchase by a Federal credit union under Sections 107(7), 107(8), or 107(15) of the Act, or this part, other than loans to members.

Investment repurchase transaction means a transaction in which an investor agrees to purchase a security from a counterparty and to resell the same or an identical security to that counterparty at a specified future date and at a specified price.

Maturity means the date the last principal amount of a security is

scheduled to come due and does not mean the call date or the weighted average life of a security.

Mortgage related security means a security as defined in Section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41)), *e.g.*, a privately-issued security backed by first lien mortgages secured by real estate upon which is located a dwelling, mixed residential and commercial structure, residential manufactured home, or commercial structure, that is rated in one of the two highest rating categories by at least one nationally-recognized statistical rating organization.

Mortgage servicing rights means a contractual obligation to perform mortgage servicing and the right to receive compensation for performing those services. Mortgage servicing is the administration of a mortgage loan, including collecting monthly payments and fees, providing recordkeeping and escrow functions, and, if necessary curing defaults and foreclosing.

Negotiable instrument means an instrument that may be freely transferred from the purchaser to another person or entity by delivery, or endorsement and delivery, with full legal title becoming vested in the transferee.

Net worth means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles and as further defined in § 702.2(f) of this chapter.

Official means any member of a Federal credit union's board of directors, credit committee, supervisory committee, or investment-related committee.

Ordinary care means the degree of care, which an ordinarily prudent and competent person engaged in the same line of business or endeavor should exercise under similar circumstances.

Pair-off transaction means an investment purchase transaction that is closed or sold on, or before the settlement date. In a pair-off, an investor commits to purchase an investment, but then pairs-off the purchase with a sale of the same investment before or on the settlement date.

Put means a financial options contract that entitles the holder to sell, entirely at the holder's option, a specified quantity of a security at a specified price at any time until the stated expiration date of the contract.

Registered investment company means an investment company that is registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a). Examples of registered investment companies are mutual funds and unit investment trusts.

Regular way settlement means delivery of a security from a seller to a buyer within the time frame that the securities industry has established for immediate delivery of that type of security. For example, regular way settlement of a Treasury security includes settlement on the trade date (cash), the business day following the trade date (regular way), and the second business day following the trade date (skip day).

Residual interest means the remainder cash flows from collateralized mortgage obligations/real estate mortgage investment conduits (CMOs/REMICs), or other mortgage-backed security transaction, after payments due bondholders and trust administrative expenses have been satisfied.

Securities lending means lending a security to a counterparty, either directly or through an agent, and accepting collateral in return.

Security means a share, participation, or other interest in property or in an enterprise of the issuer or an obligation of the issuer that:

(1) Either is represented by an instrument issued in bearer or registered form or, if not represented by an instrument, is registered in books maintained to record transfers by or on behalf of the issuer;

(2) Is of a type commonly dealt in on securities exchanges or markets or, when represented by an instrument, is commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

(3) Either is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations.

Senior management employee means a Federal credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager), an assistant chief executive officer, and the chief financial officer.

Small business related security means a security as defined in Section 3(a)(53) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(53), *e.g.*, a security that is rated in 1 of the 4 highest rating categories by at least one nationally recognized statistical rating organization, and represents an interest in one or more promissory notes or leases of personal property evidencing the obligation of a small business concern and originated by an insured depository institution, insured credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority, or a finance company or leasing company. This definition does not include Small Business Administration securities permissible under § 107(7) of the Act.

Weighted average life means the weighted-average time to the return of a dollar of principal, calculated by multiplying each portion of principal received by the time at which it is expected to be received (based on a reasonable and supportable estimate of that time) and then summing and dividing by the total amount of principal.

When-issued trading of securities means the buying and selling of securities in the period between the announcement of an offering and the issuance and payment date of the securities.

Yankee dollar deposit means a deposit in a United States branch of a foreign bank licensed to do business in the State in which it is located, or a deposit in a State-chartered, foreign controlled bank.

Zero coupon investment means an investment that makes no periodic interest payments but instead is sold at a discount from its face value. The holder of a zero coupon investment realizes the rate of return through the gradual appreciation of the investment, which is redeemed at face value on a specified maturity date.

§ 703.3 Investment policies.

A Federal credit union's board of directors must establish written investment policies consistent with the Act, this part, and other applicable laws and regulations and must review the policy at least annually. These policies may be part of a broader, asset-liability management policy. Written investment policies must address the following:

(a) The purposes and objectives of the Federal credit union's investment activities;

(b) The characteristics of the investments the Federal credit union may make including the issuer, maturity, index, cap, floor, coupon rate, coupon formula, call provision, average life, and interest rate risk;

(c) How the Federal credit union will manage interest rate risk;

(d) How the Federal credit union will manage liquidity risk;

(e) How the Federal credit union will manage credit risk including specifically listing institutions, issuers, and counterparties that may be used, or criteria for their selection, and limits on the amounts that may be invested with each;

(f) How the Federal credit union will manage concentration risk, which can result from dealing with a single or

related issuers, lack of geographic distribution, holding obligations with similar characteristics like maturities and indexes, holding bonds having the same trustee, and holding securitized loans having the same originator, packager, or guarantor;

(g) Who has investment authority and the extent of that authority. Those with authority must be qualified by education or experience to assess the risk characteristics of investments and investment transactions. Only officials or employees of the Federal credit union may be voting members of an investment-related committee;

(h) The broker-dealers the Federal credit union may use;

(i) The safekeepers the Federal credit union may use;

(j) How the Federal credit union will handle an investment that, after purchase, is outside of board policy or fails a requirement of this part; and

(k) How the Federal credit union will conduct investment trading activities, if applicable, including addressing:

(1) Who has purchase and sale authority;

(2) Limits on trading account size;

(3) Allocation of cash flow to trading accounts;

(4) Stop loss or sale provisions;

(5) Dollar size limitations of specific types, quantity and maturity to be purchased;

(6) Limits on the length of time an investment may be inventoried in a trading account; and

(7) Internal controls, including segregation of duties.

§ 703.4 Recordkeeping and documentation requirements.

(a) Federal credit unions with assets of $10,000,000 or greater must comply with all generally accepted accounting principles applicable to reports or statements required to be filed with NCUA. Federal credit unions with assets less than $10,000,000 are encouraged to do the same, but are not required to do so. Federal credit unions with assets less than $10,000,000 may choose to account for their investments consistent with the NCUA Accounting Manual For Federal Credit Unions.

(b) A Federal credit union must maintain documentation for each investment transaction for as long as it holds the investment and until the documentation has been audited in accordance with § 701.12 of this chapter and examined by NCUA. The documentation should include, where applicable, bids and prices at purchase and sale and for periodic updates, relevant disclosure documents or a description of the security from an industry-recognized information provider, financial data, and tests and reports required by the Federal credit union's investment policy and this part.

(c) A Federal credit union must maintain documentation its board of directors used to approve a broker-dealer or a safekeeper for as long as the broker-dealer or safekeeper is approved and until the documentation has been audited in accordance with § 701.12 of this chapter and examined by NCUA.

(d) A Federal credit union must obtain an individual confirmation statement from each broker-dealer for each investment purchased or sold.

§ 703.5 Discretionary control over investments and investment advisers.

(a) Except as provided in paragraph (b) of this section, a Federal credit union must retain discretionary control over its purchase and sale of investments. A Federal credit union has not delegated discretionary control to an investment adviser when the Federal credit union reviews all recommendations from investment advisers and is required to authorize a recommended purchase or sale transaction before its execution.

(b)(1) A Federal credit union may delegate discretionary control over the purchase and sale of investments to a person other than a Federal credit union official or employee:

(i) Provided the person is an investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. 80b); and

(ii) In an amount up to 100 percent of its net worth in the aggregate at the time of delegation.

(2) At least annually, the Federal credit union must adjust the amount of funds held under discretionary control to comply with the 100 percent of net worth cap. The Federal credit union's board of directors must receive notice as soon as possible, but no later than the next regularly scheduled board meeting, of the amount exceeding the net worth cap and notify in writing the appropriate regional director within 5 days after the board meeting. The credit union must develop a plan to comply with the cap within a reasonable period of time.

(3) Before transacting business with an investment adviser, a Federal credit union must analyze his or her background and information available from State or Federal securities regulators, including any enforcement actions against the adviser, associated personnel, and the firm for which the adviser works.

(c) A Federal credit union may not compensate an investment adviser with discretionary control over the purchase and sale of investments on a per transaction basis or based on capital gains, capital appreciation, net income, performance relative to an index, or any other incentive basis.

(d) A Federal credit union must obtain a report from its investment adviser at least monthly that details the investments under the adviser's control and their performance.

§ 703.6 Credit analysis.

A Federal credit union must conduct and document a credit analysis on an investment and the issuing entity before purchasing it, except for investments issued or fully guaranteed as to principal and interest by the U.S. government or its agencies, enterprises, or corporations or fully insured (including accumulated interest) by the National Credit Union Administration or the Federal Deposit Insurance Corporation. A Federal credit union must update this analysis at least annually for as long as it holds the investment.

§ 703.7 Notice of non-compliant investments.

A Federal credit union's board of directors must receive notice as soon as possible, but no later than the next regularly scheduled board meeting, of any investment that either is outside of board policy after purchase or has failed a requirement of this part. The board of directors must document its action regarding the investment in the minutes of the board meeting, including a detailed explanation of any decision not to sell it. The Federal credit union must notify in writing the appropriate regional director of an investment that has failed a requirement of this part within 5 days after the board meeting.

§ 703.8 Broker-dealers.

(a) A Federal credit union may purchase and sell investments through a broker-dealer as long as the broker-dealer is registered as a broker-dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) or is a depository institution whose broker-dealer activities are regulated by a Federal or State regulatory agency.

(b) Before purchasing an investment through a broker-dealer, a Federal credit union must analyze and annually update the following:

(1) The background of any sales representative with whom the Federal credit union is doing business;

(2) Information available from State or Federal securities regulators and securities industry self-regulatory

organizations, such as the National Association of Securities Dealers and the North American Securities Administrators Association, about any enforcement actions against the broker-dealer, its affiliates, or associated personnel; and

(3) If the broker-dealer is acting as the Federal credit union's counterparty, the ability of the broker-dealer and its subsidiaries or affiliates to fulfill commitments, as evidenced by capital strength, liquidity, and operating results. The Federal credit union should consider current financial data, annual reports, reports of nationally-recognized statistical rating agencies, relevant disclosure documents, and other sources of financial information.

(c) The requirements of paragraph (a) of this section do not apply when the Federal credit union purchases a certificate of deposit or share certificate directly from a bank, credit union, or other depository institution.

§ 703.9 Safekeeping of investments.

(a) A Federal credit union's purchased investments and repurchase collateral must be in the Federal credit union's possession, recorded as owned by the Federal credit union through the Federal Reserve Book-Entry System, or held by a board-approved safekeeper under a written custodial agreement that requires the safekeeper to exercise, at least, ordinary care.

(b) Any safekeeper used by a Federal credit union must be regulated and supervised by either the Securities and Exchange Commission, a Federal or State depository institution regulatory agency, or a State trust company regulatory agency.

(c) A Federal credit union must obtain and reconcile monthly a statement of purchased investments and repurchase collateral held in safekeeping.

(d) Annually, the Federal credit union must analyze the ability of the safekeeper to fulfill its custodial responsibilities, as evidenced by capital strength, liquidity, and operating results. The Federal credit union should consider current financial data, annual reports, reports of nationally-recognized statistical rating agencies, relevant disclosure documents, and other sources of financial information.

§ 703.10 Monitoring non-security investments.

(a) At least quarterly, a Federal credit union must prepare a written report listing all of its shares and deposits in banks, credit unions, and other depository institutions, that have one or more of the following features:

(1) Embedded options;

(2) Remaining maturities greater than 3 years; or

(3) Coupon formulas that are related to more than one index or are inversely related to, or multiples of, an index.

(b) The requirement of paragraph (a) of this section does not apply to shares and deposits that are securities.

(c) If a Federal credit union does not have an investment-related committee, then each member of its board of directors must receive a copy of the report described in paragraph (a) of this section. If a Federal credit union has an investment-related committee, then each member of the committee must receive a copy of the report, and each member of the board must receive a summary of the information in the report.

§ 703.11 Valuing securities.

(a) Before purchasing or selling a security, a Federal credit union must obtain either price quotations on the security from at least two broker-dealers or a price quotation on the security from an industry-recognized information provider. This requirement to obtain price quotations does not apply to new issues purchased at par or at original issue discount.

(b) At least monthly, a Federal credit union must determine the fair value of each security it holds. It may determine fair value by obtaining a price quotation on the security from an industry-recognized information provider, a broker-dealer, or a safekeeper.

(c) At least annually, the Federal credit union's supervisory committee or its external auditor must independently assess the reliability of monthly price quotations received from a broker-dealer or safekeeper. The Federal credit union's supervisory committee or external auditor must follow generally accepted auditing standards, which require either re-computation or reference to market quotations.

(d) If a Federal credit union is unable to obtain a price quotation required by this section for a particular security, then it may obtain a quotation for a security with substantially similar characteristics.

§ 703.12 Monitoring securities.

(a) At least monthly, a Federal credit union must prepare a written report setting forth, for each security held, the fair value and dollar change since the prior month-end, with summary information for the entire portfolio.

(b) At least quarterly, a Federal credit union must prepare a written report setting forth the sum of the fair values of all fixed and variable rate securities held that have one or more of the following features:

(1) Embedded options;

(2) Remaining maturities greater than 3 years; or

(3) Coupon formulas that are related to more than one index or are inversely related to, or multiples of, an index.

(c) Where the amount calculated in paragraph (b) of this section is greater than a Federal credit union's net worth, the report described in that paragraph must provide a reasonable and supportable estimate of the potential impact, in percentage and dollar terms, of an immediate and sustained parallel shift in market interest rates of plus and minus 300 basis points on:

(1) The fair value of each security in the Federal credit union's portfolio;

(2) The fair value of the Federal credit union's portfolio as a whole; and

(3) The Federal credit union's net worth.

(d) If the Federal credit union does not have an investment-related committee, then each member of its board of directors must receive a copy of the reports described in paragraphs (a) through (c) of this section. If the Federal credit union has an investment-related committee, then each member of the committee must receive copies of the reports, and each member of the board of directors must receive a summary of the information in the reports.

§ 703.13 Permissible investment activities.

(a) *Regular way settlement and delivery versus payment basis.* A Federal credit union may only contract for the purchase or sale of a security as long as the delivery of the security is by regular way settlement and the transaction is accomplished on a delivery versus payment basis.

(b) *Federal funds.* A Federal credit union may sell Federal funds to an institution described in Section 107(8) of the Act and credit unions, as long as the interest or other consideration received from the financial institution is at the market rate for Federal funds transactions.

(c) *Investment repurchase transaction.* A Federal credit union may enter into an investment repurchase transaction so long as:

(1) Any securities the Federal credit union receives are permissible investments for Federal credit unions, the Federal credit union, or its agent, either takes physical possession or control of the repurchase securities or is recorded as owner of them through the Federal Reserve Book Entry Securities Transfer System, the Federal credit union, or its agent, receives a daily

assessment of their market value, including accrued interest, and the Federal credit union maintains adequate margins that reflect a risk assessment of the securities and the term of the transaction; and

(2) The Federal credit union has entered into signed contracts with all approved counterparties.

(d) *Borrowing repurchase transaction.* A Federal credit union may enter into a borrowing repurchase transaction so long as:

(1) The transaction meets the requirements of paragraph (c) of this section;

(2) Any cash the Federal credit union receives is subject to the borrowing limit specified in Section 107(9) of the Act, and any investments the Federal credit union purchases with that cash are permissible for Federal credit unions; and

(3) The investments referenced in paragraph (d)(2) of this section mature no later than the maturity of the borrowing repurchase transaction.

(e) *Securities lending transaction.* A Federal credit union may enter into a securities lending transaction so long as:

(1) The Federal credit union receives written confirmation of the loan;

(2) Any collateral the Federal credit union receives is a legal investment for Federal credit unions, the Federal credit union, or its agent, obtains a first priority security interest in the collateral by taking physical possession or control of the collateral, or is recorded as owner of the collateral through the Federal Reserve Book Entry Securities Transfer System; and the Federal credit union, or its agent, receives a daily assessment of the market value of the collateral, including accrued interest, and maintains adequate margin that reflects a risk assessment of the collateral and the term of the loan;

(3) Any cash the Federal credit union receives is subject to the borrowing limit specified in Section 107(9) of the Act, and any investments the Federal credit union purchases with that cash are permissible for Federal credit unions and mature no later than the maturity of the transaction; and

(4) The Federal credit union has executed a written loan and security agreement with the borrower.

(f)(1) *Trading securities.* A Federal credit union may trade securities, including engaging in when-issued trading and pair-off transactions, so long as the Federal credit union can show that it has sufficient resources, knowledge, systems, and procedures to handle the risks.

(2) A Federal credit union must record any security it purchases or sells for trading purposes at fair value on the trade date. The trade date is the date the Federal credit union commits, orally or in writing, to purchase or sell a security.

(3) At least monthly, the Federal credit union must give its board of directors or investment-related committee a written report listing all purchase and sale transactions of trading securities and the resulting gain or loss on an individual basis.

§ 703.14 Permissible investments.

(a) *Variable rate investment.* A Federal credit union may invest in a variable rate investment, as long as the index is tied to domestic interest rates and not, for example, to foreign currencies, foreign interest rates, or domestic or foreign commodity prices, equity prices, or inflation rates. For purposes of this part, the U.S. dollar-denominated London Interbank Offered Rate (LIBOR) is a domestic interest rate.

(b) *Corporate credit union shares or deposits.* A Federal credit union may purchase shares or deposits in a corporate credit union, except where the NCUA Board has notified it that the corporate credit union is not operating in compliance with part 704 of this chapter. A Federal credit union's aggregate amount of paid-in capital and membership capital, as defined in part 704 of this chapter, in one corporate credit union is limited to two percent of its assets measured at the time of investment or adjustment. A Federal credit union's aggregate amount of paid-in capital and membership capital in all corporate credit unions is limited to four percent of its assets measured at the time of investment or adjustment.

(c) *Registered investment company.* A Federal credit union may invest in a registered investment company or collective investment fund, as long as the prospectus of the company or fund restricts the investment portfolio to investments and investment transactions that are permissible for Federal credit unions.

(d) *Collateralized mortgage obligation/real estate mortgage investment conduit.* A Federal credit union may invest in a fixed or variable rate collateralized mortgage obligation/real estate mortgage investment conduit.

(e) *Municipal security.* A Federal credit union may purchase and hold a municipal security, as defined in Section 107(7)(K) of the Act, only if a nationally-recognized statistical rating organization has rated it in one of the four highest rating categories.

(f) *Instruments issued by institutions described in Section 107(8) of the Act.* A Federal credit union may invest in the following instruments issued by an institution described in Section 107(8) of the Act:

(1) Yankee dollar deposits;

(2) Eurodollar deposits;

(3) Banker's acceptances;

(4) Deposit notes; and

(5) Bank notes with original weighted average maturities of less than 5 years.

(g) *European financial options contract.* A Federal credit union may purchase a European financial options contract or a series of European financial options contracts only to fund the payment of dividends on member share certificates where the dividend rate is tied to an equity index provided:

(1) The option and dividend rate are based on a domestic equity index;

(2) Proceeds from the options are used only to fund dividends on the equity-linked share certificates;

(3) Dividends on the share certificates are derived solely from the change in the domestic equity index over a specified period;

(4) The options' expiration dates coincide with the maturity date of the share certificate;

(5) The certificate may be redeemed prior to the maturity date only upon the member's death or termination of the corresponding option;

(6) The total costs associated with the purchase of the option is known by the Federal credit union prior to effecting the transaction;

(7) The options are purchased at the same time the certificate is issued to the member.

(8) The counterparty to the transaction is a domestic counterparty and has been approved by the Federal credit union's board of directors;

(9) The counterparty to the transaction:

(i) Has a long-term, senior, unsecured debt rating from a nationally-recognized statistical rating organization of AA− (or equivalent) or better at the time of the transaction, and the contract between the counterparty and the Federal credit union specifies that if the long-term, senior, unsecured debt rating declines below AA− (or equivalent) then the counterparty agrees to post collateral with an independent party in an amount fully securing the value of the option; or

(ii) Posts collateral with an independent party in an amount fully securing the value of the option if the counterparty does not have a long-term, senior unsecured debt rating from a nationally-recognized statistical rating organization.

(10) Any collateral posted by the counterparty is a permissible investment for Federal credit unions and is valued daily by an independent

third party along with the value of the option;

(11) The aggregate amount of equity-linked member share certificates does not exceed the credit union's net worth;

(12) The terms of the share certificate include a guarantee that there can be no loss of principal to the member regardless of changes in the value of the option unless the certificate is redeemed prior to maturity; and

(13) The Federal credit union provides it board of directors with a monthly report detailing at a minimum:

(i) The dollar amount of outstanding equity-linked share certificates;

(ii) Their maturities; and

(iii) The fair value of the options as determined by an independent third party.

§ 703.15 Prohibited investment activities.

Adjusted trading or short sales. A Federal credit union may not engage in adjusted trading or short sales.

§ 703.16 Prohibited investments.

(a) *Derivatives.* A Federal credit union may not purchase or sell financial derivatives, such as futures, options, interest rate swaps, or forward rate agreements, except as permitted under §§ 701.21(i) and 703.14(g) of this chapter;

(b) *Zero coupon investments.* A Federal credit union may not purchase a zero coupon investment with a maturity date that is more than 10 years from the settlement date;

(c) *Mortgage servicing rights.* A Federal credit union may not purchase mortgage servicing rights as an investment but may perform mortgage servicing functions as a financial service for a member as long as the mortgage loan is owned by a member;

(d) A Federal credit union may not purchase a commercial mortgage related security that is not otherwise permitted by Section 107(7)(E) of the Act; and

(e) *Other prohibited investments.* A Federal credit union may not purchase stripped mortgage-backed securities, residual interests in collateralized mortgage obligations/real estate mortgage investment conduits, or small business related securities.

§ 703.17 Conflicts of interest.

(a) A Federal credit union's officials and senior management employees, and their immediate family members, may not receive anything of value in connection with its investment transactions. This prohibition also applies to any other employee, such as an investment officer, if the employee is directly involved in investments, unless the Federal credit union's board of directors determines that the employee's involvement does not present a conflict of interest. This prohibition does not include compensation for employees.

(b) A Federal credit union's officials and employees must conduct all transactions with business associates or family members that are not specifically prohibited by paragraph (a) of this section at arm's length and in the Federal credit union's best interest.

§ 703.18 Grandfathered investments.

(a) Subject to safety and soundness considerations, a Federal credit union may hold a CMO/REMIC residual, stripped mortgage-backed securities, or zero coupon security with a maturity greater than 10 years, if it purchased the investment:

(1) Before December 2, 1991; or

(2) On or after December 2, 1991, but before January 1, 1998, if for the purpose of reducing interest rate risk and if the Federal credit union meets the following:

(i) The Federal credit union has a monitoring and reporting system in place that provides the documentation necessary to evaluate the expected and actual performance of the investment under different interest rate scenarios;

(ii) The Federal credit union uses the monitoring and reporting system to conduct and document an analysis that shows, before purchase, that the proposed investment will reduce its interest rate risk;

(iii) After purchase, the Federal credit union evaluates the investment at least quarterly to determine whether or not it actually has reduced the interest rate risk; and

(iv) The Federal credit union accounts for the investment consistent with generally accepted accounting principles.

(b) All grandfathered investments are subject to the valuation and monitoring requirements of §§ 703.10, 703.11, and 703.12 of this part.

§ 703.19 Investment pilot program.

(a) Under the investment pilot program, NCUA will permit a limited number of Federal credit unions to engage in investment activities prohibited by this part but permitted by the Act.

(b) Except as provided in paragraph (c) of this section, before a Federal credit union may engage in additional activities it must obtain written approval from NCUA. To obtain approval, a Federal credit union must submit a request to its regional director that addresses the following items:

(1) Certification that the Federal credit union is ''well-capitalized'' under part 702 of this chapter;

(2) Board policies approving the activities and establishing limits on them;

(3) A complete description of the activities, with specific examples of how they will benefit the Federal credit union and how they will be conducted;

(4) A demonstration of how the activities will affect the Federal credit union's financial performance, risk profile, and asset-liability management strategies;

(5) Examples of reports the Federal credit union will generate to monitor the activities;

(6) Projections of the associated costs of the activities, including personnel, computer, audit, and so forth;

(7) Descriptions of the internal systems that will measure, monitor, and report the activities;

(8) Qualifications of the staff and officials responsible for implementing and overseeing the activities; and

(9) Internal control procedures that will be implemented, including audit requirements.

(c) A third-party seeking approval of an investment pilot program must submit a request to the Director of the Office of Examination and Insurance that addresses the following items:

(1) A complete description of the activities with specific examples of how a credit union will conduct and account for them, and how they will benefit a Federal credit union;

(2) A description of any risks to a Federal credit union from participating in the program; and

(3) Contracts that must be executed by the Federal credit union.

(d) A Federal credit union need not obtain individual written approval to engage in investment activities prohibited by this part but permitted by statute where the activities are part of a third-party investment program that NCUA has approved under this section.

PART 742—REGULATORY FLEXIBILITY PROGRAM

■ 3. The authority citation for part 742 continues to read as follows:

Authority: 12 U.S.C. 1756 and 1766.

■ 4. Revise § 742.4 to read as follows:

§ 742.4 From what NCUA regulations will I be exempt?

(a) RegFlex credit unions are exempt from the provisions of the following NCUA regulations without restrictions or limitations: § 701.25, § 701.32(b) and (c), § 701.36(a), (b) and (c), § 703.5(b)(1)(ii) and (2), § 703.12(c); and § 703.16(b) of this chapter.

(b) RegFlex credit unions are exempt from the provisions of the following

NCUA regulations with certain restrictions or limitations:

(1) Section 703.13(d)(3) of this chapter, provided the value of the investments that mature later than the borrowing repurchase transaction does not exceed 100 percent of the Federal credit union's net worth; and

(2) Section 703.16(d) of this chapter provided:

(i) The issuer of the security is domestic;

(ii) The security is rated in one of the two highest rating categories by at least one nationally-recognized statistical rating organization;

(iii) The security meets the definition of mortgage related security as defined in 15 U.S.C. 78c(a)(41) and the definition of commercial mortgage related security as defined in § 703.2 of this chapter;

(iv) The security's underlying pool of loans contains more than 50 loans with no one loan representing more than 10 percent of the pool; and

(v) The aggregate total of commercial mortgage related securities purchased by the Federal credit union does not exceed 50 percent of its net worth.

[FR Doc. 03–13660 Filed 6–2–03; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–14–AD; Amendment 39–13172; AD 2003–11–13]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS332C, L, and L1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) model helicopters. This action requires replacing a certain elbow adapter (adapter) with an airworthy adapter. This amendment is prompted by reports of a cracked adapter on the hydraulic reservoir resulting in leakage of hydraulic fluid and loss of hydraulic power. This condition, if not corrected, could result in failure of an adapter on the hydraulic reservoir, loss of hydraulic fluid, loss of hydraulic power, and subsequent loss of control of the helicopter.

DATES: Effective June 18, 2003.

Comments for inclusion in the Rules Docket must be received on or before August 4, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003-SW–14–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model AS332C, L, and L1 helicopters. The DGAC advises that a right-hand (RH) hydraulic reservoir drained while in service due to a cracked adapter on the hydraulic reservoir. Such a situation could result in the loss of hydraulic power assistance if leakage occurs on both hydraulic systems at the same time.

Eurocopter has issued Alert Service Bulletin No. 67.00.25, dated January 8, 2003 (ASB), which specifies replacing certain adapters, part number (P/N) DHS613–636–43, on the RH hydraulic reservoir to limit the risk of hydraulic fluid leakage, which can result in the loss of hydraulic power assistance in the event of leakage on both hydraulic systems. The DGAC classified this ASB as mandatory and issued AD 2003–101(A), dated March 5, 2003, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

The previously described unsafe condition is likely to exist or develop on other helicopters of the same type design registered in the United States. Therefore, this AD is being issued to prevent failure of an adapter on the hydraulic reservoir, loss of hydraulic fluid, loss of hydraulic power, and subsequent loss of control of the helicopter. This AD requires replacing each adapter, P/N DHS613–636–43, with a manufacturing code on the hydraulic reservoir end indicating manufacture before January 1, 2002, and not identified with a yellow mark, with an airworthy adapter, P/N DHS613–636–43, with a manufacturing code on the reservoir end indicating manufacture on or after January 1, 2002. This AD requires that both the RH and left-hand (LH) affected adapters be replaced within 15 days even though the manufacturer's service information and the DGAC AD envisioned replacing the RH adapter only. This was driven apparently by an insufficient number of airworthy replacement adapters at the time their service information was released. Now, since there should be sufficient airworthy replacement adapters, both affected RH and LH adapters must be replaced. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, this AD requires replacing the previously identified adapter with an airworthy adapter within 15 days, and this AD must be issued immediately.

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

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we are no longer including it in each individual AD.

The FAA estimates that this AD will affect 3 helicopters, and replacing both adapters on each helicopter will take approximately 2 work hours at an average labor rate of $60 per work hour. Required parts will cost approximately $184 (2 adapters per helicopter). Based on these figures, the total cost impact of the AD on U.S. operators is $912.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are

invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2003–SW–14–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–11–13 Eurocopter France: Amendment 39–13172. Docket No. 2003–SW–14–AD.

Applicability: Model AS332C, L, and L1 helicopters with an elbow adapter (adapter), part number (P/N) DHS613–636–43, with a manufacturing code on the hydraulic reservoir end indicating manufacture before January 1, 2002, and not identified by a yellow paint mark, installed, certificated in any category.

Note 1: Accomplishment Instructions, paragraphs 2.B.2. and 2.B.3., of Eurocopter Alert Service Bulletin No. 67.00.25, dated January 9, 2003, describe how to identify the adapter.

Compliance: Required within 15 days, unless accomplished previously.

To prevent failure of an adapter on the hydraulic reservoir, loss of hydraulic fluid, loss of hydraulic power, and subsequent loss of control of the helicopter, accomplish the following:

(a) Replace the adapter with an airworthy adapter with a manufacturing code on the hydraulic reservoir end indicating manufacture on or after January 1, 2002.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Regulations Group, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

(c) This amendment becomes effective on June 18, 2003.

Note 2: The subject of this AD is addressed in Direction Generale De L'Aviation Civile, France, AD 2003–101(A), dated March 5, 2003.

Issued in Fort Worth, Texas, on May 27, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–13654 Filed 6–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–142–AD; Amendment 39–13175; AD 2003–11–16]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires a one-time inspection for missing bolts on the inboard and outboard support of the inboard main flap, and follow-on inspections and corrective actions if necessary. For certain airplanes that are subject to the existing AD, this amendment requires a new one-time inspection for gaps, a new one-time torque check for loose bolts, corrective actions if necessary, and eventual replacement of existing titanium bolts with steel bolts. These actions are necessary to detect missing, loose, or cracked bolts on the supports of the inboard main flap and prevent loss of the inboard main flap, which could result in loss of control of the airplane. These actions are intended to address the identified unsafe condition.

DATES: Effective July 8, 2003.

The incorporation by reference of Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002, was approved previously by the Director of the **Federal Register** as of August 27, 2002 (67 FR 52401, August 12, 2002).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6441; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal

Aviation Regulations (14 CFR part 39) by superseding AD 2002–22–07, amendment 39–12932 (67 FR 66043, October 30, 2002), which is applicable to certain Boeing Model 767 series airplanes, was published in the **Federal Register** on March 5, 2003 (68 FR 10412). The action proposed to continue to require a one-time inspection for missing bolts on the inboard and outboard support of the inboard main flap, and follow-on inspections and corrective actions, if necessary. The action also proposed to require, for certain airplanes that are subject to the existing AD, a new one-time inspection for gaps, a new one-time torque check for loose bolts, corrective actions if necessary, and eventual replacement of existing titanium bolts with steel bolts.

Comments

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

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Cost Impact

There are approximately 821 airplanes of the affected design in the worldwide fleet. The FAA estimates that 374 airplanes of U.S. registry will be affected by this AD.

The initial inspection that is currently required by AD 2002–16–05 takes approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspection on U.S. operators is estimated to be $134,640, or $360 per airplane.

For an affected airplane, the new inspection for gaps that is required by this AD will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this required inspection is $60 per airplane.

For an affected airplane, the new torque test that is required by this AD will take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this required torque test is $360 per airplane.

For an affected airplane, the replacement of bolts that is required by this AD will take approximately 10 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,880 per airplane. Based on these figures, the cost impact of this required replacement is $2,480 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–12932 (67 FR 66043, October 30, 2002), and by adding a new airworthiness directive (AD), amendment 39–13175, to read as follows:

2003–11–16 Boeing: Amendment 39–13175. Docket 2002–NM–142–AD. Supersedes AD 2002–22–07, Amendment 39–12932.

Applicability: Model 767 series airplanes, including Model 767–400ER series airplanes, line numbers 1 through 879 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect missing, loose, or cracked bolts on the inboard and outboard support of the inboard main flap and prevent loss of the inboard main flap, which could result in loss of control of the airplane, accomplish the following:

Restatement of Requirements of AD 2002–22–07

Group 1 and 2 Airplanes: One-Time Inspection for Missing or Loose Bolts

(a) Within 90 days after August 27, 2002 (the effective date of AD 2002–16–05, amendment 39–12844), do a one-time general visual inspection to determine if any bolt is missing from the outboard support of the inboard main flap, per Part 2 or Part 8, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6,

2002. Group 1 airplanes may comply with the replacement specified in paragraph (g) of this AD in lieu of the inspection in this paragraph, provided that the replacement per paragraph (g) of this AD is accomplished within the compliance time specified in this paragraph.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) If no bolt is missing, before further flight, do a general visual inspection for a gap between the nut and surrounding structure or between shim and joint (which would indicate a loose bolt), per Part 2 or Part 8, as applicable, of the Accomplishment Instructions of the service bulletin. If no bolt is missing and no gap is found, no further action is required by this paragraph.

(2) If any bolt is missing, before further flight, do paragraph (b) of this AD. In lieu of paragraph (b) of this AD, airplanes in Group 1 may comply with paragraph (g) of this AD.

Group 1 and 2 Airplanes: Missing Bolts or Gaps—Follow-On Actions

(b) For Group 1 or 2 airplanes as listed in Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002: If any bolt is missing or any gap is found during the inspections per paragraph (a) or (f) of this AD, before further flight, remove all of the bolts in the subject area and replace them with new or serviceable bolts, per Figure 6, 7, or 8 of the service bulletin, as applicable. For any attachment hole where the bolt was missing, install a new or serviceable bolt made from the same material as the other bolts, per the Accomplishment Instructions of the service bulletin.

(1) An existing bolt may be reinstalled if a fluorescent dye penetrant inspection for cracking is done per Part 5 of the Accomplishment Instructions of the service bulletin, and the bolt is found to be free of any crack.

(2) Do not intermix BACB30MR*K* bolts with BACB30LE*K* or BACB30US*K* bolts in the joints subject to this AD.

Model 767–400ER Series Airplanes: Initial Inspection and Corrective Actions

(c) For Model 767–400ER series airplanes: Within 90 days after August 27, 2002, do a one-time general visual inspection to determine if any bolt is missing from the inboard and outboard support of the inboard main flap, and do a detailed inspection for a gap between the nut and surrounding structure or between shim and joint (which would indicate a loose bolt), per Figure 2 of Boeing Alert Service Bulletin 767–27A0176, revision 1, dated June 6, 2002.

(1) If no bolt is missing and no gap is found: No further action is required by this paragraph.

(2) If any bolt is missing or any gap is found: Do paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved as required by this paragraph, the approval must specifically refer to this AD.

(ii) Within 10 days after the inspections: Submit a report of inspection findings to the Manager, Boeing Certificate Management Office, FAA, Transport Airplane Directorate, 2500 East Valley Road, Suite C2, Renton, Washington 98055; fax (425) 227–1159. The report must include the airplane's serial number, the total number of flight cycles and flight hours on the airplane, the number and specific location of discrepant bolts, and the nature of the discrepancy (*i.e.*, missing bolt or gap found). Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Previously Accomplished Inspections and Bolt Replacements

(d) Inspections and bolt replacements accomplished before the effective date of this AD per Boeing Alert Service Bulletin 767–27A0176, dated November 16, 2001, are acceptable for compliance with the corresponding actions required by this AD.

Group 1 and 2 Airplanes: One-Time Inspection for Missing or Loose Bolts

(e) Within 90 days after November 14, 2002 (the effective date of AD 2002–22–07, amendment 39–12932): Do the one-time general visual inspection required by paragraph (a) of this AD to determine if any bolt is missing from the inboard support of the inboard main flap, per Part 2 or Part 8, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002. Group 1 airplanes may comply with the replacement specified in paragraph (g) of this AD in lieu of the inspection in this paragraph, provided that the replacement per paragraph (g) of this AD is accomplished within the compliance time specified in this paragraph.

New Requirements of This AD

Group 1 Airplanes: Follow-on Actions

(f) For Group 1 airplanes as listed in Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002: If no bolt is missing and no gap is found during the inspections required by paragraphs (a), (a)(1), and (e) of this AD, prior to the accumulation of 5,000 total flight cycles, or within 24 months after the effective date of this AD, whichever is later, perform a general visual inspection to find any gap between the nut and surrounding structure or between shim and joint (which would indicate a loose bolt), per Part 3 of the Accomplishment Instructions of the service bulletin.

(1) If no gap is found, before further flight, do a torque check per Part 4 of the Accomplishment Instructions of the service bulletin.

(i) If, during the torque check, the nut does not turn, remove the nut, clean the bolt and threads, and reinstall the nut per Part 4 and Figure 4 of the service bulletin. Do paragraph (g) of this AD at the time specified in that paragraph.

(ii) If the nut turns, do paragraph (b) of this AD. Then, do paragraph (g) of this AD at the time specified in that paragraph.

(2) If any gap is found, do paragraph (b) of this AD. Then, do paragraph (g) of this AD at the time specified in that paragraph.

Group 1 Airplanes: Replacement of Titanium Bolts

(g) For Group 1 airplanes as listed in Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002: Prior to the accumulation of 10,000 total flight cycles, or within 48 months after the effective date of this AD, whichever is later, replace all subject titanium bolts with new steel bolts per Part 6 of the Accomplishment Instructions of the service bulletin. This action is acceptable for compliance with paragraphs (a), (e), and (f) of this AD and eliminates the need for the inspections required by those paragraphs. This action is acceptable for compliance with paragraph (b) of this AD, provided that the replacement of bolts per this paragraph is accomplished at the time specified in paragraph (b) of this AD. Do not intermix BACB30MR*K* bolts with BACB30LE*K* or BACB30US*K* bolts in the joints subject to this AD.

Alternative Methods of Compliance

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

(2) Alternative methods of compliance, approved previously in accordance with AD 2002–16–05, amendment 39–12844, and AD 2002–22–07, amendment 39–12932, are approved as alternative methods of compliance for the requirements of paragraphs (b) and (c)(2)(i) of this AD.

(3) Alternative methods of compliance, approved previously in accordance with paragraph (c) of AD 2002–16–05, amendment 39–12844, and AD 2002–22–07, amendment 39–12932, are approved as alternative methods of compliance for the requirements of paragraph (g) of this AD.

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

Special Flight Permits

(i) Special flight permits may be issued in accordance with sections §§ 21.197 and

21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(j) Unless otherwise provided in this AD, the actions shall be done per Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002. This incorporation by reference was approved previously by the Director of the Federal Register as of August 27, 2002 (67 FR 52401, August 12, 2002). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(k) This amendment becomes effective on July 8, 2003.

Issued in Renton, Washington, on May 27, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–13649 Filed 6–2–03; 8:45 am]

BILLING CODE 4910–13–P

INTERNATIONAL TRADE COMMISSION

19 CFR Parts 201, 204, 206, 207, 210, and 212

Rules of General Application; Investigations of Effects of Imports on Agricultural Programs; Investigations Relating to Global and Bilateral Safeguard Actions, Market Disruption, Trade Diversion and Review of Relief Actions; and Investigations of Whether Injury to Domestic Industries Results From Imports Sold at Less Than Fair Value or From Subsidized Exports to the United States; Adjudication and Enforcement; Implementation of the Equal Access to Justice Act

AGENCY: International Trade Commission.

ACTION: Final rules.

SUMMARY: The United States International Trade Commission (Commission) amends its rules of practice and procedure concerning rules of general application, safeguard investigations, antidumping and countervailing duty investigations and reviews, intellectual property-related investigations, and the Equal Access to Justice Act, in 19 CFR parts 201, 206, 207, 210, and 212. The Commission also renumbers two footnotes in 19 CFR part 204. The amendments are necessary to make certain technical corrections, to clarify certain provisions, to harmonize different parts of the Commission's rules, and to address concerns that have arisen in Commission practice. The intended effect of the amendments is to facilitate compliance with the Commission's rules and improve the administration of agency proceedings.

DATES: These rules are effective August 4, 2003, without further action, unless adverse comment is received by July 3, 2003. If adverse comment is received, the Commission will publish a timely withdrawal of the rules in the **Federal Register**.

ADDRESSES: A signed original and 8 copies of each set of comments on these amendments to the Commission's Rules, along with a cover letter, should be submitted by mail or hand delivery to Marilyn R. Abbott, Secretary, United States International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436. Comments may be submitted electronically to the extent provided by section 201.8 of the Commission's rules, as amended by 67 FR 68063 (Nov. 8, 2002).

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of the General Counsel, United States International Trade Commission (telephone 202–205–3102). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its World Wide Web site (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: This preamble provides background information, a regulatory analysis of the amendments, and then a detailed section-by-section analysis of the amendments.

Background

Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. To carry out its functions and duties, the Commission has issued rules of practice and procedure. The passage of time has rendered some provisions of the rules outdated. In addition, Commission practice has revealed the need for improvements in certain rules. This rulemaking updates certain outdated provisions and improves other provisions.

Consistent with its ordinary practice, the Commission is issuing these amendments in accordance with the rulemaking procedure in section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). This procedure entails the following steps: (1) Publication of a notice of proposed rulemaking; (2) solicitation of public comments on the proposed amendments; (3) Commission review of such comments prior to developing final amendments; and (4) publication of final amendments at least thirty days prior to their effective date. The Commission published a notice of proposed rulemaking (67 FR 38614, June 5, 2002) on which the present notice is based. No public comments were received on the notice of proposed rulemaking. Based on a continuing review of the rules to identify references that need correction or clarification, the present notice contains a number of amendments not included in the notice of proposed rulemaking.

A number of the amendments affect interim rules, *i.e.,* sections 201.201, 201.202, 201.204, 206.3. Those interim rules will be replaced with final rules in future rulemakings.

Regulatory Analysis

The Commission has determined that these amendments do not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and thus do not constitute a significant regulatory action for purposes of the Executive Order.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is inapplicable to this rulemaking because it is not one for which a notice of rulemaking is required under 5 U.S.C. 553(b) or any other statute. Although the Commission has chosen to publish a notice, these amendments are ''agency rules of procedure and practice,'' and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b).

These amendments do not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999).

No actions are necessary under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) because the amendments will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments.

The amendments are not major rules as defined in the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). Moreover, they are exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (5

U.S.C. 801 *et seq.*) because they concern rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

The amendments are not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), since they do not contain any new information collection requirements.

Section-by-Section Analysis of the Amendments

Part 201—Rules of General Application

Subpart A—Miscellaneous

The Commission revises section 201.1 regarding the applicability of part 201 to correctly reference parts 210, 212 and 213 in the reference to rules of special application.

The Commission amends section 201.2 by revising paragraph (c), which defines the term ''Tariff Act,'' to include citations to 19 U.S.C. 1677m and 1677n.

The Commission amends section 201.3 by revising paragraph (c) to clarify that any document filed after Commission business hours will be considered filed the next business day, and that if filing on that day means the document is untimely filed then the document may not be accepted unless it is accompanied by a request for permission to make a late filing.

The Commission amends section 201.3a by revising paragraph (a) to update the Commission's designated point of contact for using its penalty mail in locating and recovering missing children.

The Commission amends section 201.4 by revising paragraph (d) to correctly cite to section 202 of the Trade Act of 1974 (19 U.S.C. 2252), eliminate the citation to the former 19 U.S.C. 1303, which has been repealed, and add ''*et seq.*'' to the citation to 19 U.S.C. 1673 to correctly refer to all of the antidumping provisions.

The Commission amends section 201.6 by revising paragraph (a)(2) to include section 206.17 as a section having special rules for the handling of nondisclosable confidential business information. The Commission also revises paragraph (d) of section 201.6 regarding the approval or denial of requests for confidential treatment. The revision will provide for consistency by stating that approvals, like denials, would be in writing. The Commission also revises paragraph (e)(3) of section 201.6 by replacing ''his consideration'' with the updated reference ''consideration.'' The Commission revises paragraph (g) of section 201.6 regarding granting confidential status to business information to clarify when business information deemed not entitled to confidential treatment will be treated as public information. The revised paragraph (g) will impose a five-day deadline for withdrawing such business information after which time it would become public.

Subpart B—Initiation and Conduct of Investigations.

The Commission amends section 201.8 by revising paragraph (a) to state that filings made within the Commission's official hours of operation will be deemed filed on the date received by the Commission, consistent with the revised paragraph (c) of section 201.3 regarding Commission hours. The Commission also amends section 201.8 by revising paragraph (c), to provide that all documents filed, other than one or two-page documents, must be double-spaced, to improve the readability of documents. In addition, the Commission amends paragraph (d) of section 201.8 to require submitters to specify when a document is being filed with no confidential counterpart.

The Commission amends section 201.13 by revising paragraph (f) to provide, for ease of consideration, that supplementary materials in nonadjudicative hearings must be marked with the name of the organization submitting them. The same paragraph is also revised to remove the page limit on supplementary material that can be filed at a hearing, so that parties may present their arguments without such a limitation. The Commission revises paragraph (i)(1) of section 201.13, to delete the unnecessary reference to the requirement to file 14 copies of briefs with the Secretary, since paragraph (d) of section 201.8 already contains a requirement concerning the requisite number of copies to be filed.

The Commission amends section 201.14 by revising paragraph (a) to simplify filing requirements. In the event of an early or all-day closing of the Commission on a business day, the revision will allow the Secretary to accept filings due the day of the early or all-day closing on the next business day, without requiring the submitter to file a request for an extension of time.

Subpart C—Availability of Information to the Public Pursuant to 5 U.S.C. 552

The Commission amends section 201.17 by revising paragraph (a)(1) to permit the filing of requests electronically. Similarly, paragraph (b) of section 201.18 is revised to permit the filing of appeals by such means. The Commission has the capability of accepting electronic filing of requests at its World Wide Web site, at *http://www.usitc.gov/foia.htm.*

The Commission amends section 201.18 by revising paragraphs (b), (d) (introductory text), and (e) to permit electronic filing of requests under the Freedom of Information Act and to correctly state that paragraph (c), and not paragraphs (a) and (b), provides for extension of time for deciding appeals of denials.

The Commission amends section 201.19 by revising paragraph (b) to clarify that the term ''[s]ubmitter'' includes contractors, bidders, vendors and others who have an administrative relationship with the Commission, and who provide confidential business information to the Commission. Under the amended provision, persons or entities having an administrative relationship to the Commission will qualify to receive notice before release of their confidential submission under FOIA.

The Commission amends section 201.21 by revising paragraph (a) to provide information about the Commission's World Wide Web site, consistent with the electronic reading room provisions of the FOIA.

Subpart D—Safeguarding Individual Privacy Pursuant to 5 U.S.C. 552a

The Commission amends section 201.31 by revising the section heading and adding paragraph (c) to include employee conduct as part of the section and to rename the section heading to reflect this change. Consequently, the Commission removes section 201.33, which currently deals with employee conduct, and adds its text to section 201.31. This eliminates the current duplication of section numbers.

Subpart G—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the U.S. International Trade Commission

The Commission amends section 201.170 by revising paragraph (c) to provide an updated contact point.

Subpart H—Debt Collection

The Commission amends subpart H, regarding debt collection, to update all references to ''Office of Finance and Budget'' to read ''Office of Finance.'' The Commission also amends subpart H to update citations to applicable statutes and rules, and in particular to take into account the move of the Federal Claims Collection Standards from title 4 of the Code of Federal Regulations to title 31. The revisions affect the authority citation for subpart H; paragraphs (f), (i), and (m) of section 201.201; paragraphs

(a) and (b)(4) of section 201.202; paragraphs (a)(16)(ii), (g)(1), (g)(2), (h)(1)(iii), (h)(2)(iii), (h)(3), (h)(4)(ii), (j), and (n) of section 201.204; paragraphs (d), (f)(3), and (g)(1)(iv) of section 201.206; and paragraph (b)(3) of section 201.207.

Part 204—Investigations of Effects of Imports on Agricultural Programs

In section 204.1, the Commission redesignates footnote 5 as footnote 1. In section 204.2, the Commission redesignates footnote 6 as footnote 2. These changes correct a misnumbering of those footnotes. The Commission also revises the authority citation to simplify the citations.

Part 206—Investigations Relating to Global and Bilateral Safeguard Actions, Market Disruption, Trade Diversion, and Review of Relief Actions

Subpart A—General

The Commission amends section 206.3 by revising paragraph (b) to include in the notice of institution any limits on page lengths for posthearing briefs.

The Commission amends section 206.8 by revising paragraph (b) to provide that the Secretary shall promptly notify a petitioner of approval of an application for disclosure of confidential business information under administrative protective order (APO), and that the petitioner shall then serve a copy of the confidential petition on those approved applicants within two (2) calendar days of receiving that notification. Under the revised paragraph, which is consistent with section 207.10(b)(1)(i), approved applicants will receive a copy of the confidential petition more quickly, and without having to wait for the Secretary's issuance of the service list.

The Commission amends section 206.17 by revising paragraphs (a)(2), (b)(2), (g)(1) and (g)(3). The Commission revises paragraph (a)(2) to require only a signed APO application and five (5) copies to be filed with the Commission. Filing a signed original and fourteen (14) copies pursuant to section 201.8(d) provides the Commission with unnecessary copies. Paragraph (b)(2) is revised to clarify that confidential business information can only be used in representing an interested party. The Commission revises paragraph (g)(1) to include the definition of nondisclosable confidential business information from section 201.6(a)(2) to make the rule easier to understand. The Commission also revises paragraph (g)(3) to make it consistent with existing section 207.7 (g)(3), the analogous provision in part 207.

Part 207—Investigations of Whether Injury to Domestic Industries Results From Imports Sold at Less Than Fair Value or From Subsidized Exports to the United States

Subpart A—General Provisions

The Commission removes section 207.6 regarding reports of progress of investigation as unnecessary as duplicative of the statute. Moreover, amendments to the statute, the Commission's rules, and Commission practice have resulted in information being disseminated as a matter of course about an investigation's schedule and status. The section number is reserved.

The Commission amends section 207.7 by revising paragraph (a)(2) to require only a signed APO application and five (5) copies to be filed with the Commission, consistent with the changes in part 206. The Commission further revises paragraph (a)(2) of section 207.7 for consistency to include a deadline for adding attorneys under the APO in remanded investigations. Paragraph (b)(2) is revised to clarify that business proprietary information can only be used in representing an interested party.

Subpart F—Five-Year Reviews

The Commission amends section 207.62 by revising paragraph (b)(2) to delete the reference to ''per group,'' as unnecessary, since a grouped review only involves one ''group.''

The Commission amends section 207.64 by revising paragraph (b), regarding staff reports, to conform with agency practice by providing that the final staff report will be placed in the record.

Part 210—Adjudication and Enforcement

The Commission revises paragraph (f)(2) of section 210.4 and paragraph (a) of section 210.8 to reduce the number of copies submitters must file of documents to the minimum needed by the agency. Submitters must file an original and 12—rather than 14—copies of each submission if the investigation or related proceeding is before the Commission, except that a submitter shall file the original and 6 copies of any exhibits filed with a request or petition for related proceedings. The Commission previously had effected a partial version of this reduction in the number of required copies by publishing notice of a waiver of its rules at 66 FR 58523 (Nov. 21, 2001).

Part 212—Implementation of the Equal Access to Justice Act

The Commission amends section 212.29, regarding payment of awards, to update all references to ''Finance and Budget Division'' to read ''Office of Finance.''

List of Subjects in 19 CFR Parts 201, 204, 206, 207, 210

Administrative practice and procedure, investigations.

■ For the reasons stated in the preamble, the Commission amends 19 CFR parts 201, 204, 206, 207, and 210 as set forth below:

PART 201—RULES OF GENERAL APPLICATION

■ 1. The authority citation for part 201 continues to read as follows:

Authority: Sec. 335 of the Tariff Act of 1930 (19 U.S.C. 1335), and sec. 603 of the Trade Act of 1974 (19 U.S.C. 2482), unless otherwise noted.

■ 2. Revise § 201.1 to read as follows:

§ 201.1 Applicability of part.

This part relates generally to functions and activities of the Commission under various statutes and other legal authority. Rules having special application appear separately in parts 202 through 207, inclusive, and parts 210, 212 and 213, of this chapter. In case of inconsistency between a rule of general application and a rule of special application, the latter is controlling.

■ 3. Amend § 201.2 to revise paragraph (c) to read as follows:

§ 201.2 Definitions.

* * * * *

(c) *Tariff Act* means the Tariff Act of 1930, 19 U.S.C. 1202–1677j, 1677m–n;

* * * * *

■ 4. Amend § 201.3 to revise paragraph (c) to read as follows:

§ 201.3 Commission offices, mailing address, and hours.

* * * * *

(c) *Hours.* The business hours of the Commission are from 8:45 a.m. to 5:15 p.m., eastern standard or daylight savings time, whichever is in effect in Washington, DC. Any document filed with the Secretary of the Commission after 5:15 p.m. will be considered filed the next business day. If filing on that day would be untimely, the filing may not be accepted unless a request is made for acceptance of a late filing for good cause shown pursuant to 201.14(b)(2).

■ 5. Amend § 201.3a to revise paragraph (a) to read as follows:

§ 201.3a Missing children information.

(a) Pursuant to 39 U.S.C. 3220, penalty mail sent by the Commission may be used to assist in the location and recovery of missing children. This section establishes procedures for such use and is applicable on a Commission-wide basis. The Commission's Office of Facilities Management, telephone 202–205–2741, shall be the point of contact for matters related to the implementation of this section.

* * * * *

■ 6. Amend § 201.4 to revise paragraph (d) to read as follows:

§ 201.4 Performance of functions.

* * * * *

(d) Presentation of matter that may come within the purview of other laws. Whenever any party or person, including the Commission staff, has reason to believe that (1) a matter under investigation pursuant to section 337 of the Tariff Act of 1930, or (2) a matter under an investigation pursuant to section 202 of the Trade Act of 1974 (19 U.S.C. 2252), which is causing increased imports may come within the purview of another remedial provision of law not the basis of such investigation, including but not limited to the antidumping provisions (19 U.S.C. 1673 *et seq.*) or the countervailing duty provisions (19 U.S.C. 1671 *et seq.*) of the Tariff Act of 1930, then the party or person may file a suggestion of notification with the Commission that the appropriate agency be notified of such matter or circumstances, together with such information as the party or person has available. The Secretary shall promptly thereafter publish notice of the filing of such suggestion and information, and make them available for inspection and copying to the extent permitted by law. Any person may comment on the suggestion within 10 days after the publication of said notice. Thereafter, the Commission shall determine whether notification is appropriate under the law and, if so, shall notify the appropriate agency of such matters or circumstances. The Commission may at any time make such notification in the absence of a suggestion under this rule when the Commission has reason to believe, on the basis of information before it, that notification is appropriate under law.

■ 7. Amend § 201.6 to revise paragraphs (a)(2), (d), (e)(3) and (g) to read as follows:

§ 201.6 Confidential business information.

(a) * * *

(2) *Nondisclosable confidential business information* is privileged information, classified information, or specific information (*e.g.,* trade secrets) of a type for which there is a clear and compelling need to withhold from disclosure. Special rules for the handling of such information are set out in § 206.17 and § 207.7 of this chapter.

* * * * *

(d) *Approval or denial of requests for confidential treatment.* Approval or denial of requests shall be made only by the Secretary or Acting Secretary. An approval or a denial of a request for confidential treatment shall be in writing. A denial shall specify the reason therefor, and shall advise the submitter of the right to appeal to the Commission.

(e) * * *

(3) The justification submitted to the Commission in connection with an appeal shall be limited to that presented to the Secretary with the original or amended request. When the Secretary or Acting Secretary has denied a request on the ground that the submitter failed to provide adequate justification, any such additional justification shall be submitted to the Secretary for consideration as part of an amended request. For purposes of paragraph (e)(1) of this section, the twenty (20) day period for filing an appeal shall be tolled on the filing of an amended request and a new twenty (20) day period shall begin once the Secretary or Acting Secretary has denied the amended request, or the approval or denial has not been forthcoming within ten (10) days of the filing of the amended request. A denial of a request by the Secretary on the ground of inadequate justification shall not obligate a requester to furnish additional justification and shall not preclude a requester from filing an appeal with the Commission based on the justification earlier submitted to the Secretary.

* * * * *

(g) *Granting confidential status to business information.* Any business information submitted in confidence and determined to be entitled to confidential treatment shall be maintained in confidence by the Commission and not disclosed except as required by law. In the event that any business information submitted to the Commission is not entitled to confidential treatment, the submitter will be permitted to withdraw the tender within five days of its denial of confidential treatment unless it is the subject of a request under the Freedom of Information Act or of judicial discovery proceedings. After such five day period, the business information deemed not entitled to confidential treatment, and not withdrawn, will be treated as public information.

* * * * *

■ 8. Amend § 201.8 to revise paragraphs (a), (c) and (d) to read as follows:

§ 201.8 Filing of Documents.

(a) *Where to file; date of filing.* Documents shall be filed at the office of the Secretary of the Commission in Washington, DC. Such documents, if properly filed within the hours of operation specified in § 201.3(c), will be deemed to be filed on the date on which they are actually received in the Commission.

* * * * *

(c) *Specifications for documents.* Each document filed under this chapter shall be double-spaced, clear and legible, except that a document of two pages or less in length need not be double-spaced.

* * * * *

(d) Number of copies. A signed original (or a copy designated as an original) and fourteen (14) copies of each document shall be filed. All submissions shall be on letter-sized paper (8½ inches by 11 inches), except copies of documents prepared for another agency or a court (*e.g.* patent file wrappers or pleadings papers). The original and at least one copy of all submissions shall be printed on one side only and shall be unbound (although they may be stapled or held together by means of a clip). In the event that confidential treatment of the document is requested under Sec. 201.6, at least four (4) additional copies shall be filed, in which the confidential business information shall have been deleted and which shall have been conspicuously marked ''nonconfidential'' or ''public inspection.'' In the event that confidential treatment is not requested, the document shall be conspicuously marked ''No confidential version filed.'' The name of the person signing the original shall be typewritten or otherwise reproduced on each copy.

* * * * *

■ 9. Amend § 201.13 to revise paragraphs (f) and (i)(1) to read as follows:

§ 201.13 Conduct of nonadjudicative hearings.

* * * * *

(f) *Supplementary material.* A party to the investigation may file with the Secretary supplementary material, other than remarks read into the record, for acceptance into the record. The party shall file any such material with the Secretary at the hearing. Supplementary materials must be marked with the

name of the organization submitting it. As used herein, the term *supplementary material* refers to (1) additional graphic material such as charts and diagrams used to illuminate an argument or clarify a position and (2) information not available to a party at the time its prehearing brief was filed.

* * * * *

(i) *Briefs*—(1) *Parties.* Briefs of the information produced at the hearing and arguments thereon may be presented to the Commission by parties to the investigation. Time to be allowed for submission of briefs will be set after conclusion of testimony and oral argument, if any.

* * * * *

■ 10. Amend § 201.14 to revise paragraph (a) to read as follows:

§ 201.14 Computation of time, additional hearings, postponements, continuances, and extensions of time.

(a) *Computation of time.* Computation of any period of time prescribed or allowed by the rules in this chapter, by order of the Commission, or by order of the presiding officer under part 210 of this chapter shall begin with the first business day following the day on which the act or event initiating such period of time shall have occurred. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or Federal legal holiday, in which event the period runs until the end of the next business day. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computation. As used in this rule, a Federal legal holiday refers to any full calendar day designated as a legal holiday by the President or the Congress of the United States. In the event of an early or all-day closing of the Commission on a business day, the Secretary is authorized to accept on the next full business day filings due the day of the early or all-day closing, without requiring the granting of an extension of time by the Chairman of the Commission, or such other person designated to conduct the investigation.

* * * * *

■ 11. Amend § 201.17 to revise paragraph (a)(1) to read as follows:

201.17 Procedures for requesting access to records.

(a) *Requests for records.* (1) A request for any information or record shall be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436 and shall indicate clearly in the request, and if the request is in paper form on the envelope, that it is a ''Freedom of Information Act Request.'' A written request may be made either (1) in paper form, or (2) electronically by contacting the Commission at *http://www.usitc.gov/foia.htm.*

* * * * *

■ 12. Amend § 201.18 to revise paragraphs (b), (d) introductory text, and (e) to read as follows:

§ 201.18 Denial of requests, appeals from denial.

* * * * *

(b) An appeal from a denial of a request must be received within sixty days of the date of the letter of denial and shall be made to the Commission and addressed to the Chairman, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. Any such appeal shall be in writing, and shall indicate clearly in the appeal, and if the appeal is in paper form on the envelope, that it is a ''Freedom of Information Act Appeal.'' An appeal may be made either in paper form, or electronically by contacting the Commission at *http://www.usitc.gov/foia.htm.*

* * * * *

(d) The extensions of time mentioned in paragraph (c) of this section shall be made only for one or more of the following reasons:

* * * * *

(e) The extensions of time mentioned in paragraph (c) of this section shall not exceed ten working days in the aggregate.

■ 13. Amend § 201.19 to revise paragraph (b) to revise the definition of *submitter* to read as follows:

§ 201.19 Notification regarding requests for confidential business information.

* * * * *

(b) *Definitions.* * * *

Submitter means any person or entity who provides confidential business information, directly or indirectly, to the Commission. The term includes, but is not limited to, corporations, producers, importers, and state and federal governments, as well as others who have an administrative relationship with the Commission such as contractors, bidders and vendors.

* * * * *

■ 14. Amend § 201.21 to revise paragraph (a) to read as follows:

§ 201.21 Availability of specific records.

(a) *Records available.* The following information, on request to the Secretary of the Commission, is available for public inspection and copying: (1) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases; (2) those statements of policy and interpretations which have been adopted by the agency; and (3) administrative staff manuals and instructions to staff that affect a member of the public. Available information includes, but is not limited to: (i) Applications, petitions, and other formal documents filed with the Commission, (ii) notices to the public concerning Commission matters, (iii) transcripts of testimony taken and exhibits submitted at hearings, (iv) reports to the President, to either or both Houses of Congress, or to Committees of Congress, release of which has been authorized by the President or the legislative body concerned, (v) reports and other documents issued for general distribution. Much of the information described above also is available on the Commission's World Wide Web site. The Commission's home page is at *http://www.usitc.gov.* The Web site also includes information subject to repeated Freedom of Information Act requests. Persons accessing the Web site can find instructions on how to locate Commission information by following the ''Freedom of Information Act'' link on the home page.

* * * * *

■ 15. Amend § 201.31 to revise the section heading and add paragraph (c) to read as follows:

§ 201.31 Fees and Employee conduct.

* * * * *

(c) The Privacy Act Officer shall establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and periodically instruct each such person with respect to such rules and the requirements of the Privacy Act including the penalties for noncompliance.

■ 16. Remove § 201.33 of subpart D.

§ 201.33 [Removed]

■ 17. Amend § 201.170 to revise paragraph (c) to read as follows:

§ 201.170 Compliance procedures.

* * * * *

(c) The Director, Office of Equal Employment Opportunity, shall be responsible for coordinating implementation of this section. Complaints may be sent to the Director, Office of Equal Employment Opportunity, United States International

Trade Commission, 500 E Street SW., Washington, DC 20436.

* * * * *

■ 18. Amend the authority citation for subpart H of part 201 to read as follows:

Authority: 19 U.S.C. 1335; 5 U.S.C. 5514(b)(1); 31 U.S.C. 3716(b); 31 U.S.C. 3720A(b)(4); 31 CFR chapter IX; 26 CFR 301.6402–6(b).

■ 19. Amend § 201.201 to revise paragraphs (f), (i), and (m) to read as follows:

§ 201.201 Definitions.

* * * * *

(f) *Director* means the Director, Office of Finance of the Commission or an official designated to act on the Director's behalf.

* * * * *

(i) *Federal Claims Collection Standards (FCCS)* means standards published at 31 CFR chapter IX.

* * * * *

(m) *Office of Finance* means the Office of Finance of the Commission.

■ 20. Amend § 201.202 to revise paragraphs (a) and (b)(4) to read as follows:

§ 201.202 Purpose and scope of salary and administrative offset rules.

(a) *Purpose.* The purpose of sections 201.201 through 201.207 is to implement 5 U.S.C. 5514, 31 U.S.C. 3716, and 31 U.S.C. 3720A which authorize the collection by salary offset, administrative offset, or tax refund offset of debts owed by persons, organizations, or entities to the Federal government. Generally, however, a debt may not be collected by such means if it has been outstanding for more than ten years after the agency's right to collect the debt first accrued. These proposed regulations are consistent with the Office of Personnel Management regulations on salary offset, codified at 5 CFR Part 550, subpart K, and with regulations on administrative offset codified at 31 CFR part 901.

* * * * *

(b) * * *

(4) Nothing in Sections 201.201 through 201.207 precludes the compromise, suspension, or termination of collection actions where appropriate under the standards implementing the Federal Claims Collection Act (31 U.S.C. 3711 *et seq.*), namely, 31 CFR chapter IX.

■ 21. Amend § 201.204 to revise paragraphs (a)(16)(ii), (g)(1), (g)(2), (h)(1)(iii), (h)(2)(iii), (h)(3), (h)(4)(ii), (j), and (n) to read as follows:

§ 201.204 Salary offset.

(a) * * *

(16) * * *

(ii) Penalties under the False Claims Act, 31 U.S.C. 3729–3733, or under any other applicable statutory authority; or

* * * * *

(g) Notice of salary offset where the Commission is the paying agency.

(1) Upon issuance of a proper certification by the Director (for debts owed to the Commission) or upon receipt of a proper certification from another creditor agency, the Office of Finance shall send the employee a written notice of salary offset. Such notice shall advise the employee:

(i) Of the certification that has been issued by the Director or received from another creditor agency;

(ii) Of the amount of the debt and of the deductions to be made; and

(iii) Of the initiation of salary offset at the next officially established pay interval or as otherwise provided for in the certification.

(2) The Office of Finance shall provide a copy of the notice to the creditor agency and advise such agency of the dollar amount to be offset and the pay period when the offset will begin.

* * * * *

(h) * * *

(1) * * *

(iii) Deductions shall begin the pay period following the issuance of the certification by the Director or the receipt by the Office of Finance of the certification from another agency or as soon thereafter as possible.

* * * * *

(2) * * *

(iii) Lump-sum deductions from final check. In order to liquidate a debt, a lump-sum deduction exceeding 15 percent of disposable pay may be made pursuant to 31 U.S.C. 3716 and 5 U.S.C. 5514(a)(1) from any final salary payment due a former employee, whether the former employee was separated voluntarily or involuntarily.

* * * * *

(3) Multiple debts. Where two or more creditor agencies are seeking salary offset, or where two or more debts are owed to a single creditor agency, the Office of Finance may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

(4) * * *

(ii) In the event that a debt to the Commission is certified while an employee is subject to salary offset to repay another agency, the Office of Finance may, at its discretion, determine whether the debt to the Commission should be repaid before the debt to the other agency, repaid simultaneously, or repaid after the debt to the other agency.

* * * * *

(j) Interest, Penalties, and Administrative Costs. Where the Commission is the creditor agency, it shall assess interest, penalties, and administrative costs pursuant to 31 U.S.C. 3717 and 31 CFR 901.9.

* * * * *

(n) Exception to due process procedures. The procedures set forth in this section shall not apply to adjustments described in 5 U.S.C. 5514(a)(3) and 5 CFR 550.1104(c).

■ 22. Amend § 201.206 to revise paragraphs (d), (f)(3), and (g)(1)(iv) to read as follows:

§ 201.206 Administrative offset.

* * * * *

(d) Interest. Pursuant to 31 U.S.C. 3717 and 31 CFR 901.9, the Commission shall assess interest, penalties and administrative costs on debts owed to the United States. The Commission is authorized to assess interest and related charges on debts that are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

(f) * * *

(3) That the Commission has complied with the requirements of its own administrative offset regulations and the applicable provisions of 31 CFR part 901 with respect to providing the debtor with due process.

* * * * *

(g) * * *

(1) * * *

(iv) That the agency has complied with its own administrative offset regulations and with the applicable provisions of 31 CFR part 901, including providing any required hearing or review.

■ 23. Amend § 201.207 to revise paragraph (b)(3) to read as follows:

§ 201.207 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.

* * * * *

(b) * * *

(3) The Commission has complied with the requirements of 31 CFR 901.3, including any required hearing or review.

* * * * *

PART 204—INVESTIGATIONS OF EFFECTS OF IMPORTS ON AGRICULTURAL PROGRAMS

■ 1. Revise the authority citation for part 204 to read as follows:

Authority: 19 U.S.C. 1335.

■ 2. In § 204.1, redesignate footnote 5 as footnote 1.

■ 3. In § 204.2, redesignate footnote 6 as footnote 2.

PART 206—INVESTIGATIONS RELATING TO GLOBAL AND BILATERAL SAFEGUARD ACTIONS, MARKET DISRUPTION, TRADE DIVERSION, AND REVIEW OF RELIEF ACTIONS

■ 1. The authority citation for part 206 continues to read as follows:

Authority: 19 U.S.C. 1335, 2251–2254, 3351–3382; secs. 103, 301–302, Pub. L. 103–465, 108 Stat. 4809.

■ 2. Amend § 206.3 to revise paragraph (b) to read as follows:

§ 206.3 Institution of investigations; publication of notice; and availability for public inspection.

* * * * *

(b) *Contents of notice.* The notice will identify the petitioner or other requestor, the imported article that is the subject of the investigation and its tariff subheading, the nature and timing of the determination to be made, the time and place of any public hearing, dates of deadlines for filing briefs, statements, and other documents, limits on page lengths for posthearing briefs, the place at which the petition or request and any other documents filed in the course of the investigation may be inspected, and the name, address, and telephone number of the office that may be contacted for more information. The Commission will provide the same sort of information in its notice when the investigation was instituted following receipt of a resolution or on the Commission's own motion.

* * * * *

■ 3. Amend § 206.8 to revise paragraph (b) to read as follows:

§ 206.8 Service, filing and certification of documents.

* * * * *

(b) *Service.* Any party submitting a document for the consideration of the Commission in the course of an investigation to which this part pertains shall, in addition to complying with § 201.8 of this chapter, serve a copy of the public version of such document on all other parties to the investigation in the manner prescribed in § 201.16 of this chapter, and, when appropriate, serve a copy of the confidential version of such document in the manner provided for in § 206.17(f). The Secretary shall promptly notify a petitioner when, before the establishment of a service list under § 206.17(a)(4), an application under § 206.17(a) is approved. When practicable, this notification shall be made by facsimile transmission. A copy of the petition including all confidential business information shall then be served by petitioner on those approved applicants in accordance with this section within two (2) calendar days of the time notification is made by the Secretary. If a document is filed before the Secretary's issuance of the service list provided for in § 201.11 of this chapter or the administrative protective order list provided for in § 206.17, the document need not be accompanied by a certificate of service, but the document shall be served on all appropriate parties within two (2) days of the issuance of the service list or the administrative protective order list and a certificate of service shall then be filed. Notwithstanding § 201.16 of this chapter, petitions, briefs, and testimony filed by parties shall be served by hand or, if served by mail, by overnight mail or its equivalent. Failure to comply with the requirements of this rule may result in removal from status as a party to the investigation. The Commission shall make available, upon request, to all parties to the investigation a copy of each document, except transcripts of hearings, confidential business information, privileged information, and information required to be served under this section, placed in the docket file of the investigation by the Commission.

* * * * *

■ 4. Amend § 206.17 to revise paragraphs (a)(2), (b)(2), (g)(1), and (g)(3) to read as follows:

§ 206.17 Limited disclosure of certain confidential business information under administrative protective order.

(a) * * *

(2) *Application.* An application under paragraph (a)(1) of this section must be made by an authorized applicant on a form adopted by the Secretary or a photocopy thereof. A signed application and five (5) copies thereof shall be filed. An application on behalf of an authorized applicant must be made no later than the time that entries of appearance are due pursuant to § 201.11 of this chapter. In the event that two or more authorized applicants represent one interested party who is a party to the investigation, the authorized applicants must select one of their number to be lead authorized applicant. The lead authorized applicant's application must be filed no later than the time that entries of appearance are due. Provided that the application is accepted, the lead authorized applicant shall be served with confidential business information pursuant to paragraph (f) of this section. The other authorized applicants representing the same party may file their applications after the deadline for entries of appearance but at least five days before the deadline for filing posthearing briefs in the investigation, and shall not be served with confidential business information.

* * * * *

(b) * * *

(2) Use such confidential business information solely for the purposes of representing an interested party in the Commission investigation then in progress;

* * * * *

(g) *Exemption from disclosure*—(1) *In general.* Any person may request exemption from the disclosure of confidential business information under administrative protective order, whether the person desires to include such information in a petition filed under this Subpart B, or any other submission to the Commission during the course of an investigation. Such a request shall only be granted if the Secretary finds that such information is nondisclosable confidential business information. As defined in § 201.6(a)(2) of this chapter, nondisclosable confidential business information is privileged information, classified information, or specific information (*e.g.*, trade secrets) of a type for which there is a clear and compelling need to withhold from disclosure.

(2) * * *

(3) *Procedure if request is approved.* If the request is approved, the person shall file three versions of the submission containing the nondisclosable confidential business information in question. One version shall contain all confidential business information, bracketed in accordance with § 201.6 of this chapter and § 206.8(c), with the specific information as to which exemption from disclosure was granted enclosed in triple brackets. This version shall have the following warning marked on every page: ''CBI exempted from disclosure under APO enclosed in triple brackets.'' The other two versions shall conform to and be filed in accordance with the requirements of § 201.6 of this chapter and § 206.8(c), except that the specific information as to which exemption from disclosure was granted shall be redacted from those versions of the submission.

* * * * *

PART 207—INVESTIGATIONS OF WHETHER INJURY TO DOMESTIC INDUSTRIES RESULTS FROM IMPORTS SOLD AT LESS THAN FAIR VALUE OR FROM SUBSIDIZED EXPORTS TO THE UNITED STATES

■ 1. The authority citation for part 207 continues to read as follows:

Authority: 19 U.S.C. 1336, 1671–1677n, 2482, 3513.

■ 2. Remove and reserve § 207.6.

§ 207.6 [Removed]

■ 3. Amend § 207.7 by revising paragraphs (a)(2), (b)(2), and (g)(1) to read as follows:

§ 207.7 Limited disclosure of certain business proprietary information under administrative protective order.

(a) * * *

(2) *Application.* An application under paragraph (a)(1) of this section must be made by an authorized applicant on a form adopted by the Secretary or a photocopy thereof. A signed application and five (5) copies thereof shall be filed. An application on behalf of a petitioner, a respondent, or another party must be made no later than the time that entries of appearance are due pursuant to § 201.11 of this chapter. In the event that two or more authorized applicants represent one interested party who is a party to the investigation, the authorized applicants must select one of their number to be lead authorized applicant. The lead authorized applicant's application must be filed no later than the time that entries of appearance are due. Provided that the application is accepted, the lead authorized applicant shall be served with business proprietary information pursuant to paragraph (f) of this section. The other authorized applicants representing the same party may file their applications after the deadline for entries of appearance but at least five days before the deadline for filing posthearing briefs in the investigation, or the deadline for filing briefs in the preliminary phase of an investigation, or the deadline for filing submissions in a remanded investigation, and shall not be served with business proprietary information.

* * * * *

(b) * * *

(2) Use such business proprietary information solely for the purposes of representing an interested party in the Commission investigation then in progress or during judicial or other review of such Commission investigation;

* * * * *

(g) *Exemption from disclosure*—(1) *In general.* Any person may request exemption from the disclosure of business proprietary information under administrative protective order, whether the person desires to include such information in a petition filed under § 207.10, or any other submission to the Commission during the course of an investigation. Such a request shall only be granted if the Secretary finds that such information is nondisclosable confidential business information. As defined in § 201.6(a)(2) of this chapter, nondisclosable confidential business information is privileged information, classified information, or specific information (*e.g.*, trade secrets) of a type for which there is a clear and compelling need to withhold from disclosure. The request will be granted or denied not later than thirty (30) days (ten (10) days in a preliminary phase investigation) after the date on which the request is filed.

* * * * *

■ 4. Amend § 207.62 to revise paragraph (b)(2) to read as follows:

§ 207.62 Rulings on adequacy and nature of Commission review.

* * * * *

(b) * * *

(2) Comments shall be submitted within the time specified in the notice of institution. In a grouped review, only one set of comments shall be filed per party. Comments shall not exceed fifteen (15) pages of textual material, double spaced and single sided, on stationery measuring 8½ x 11 inches. Comments containing new factual information shall be disregarded.

* * * * *

■ 5. Amend § 207.64 to revise paragraph (b) to read as follows:

§ 207.64 Staff Reports.

* * * * *

(b) *Final staff report.* After the hearing, the Director shall revise the prehearing staff report and submit to the Commission, prior to the Commission's determination, a final version of the staff report. The final staff report is intended to supplement and correct the information contained in the prehearing staff report. The Director shall place the final staff report in the record. A public version of the final staff report shall be made available to the public and a business proprietary version shall also be made available to persons authorized to receive business proprietary information under § 207.7.

PART 210—ADJUDICATION AND ENFORCEMENT

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 19 U.S.C. 1333, 1335, and 1337.

■ 2. Amend § 210.4 to revise paragraph (f)(2) to read as follows:

§ 210.4 Written submissions; representations; sanctions.

* * * * *

(f) * * *

(2) Unless the Commission or this part specifically states otherwise,

(i) The original and 6 true copies of each submission shall be filed if the investigation or related proceeding is before an administrative law judge, and

(ii) The original and 12 true copies of each submission shall be filed if the investigation or related proceeding is before the Commission, except that a submitter shall file the original and 6 copies of any exhibits filed with a request or petition for related proceedings.

* * * * *

■ 3. Amend § 210.8 to revise paragraph (a) to read as follows:

§ 210.8 Commencement of preinstitution proceedings.

(a) Upon receipt of complaint. A preinstitution proceeding is commenced by filing with the Secretary a signed original complaint and the requisite number of true copies. The complainant shall file 12 confidential copies of the complaint along with 6 copies of any exhibits filed with the complaint, 12 nonconfidential copies of the complaint along with 6 copies of any exhibits filed with the complaint, plus one confidential copy and one nonconfidential copy of the complaint and exhibits for each person named in the complaint as violating section 337 of the Tariff Act of 1930, and one nonconfidential copy for the government of each foreign country of any person or persons so named. The same requirements apply for the filing of a supplement to the complaint. If the complainant is seeking temporary relief, the complainant must file 12 confidential copies of the motion along with 6 copies of any exhibits filed with the motion, 12 nonconfidential copies along with 6 copies of any exhibits filed with the motion, plus one additional confidential copy and one additional nonconfidential copy of the motion and exhibits for each proposed respondent, and one nonconfidential copy for the government of the foreign country of the proposed respondent. The additional copies of the complaint and motion for

temporary relief for each proposed respondent and the appropriate foreign government are to be provided notwithstanding the procedures applicable to a motion for temporary relief, which require service of the complaint and motion for temporary relief by the complainant.

PART 212—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT

■ 1. The authority citation for part 212 continues to read as follows:

Authority: Sec. 203(a)(1), Pub. L. 96–481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)).

■ 2. Amend § 212.29 to read as follows:

§ 212.29 Payment of award.

An applicant seeking payment of an award shall submit to the Office of Finance of the Commission a copy of the Commission's final determination granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. The address for submission to the Commission is: United States International Trade Commission, Office of Finance, 500 E Street SW., Washington, DC 20436. The Commission will pay the amount to the applicant within 60 days, unless judicial review of the award or of the underlying determination of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

Issued: May 27, 2003.

By Order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–13688 Filed 6–2–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 02N–0241]

Amendment of Regulations on Aluminum in Large and Small Volume Parenterals Used in Total Parenteral Nutrition; Delay of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; delay of effective date.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to change the labeling requirements concerning aluminum in small volume parenterals (SVPs) and pharmacy bulk packages (PBPs) used in total parenteral nutrition (TPN). The immediate container labels of SVPs and PBPs containing 25 micrograms per liter (μg/L) or less of aluminum may state: ''Contains no more than 25 μg/L of aluminum'' instead of stating the exact amount of aluminum they contain. In addition, the final rule revises the aluminum regulations to reflect the fact that the effective date of the final rule published in the **Federal Register** of January 26, 2000 (65 FR 4103) (the January 2000 final rule) is delayed until July 26, 2004. The agency is taking these actions in response to a request from industry.

DATES: This final rule is effective July 26, 2004. The effective date for § 201.323, added at 65 FR 4103, January 26, 2000, is delayed until July 26, 2004.

FOR FURTHER INFORMATION CONTACT: Christine F. Rogers, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

In the January 2000 final rule, FDA amended its regulations in § 201.323 (21 CFR 201.323) to enact certain requirements regarding aluminum levels in large volume parenterals (LVPs), SVPs, and PBPs used in TPN. The January 2000 final rule was originally scheduled to become effective on January 26, 2001. In the **Federal Register** of January 26, 2001 (66 FR 7864), the agency published a document delaying the effective date to January 26, 2003. In the **Federal Register** of November 26, 2002 (67 FR 70691), the agency published a document further delaying the effective date to January 26, 2004.

Section 201.323(c) of the January 2000 final rule required the product's maximum level of aluminum at expiry to be stated on the immediate container label of SVPs and PBPs used in the preparation of TPN solutions. The January 2000 final rule required that the statement on the immediate container label read as follows: ''Contains no more than _ μg/L of aluminum.'' For those SVPs and PBPs that are lyophilized powders used in the preparation of TPN solutions, the January 2000 final rule required that the maximum level of aluminum at expiry be printed on the immediate container label as follows: ''When reconstituted in accordance with the package insert instructions, the concentration of aluminum will be no more than _ μg/L.'' The January 2000 final rule also required that the maximum level of aluminum be stated as the highest of: (1) The highest level for the batches produced during the last 3 years, (2) the highest level for the latest five batches, or (3) the maximum historical level, but only until completion of production of the first five batches after the effective date of the rule.

In the **Federal Register** of August 12, 2002 (67 FR 52429), FDA proposed to amend § 201.323 to permit the immediate container labels of SVPs and PBPs containing 25 μg/L or less of aluminum to state: ''Contains no more than 25 μg/L of aluminum'' instead of stating the exact amount of aluminum they contain (the 2002 proposed rule). The proposed amendment was prompted by a request from the Health Industry Manufacturers Association (HIMA, now called AdvaMed). A complete discussion of HIMA's arguments in support of the revision can be found in the 2002 proposed rule.

The agency agreed with HIMA's request for the following reasons. FDA has already determined that 25 μg/L is a safe upper limit for manufacturers to include in LVPs and believes that it is similarly appropriate for SVPs and PBPs. If an SVP or PBP that contains 25 μg/L of aluminum is added to a TPN solution that contains 25 μg/L of aluminum, the concentration of aluminum in the mixture will still be 25 μg/L. Consistent with its approach to LVPs (to which SVPs and PBPs are added) that are permitted to contain 25 μg/L, FDA believes health care practitioners will be provided with sufficient information on the aluminum content of SVPs and PBPs if the label states that the product contains no more than 25 μg/L of aluminum.

In the 2002 proposed rule, the agency also announced its intent to extend the effective date for § 201.323 as necessary to provide time for the proposal to be finalized.

II. Comments on the Proposed Rule

The agency received one comment on the 2002 proposed rule. The comment agreed with the proposal. The comment supported the agency's plan to extend the effective date of § 201.323 until the proposed rule could be finalized. The comment asked that the effective date be extended at least 18 months after January 26, 2003, to give industry sufficient time to comply with § 201.323. The comment also asked FDA to clarify that a delay of the effective date would apply to all products subject to § 201.323.

In response to this comment, the agency is delaying the effective date of

§ 201.323 until July 26, 2004. This delay applies to all products subject to § 201.323.

III. Changes From the Proposed Rule

The final rule delays the effective date of § 201.323 to July 26, 2004. The final rule also changes § 201.323(c)(3) to reflect the fact that the effective date has been delayed. Section 201.323(c)(3) provides that a manufacturer may state the maximum level of aluminum in terms of historical levels, but only until completion of production of the first five batches after the effective date of the January 2000 final rule. That effective date is the date by which manufacturers are to submit supplements describing the validated assay method used to determine aluminum content. Because manufacturers now have until July 26, 2004, to submit supplements, the final rule changes the date in § 201.323(c)(3) to July 26, 2004. The final rule also slightly modifies the introductory language in § 201.323(c) to clarify that the language ''except as provided in paragraph (d) of this section'' applies to both the second and third sentences in § 201.323(c). That is, the ''exception'' language applies generally to SVPs and PBPs used in the preparation of TPN and also to SVPs and PBPs that are lyophilized powders that are reconsituted and used in the preparation of TPN.

IV. Environmental Impact

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

V. Paperwork Reduction Act of 1995

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

VI. Analysis of Impacts

FDA has examined the impacts of this amendment to § 201.323 under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order and in these two statutes.

The purpose of this final rule is to relax the requirements of the January 2000 final rule for labeling aluminum content in SVPs and PBPs used in TPN. Specifically, this final rule allows manufacturers to use a standard statement of quantity of aluminum content in place of the exact amount for affected products that contain no more than 25 μg/L of aluminum. FDA determined that the proposed rule would not be a significant action as defined by the Executive order. FDA received one comment to the proposed rule, but the comment did not address the Analysis of Impacts section of the proposed rule.

In the Analysis of Impacts section of the January 2000 final rule, the agency relied on the Eastern Research Group (ERG) report entitled ''Addendum to Compliance Cost Analysis for a Regulation for Parenteral Drug Products Containing Aluminum.'' In that report, ERG calculated the total relabeling costs for SVPs and PBPs to be about $523,000, or about $3,500 per product (equivalent to annualized costs totaling $128,000, or about $850 per product, discounted at 7 percent over 5 years). To the extent that manufacturers of SVPs and PBPs containing no more than 25 μg/L of aluminum use the added flexibility in labeling that this final rule provides, the compliance burden cited above could be reduced.

The single comment to the proposed rule requested that an additional 18 months be added to the effective date of § 201.323. FDA has complied with this request. Since this additional time would allow for more flexibility in implementing the compliance methods for all parts of § 201.323, it could further reduce the compliance burden.

Because this final rule could slightly decrease current compliance costs for the affected industry without imposing any additional costs, FDA has determined that the final rule is not a significant regulatory action as defined by the Executive order and thus is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. FDA made the determination for the January 2000 final rule that very few small firms, if any, would be significantly impacted. Thus, the agency certified that the final rule would not have a significant impact on a substantial number of small entities. This final rule could slightly lessen the economic impact of the January 2000 final rule. Accordingly, FDA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. No further analysis is required under the Regulatory Flexibility Act (as amended).

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires that agencies prepare a written statement of anticipated costs and benefits before finalizing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation).

The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the final rule because the rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is $110 million.

VII. Federalism

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

List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 201 is amended as follows:

PART 201—LABELING

■ 1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

■ 2. Section 201.323 is amended by revising the first sentence of the introductory text of paragraph (c); by removing from paragraph (c)(3) the word ''January'' and adding in its place the word ''July''; by redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively; and by adding new paragraph (d) to read as follows:

§ 201.323 Aluminum in large and small volume parenterals used in total parenteral nutrition.

* * * * *

(c) Except as provided in paragraph (d) of this section, the maximum level of aluminum present at expiry must be stated on the immediate container label of all small volume parenteral (SVP) drug products and pharmacy bulk packages (PBPs) used in the preparation of TPN solutions.* * *

(d) If the maximum level of aluminum is 25 μg/L or less, instead of stating the exact amount of aluminum as required in paragraph (c) of this section, the immediate container label may state: ''Contains no more than 25 μg/L of aluminum.'' If the SVP or PBP is a lyophilized powder, the immediate container label may state: ''When reconstituted in accordance with the package insert instructions, the concentration of aluminum will be no more than 25 μg/L''.

* * * * *

Dated: May 22, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–13752 Filed 6–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 349

[Docket No. 03N–0193]

RIN 0910–AA01

Ophthalmic Drug Products for Over-the-Counter Human Use; Final Monograph; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulation that established conditions under which over-the-counter (OTC) ophthalmic drug products are generally recognized as safe and effective and not misbranded. This amendment updates the monograph to incorporate a United States Pharmacopeia (USP) name change for one active ingredient included in the monograph. This final rule is part of FDA's ongoing review of OTC drug products.

DATES: This final rule is effective July 3, 2003. Submit written or electronic comments by August 4, 2003.

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

FOR FURTHER INFORMATION CONTACT: Michael T. Benson, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 4, 1988 (53 FR 7076), FDA issued a final monograph for OTC ophthalmic drug products in part 349 (21 CFR part 349). Section 349.12 of that monograph included the active ingredient hydroxypropyl methylcellulose. In 2000, the USP proposed (for inclusion in the Third Supplement to *USP* 24) a name change for this ingredient based on a name adopted by the United States Adopted Names Council (Ref. 1). The new name for hydroxypropyl methylcellulose is hypromellose. This name change became official on March 1, 2001, and was subsequently included in the *USP* with an effective date of September 1, 2002 (Ref. 2).

II. Naming Process

The Federal Food, Drug, and Cosmetic Act (the act) in section 502(e)(1)(A)(i) (21 U.S.C. 352(e)(1)(A)(i)) requires the label of a drug to bear the established name of the drug to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula). The established name of the drug is defined as:

* * * (A) the applicable official name designated pursuant to section 508 [of the act], or (B) if there is no such name and such drug, or such ingredient, is an article recognized in an official compendium, then the official title thereof in such compendium, or (C) if neither clause (A) nor clause (B) of this subparagraph applies, then the common or usual name, if any, of such drug or of such ingredient * * *.

21 U.S.C. 352(e)(3).

Section 508 of the act (21 U.S.C. 358) authorizes FDA to designate an official name for any drug if FDA determines ''that such action is necessary or desirable in the interest of usefulness and simplicity.'' FDA does not, however, routinely designate official names for drug products under section 508 of the act (§ 299.4(e) (21 CFR 299.4(e))). In the absence of designation by FDA of an official name, interested persons may rely on the current compendial name as the established name (§ 299.4(e)).

III. The Technical Amendment

FDA has not designated an official name for the active ingredient hydroxypropyl methylcellulose. Thus, its established name is the current compendial name. The USP has now changed the compendial name for hydroxypropyl methylcellulose to hypromellose. To be consistent with the change in this official compendial name, the agency is changing this name in § 349.12 in the ingredient listing. As noted previously, this USP name change became official on March 1, 2001, with a USP effective date of September 1, 2002.

Because section 502(e)(1) and (e)(3) of the act requires the established name of a drug to be used, any ophthalmic drug product initially introduced or initially delivered for introduction into interstate commerce after September 1, 2002, would need to bear the new established name ''hypromellose.'' However, the agency is aware that many manufacturers of OTC ophthalmic drug products have not yet implemented this name change in their product labeling. Therefore, elsewhere in this issue of the **Federal Register**, as a matter of its enforcement discretion, the agency is issuing guidance stating its intent to provide manufacturers of affected OTC ophthalmic drug products until September 1, 2003 (1 extra year from the USP effective date), to implement this labeling change. Accordingly, on or after September 1, 2003, any OTC ophthalmic drug product initially introduced or initially delivered for introduction into interstate commerce that contains the ingredient hypromellose (formerly known as hydroxypropyl methylcellulose) must bear labeling that contains the new name for this ingredient.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of agency procedure under 5 U.S.C. 553(b)(3)(A). Alternatively, the agency's implementation of this action without opportunity for public comment comes within the good cause exceptions in 5 U.S.C. 553(b)(3)(B) in that obtaining public comment is impracticable, unnecessary, and contrary to public interest. This labeling revision

represents a minor clarifying change that does not change the substance of the labeling requirements contained in the final regulations. As discussed previously in this document, manufacturers must relabel their products as a result of the USP name change to remain in compliance with the act. This amendment updates the name of one active ingredient in the final monograph for OTC ophthalmic drug products to reflect this official name change that has already been implemented by the USP. In accordance with 21 CFR 10.40(e)(1), FDA is providing an opportunity for comment on whether the regulation should be modified or revoked.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the UMRA requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency concludes that this final rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. FDA has determined that the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The UMRA does not require FDA to prepare a statement of costs and benefits for this final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million.

The purpose of this final rule is to update the final monograph for OTC ophthalmic drug products to incorporate a USP name change for one active ingredient included in the monograph. As discussed in section II of this document, section 502(e)(1) and (e)(3) of the act requires that the established name of a drug be used. Under § 299.4(e), because FDA does not routinely designate official names under section 508 of the act, the established name under section 502(e) of the act ordinarily is the compendial name of the drug. Therefore, because FDA has not designated an official name under section 508 of the act, manufacturers must relabel their products as a result of the USP name change to remain in compliance with the act. Updating the name of the active ingredient in the ophthalmic monograph to reflect its current established name will eliminate possible confusion by the public. Because manufacturers must relabel their products as a result of the USP name change to remain in compliance with the act, this rule does not impose any additional costs on industry. Consequently, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, no further analysis is required.

V. Paperwork Reduction Act of 1995

The agency concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling statements are a ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

VI. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Federalism

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

VIII. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or three paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IX. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. ''Pharmacopeial Forum,'' The United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 702–705, May and June 2000.

2. ''Third Supplement,'' *United States Pharmacopeia* 24, National Formulary 19, The United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 3041–3042, January 2, 2001.

List of Subjects in 21 CFR Part 349

Labeling, Ophthalmic goods and services, Over-the-counter drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 349 is amended as follows:

PART 349—OPHTHALMIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

■ 1. The authority citation for 21 CFR part 349 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

■ 2. Section 349.12 is amended by revising paragraph (a)(3) to read as follows:

§ 349.12 Ophthalmic demulcents.

* * * * *

(a) * * *

(3) Hypromellose, 0.2 to 2.5 percent.

* * * * *

Dated: May 15, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–13827 Filed 6–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. 02N–0288]

Medical Devices; Designation of Special Control for Eight Surgical Suture Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to amend the classification regulations for eight surgical suture devices previously reclassified into class II to specify a special control for those devices. The special control is an FDA guidance document entitled ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA'' that identifies performance, testing, and labeling recommendations for the devices. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance document that will serve as the special control. FDA is taking these actions on its own initiative because it believes they are necessary to provide reasonable assurance of the safety and effectiveness of surgical suture devices. These actions are being taken under the Federal Food, Drug, and Cosmetic Act (the act).

DATES: This rule is effective July 3, 2003.

FOR FURTHER INFORMATION CONTACT: Anthony D. Watson, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090, ext. 164.

SUPPLEMENTARY INFORMATION:

I. Background

The act (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (SMDA) (Public Law 101–629), the Food and Drug Administration Modernization Act (FDAMA) (Public Law 105–115), and the Medical Device User Fee and Modernization Act (MDUFMA) (Public Law 107–250) established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under the 1976 amendments, class II devices were defined as those devices for which there is insufficient information to show that general controls themselves will assure safety and effectiveness, but for which there is sufficient information to establish performance standards to provide such assurance.

SMDA broadened the definition of class II devices to mean those devices for which the general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance, including performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and any other appropriate actions the agency deems necessary (section 513(a)(1)(B) of the act).

The 1976 amendments also broadened the definition of ''device'' in 201(h) of the act (21 U.S.C. 321(h)) to include certain articles that were once regulated as drugs. Under the 1976 amendments, Congress classified into class III all transitional devices, i.e., those devices previously regulated as new drugs, including surgical sutures.

II. Regulatory History of the Devices

In the **Federal Register** of December 16, 1977 (42 FR 63472), FDA published a notice that identified sutures as class III devices under the transitional provisions of the act. Section 520(l)(2) of the act (21 U.S.C. 360j(l)(2)) provides that the manufacturer or importer of a device classified in class III under the transitional provisions may file a petition for reclassification of the device into class I or class II. Procedures for filing and review of classification petitions are set forth in § 860.136 (21 CFR 860.136).

In accordance with section 520(l)(2) of the act and § 860.136, and after consulting with members of the General and Plastic Surgery Devices Panel, FDA reclassified surgical suture devices from class III to class II as follows:

1. Absorbable poly(glycolide/L-lactide) surgical suture (21 CFR 878.4493), reclassification order (letter) dated September 14, 1989;
2. Stainless steel suture (21 CFR 878.4495), reclassification order (letter) dated July 30, 1986;
3. Absorbable surgical gut suture (21 CFR 878.4830), reclassification order (letter) dated September 19, 1988;
4. Nonabsorbable poly(ethylene terephthalate) surgical suture (21 CFR 878.5000), reclassification order (letter) dated July 5, 1990;
5. Nonabsorbable polypropylene surgical suture (21 CFR 878.5010), reclassification order (letter) dated July 5, 1990;
6. Nonabsorbable polyamide surgical suture (21 CFR 878.5020), reclassification order (letter) dated February 15, 1990;
7. Natural nonabsorbable silk surgical suture (21 CFR 878.5030), reclassification order (letter) dated November 9, 1990; and
8. Nonabsorbable expanded polytetrafluoroethylene surgical suture (21 CFR 878.5035), reclassification order (letter) dated September 9, 1999.

In the **Federal Register** of December 19, 2002 (67 FR 77678), FDA published a proposed rule to designate a special control for eight surgical suture devices already classified into class II. FDA proposed that surgical suture devices would remain in class II, but would be subject to a special control. The proposed rule identified the special control as an FDA guidance document entitled ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA.'' In the same edition of the **Federal Register**, FDA announced the availability of the draft guidance that, when final, was intended to serve as a special control (67 FR 77797). FDA invited interested persons to comment on the proposed rule and on the proposed special control guidance document by March 19, 2003.

III. FDA's Conclusion

FDA received no comments on the proposed rule or on the guidance document proposed as the special control. Therefore, under the SMDA authority, FDA is amending the classification regulations for eight surgical suture devices previously reclassified into class II, to designate a special control for those devices. The special control capable of providing reasonable assurance of safety and effectiveness for these devices is a guidance document entitled ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA'' that identifies performance,

testing, and labeling recommendations for the devices. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the special control guidance.

Following the effective date of this final rule, any firm submitting a 510(k) premarket notification for a new surgical suture will need to address the recommendations in the special control guidance. However, the firm need only show that its device is as safe and effective as a device that meets guidance recommendations. The firm may use alternative approaches if those approaches address the performance, testing, and labeling issues identified in the guidance.

IV. Environmental Impact

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

V. Analysis of Impacts

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

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The special controls guidance document does not impose any new burdens on manufacturers of these devices. FDA has granted 201 substantial equivalence orders from 95 manufacturers of these devices in the last 10 years. The guidance document is based upon the review of the information submitted in these premarket notifications. Based on the review of the premarket notifications, FDA believes that manufacturers presently marketing these devices are in conformance with the guidance document and they will not need to take any further action. The guidance document merely assures that, in the future, devices of these generic types will be at least as safe and effective as the presently marketed devices. These devices are already subject to premarket notification and labeling requirements. The guidance document advises manufacturers on appropriate means of complying with these requirements.

The consensus standards in the guidance were recognized under section 514(c) of the act (21 U.S.C. 360d(c)) for the purpose of demonstrating certain aspects of substantial equivalency. The manufacturer may provide a declaration of conformity to a recognized standard to meet a premarket notification requirement. Ordinarily, this will provide a simplified method of meeting the requirement. The manufacturer may choose to submit other data or information to meet the requirement. The guidance document sets out options that the manufacturer has in this respect.

For the foregoing reasons, the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. In addition, this rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VI. Federalism

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

VII. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

List of Subjects in 21 CFR Part 878

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 878 is amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

■ 1. The authority citation for 21 CFR part 878 continues to read as follows:

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

■ 2. Section 878.4493 is amended by revising paragraph (b) to read as follows:

§ 878.4493 Absorbable poly(glycolide/L-lactide) surgical suture.

* * * * *

(b) *Classification*. Class II (special controls). The special control for this device is FDA's ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA.'' See § 878.1(e) for the availability of this guidance document.

■ 3. Section 878.4495 is amended by revising paragraph (b) to read as follows:

§ 878.4495 Stainless steel suture.

* * * * *

(b) *Classification*. Class II (special controls). The special control for this device is FDA's ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA.'' See § 878.1(e) for the availability of this guidance document.

■ 4. Section 878.4830 is amended by revising paragraph (b) to read as follows:

§ 878.4830 Absorbable surgical gut suture.

* * * * *

(b) *Classification*. Class II (special controls). The special control for this device is FDA's ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA.'' See § 878.1(e) for the availability of this guidance document.

■ 5. Section 878.5000 is amended by revising paragraph (b) to read as follows:

§ 878.5000 Nonabsorbable poly(ethylene terephthalate) surgical suture.

* * * * *

(b) *Classification*. Class II (special controls). The special control for this device is FDA's ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA.'' See § 878.1(e) for the availability of this guidance document.

■ 6. Section 878.5010 is amended by revising paragraph (b) to read as follows:

§ 878.5010 Nonabsorbable polypropylene surgical suture.

* * * * *

(b) *Classification*. Class II (special controls). The special control for this device is FDA's ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA.'' See § 878.1(e) for the availability of this guidance document.

■ 7. Section 878.5020 is amended by revising paragraph (b) to read as follows:

§ 878.5020 Nonabsorbable polyamide surgical suture.

* * * * *

(b) *Classification*. Class II (special controls). The special control for this device is FDA's ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA.'' See § 878.1(e) for the availability of this guidance document.

■ 8. Section 878.5030 is amended by revising paragraph (b) to read as follows:

§ 878.5030 Natural nonabsorbable silk surgical suture.

* * * * *

(b) *Classification*. Class II (special controls). The special control for this device is FDA's ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA.'' See § 878.1(e) for the availability of this guidance document.

■ 9. Section 878.5035 is amended by revising paragraph (b) to read as follows:

§ 878.5035 Nonabsorbable expanded polytetrafluoroethylene surgical suture.

* * * * *

(b) *Classification*. Class II (special controls). The special control for this device is FDA's ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA.'' See § 878.1(e) for the availability of this guidance document.

Dated: May 20, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–13825 Filed 6–2–03; 8:45 am]

BILLING CODE 4160–01–S

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

28 CFR Part 802

[CSOSA–0003–F]

RIN 3225–AA01

Disclosure of Records

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Final rule.

SUMMARY: The Court Services and Offender Supervision Agency for the District of Columbia (''CSOSA'' or ''Agency'') is adopting regulations on the disclosure of CSOSA or the District of Columbia Pretrial Services Agency (''PSA'' or ''Agency'') records. These regulations include procedures for processing requests for disclosure under the Freedom of Information Act, under the Privacy Act, and for the production of records in response to a subpoena or other legal demand for testimony. The regulations also identify Privacy Act systems of records exemptions for both CSOSA and PSA. These regulations are necessary in order to ensure that the public has appropriate access to information maintained by the Agency and that adequate safeguards are in place to protect the privacy rights of individuals.

EFFECTIVE DATE: July 3, 2003.

ADDRESSES: Office of the General Counsel, CSOSA, Room 1253, 633 Indiana Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Records Manager (telephone: (202) 220–5359; e-mail: *roy.nanovic@csosa.gov*).

SUPPLEMENTARY INFORMATION: The Court Services and Offender Supervision Agency for the District of Columbia (''CSOSA'' or ''Agency'') is adopting regulations (28 CFR part 802) on the disclosure of records maintained by CSOSA or the District of Columbia Pretrial Services Agency (''PSA'' or ''Agency''). CSOSA published a proposed rule on this subject in the **Federal Register** on March 15, 2002 (67 FR 11804). As noted in the proposed rule, PSA is an independent entity within CSOSA.

Summary of Regulatory Provisions

Subpart A of the proposed regulations provides a general introduction. Subpart B covers procedures for Freedom of Information Act (FOIA) requests; subpart C covers procedures for Privacy Act requests; subpart D covers disclosures in response to subpoenas or other legal demands; and subpart E covers exemptions to CSOSA and PSA Privacy Act systems of records.

Freedom of Information Act Requests

The general guidelines for disclosure (§ 802.3) under the FOIA note that a record must be in the possession and control of the agency at the time of the request to be considered subject to release under the regulations. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request. Hard copy of electronic records which are subject to FOIA, but which are available to the public through an established distribution system, the **Federal Register**, or the Internet at CSOSA's Web site (*http://www.csosa.gov*), normally do not need to be processed under the FOIA. CSOSA will process such requests under the FOIA only if the requester insists on such processing.

Definitions for certain terms used in the subpart are contained in § 802.4. The procedures for submitting and processing FOIA requests are contained in § 802.5. Section 802.6 explains how CSOSA handles requests for documents which relate to or were created by another agency.

Section 802.7 covers the denial of a request. This section also explains how the requester may appeal the denial. Section 802.8 explains how to request expedited processing. Section 802.9 covers procedures for the disclosure of business information which may have been provided to the Agency. The business submitter (any entity which provided the business information to the Agency and which has a proprietary interest in the information) will receive notice of the FOIA request and have an opportunity to object to disclosure. Section 802.10 contains the fee schedule for FOIA requests.

Privacy Act Requests

The regulations in subpart C are intended to let you know how you can determine whether CSOSA or PSA maintains records about you, how you can obtain access to your records, and how to have your records corrected or amended.

Definitions for certain terms used in the subpart are contained in § 802.12. Section 802.13 explains how to verify your identity when making a request for your own records and how to document that you have consent when you make a request for information concerning another individual. The procedures for submitting and processing requests for access to records are contained in

§ 802.14 and have been reorganized and amended to better address the technical requirements for accessing and reviewing records. Section 802.15, which covers the denial of a request, and § 802.16, which explains how the requester may appeal the denial, have similarly been adjusted (for example, appeals based upon an adverse determination of the requester's category or for fee waiver apply to FOIA only and have accordingly been removed from the final rule). Section 802.17 explains how CSOSA or PSA handle requests for documents which relate to or were created by another agency.

Section 802.18 explains how you may request to correct or amend a record about you which the Agency maintains. Section 802.19 contains procedures for appealing a denial to correct or amend your record. Section 802.19 now specifies that the system manager is responsible for granting or denying requests for corrections of records.

Section 802.20 contains the procedures for accounting for disclosures, and § 802.21 notes your appeal rights for a denial of a request for an accounting. Section 802.20 has been amended to clarify that disclosures made under the FOIA are exempt from accounting and that no accounting will be provided to the record subject for disclosures made to law enforcement agencies. Fees for Privacy Act requests are described in § 802.22 and have been reworded slightly for the sake of clarity. Section 802.23 explains the Agency's policy on the use and disclosure of social security numbers.

Subpoenas or Other Legal Demands for Testimony or Production or Disclosure of Records or Other Information

Subpart D contains procedures for the production of records in response to subpoenas or demands of courts or other authorities in connection with a proceeding to which the Agency is not a party. These regulations establish a systematic means by which the Agency can evaluate requests for production of official agency information. The regulations are intended to: (1) Conserve Agency employee's time for conducting official business, (2) minimize the possibility of involving the Agency in controversial issues that are not related to the mission of the Agency, (3) prevent the possibility that the public will misconstrue variances between personal opinions of Agency employees and Agency policy, (4) avoid spending the government's time and money for private purposes, (5) preserve the integrity of the administrative process, and (6) protect confidential, sensitive information and the deliberative process of the Agency. In adopting these provisions as final, CSOSA is clarifying the provisions in § 802.27(d) to refer to these reasons when considering factors pertinent to whether a demand should be complied with.

Exemption of Record Systems

The Privacy Act permits specific systems of records to be exempt from some of its requirements. Subpart E identifies these exemptions and explains the basis for making the exemptions. CSOSA exemptions are contained in § 802.28; PSA exemptions are contained in § 802.29. The CSOSA exemption for Employment Profile, previously identified as CSOSA–14, has been removed as that system of record is no longer in use. The full text of CSOSA and PSA systems of records appeared in a separate notice document in the March 15, 2002 **Federal Register** (67 FR 11816).

Disposition of Public Comment

CSOSA did not receive any comments on the proposed rule. CSOSA accordingly is adopting the proposed provisions as a final rule without further change other than the technical amendments to the Privacy Act procedures and the clarification to § 802.27(d) noted above.

Matters of Regulatory Procedure

Administrative Procedure Act

In accordance with the Administrative Procedure Act, CSOSA published a proposed rule on this subject in the **Federal Register**. This final rule will become effective as noted above.

Executive Order 12866

This proposed rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

Executive Order 13132

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. Therefore, in accordance with Executive Order 13132, the Director of CSOSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of CSOSA, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and by approving it certifies that this rule will not have a significant economic impact upon a substantial number of small entities. This rule pertains to agency management, and its economic impact is limited to the agency's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, the Director of CSOSA has determined that no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

If you have suggestions on how to improve the clarity of these regulations, write, e-mail, or call the Records Manager (Roy Nanovic) at the address or telephone number given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions.

List of Subjects in 28 CFR Part 802

Freedom of information; Privacy; Probation and parole.

Paul A. Quander, Jr.,

Director.

■ Accordingly, we amend chapter VIII, Title 28 of the Code of Federal Regulations by adding a new part 802 as set forth below.

PART 802—DISCLOSURE OF RECORDS

Subpart A—General

Sec.

802.1 Introduction.

Subpart B—Freedom of Information Act.

802.2 Purpose and scope.

802.3 Guidelines for disclosure.

802.4 Definitions.

802.5 Freedom of Information Act requests.
802.6 Documents from other agencies.
802.7 Denial of request.
802.8 Expedited processing.
802.9 Business information.
802.10 Fee schedule.

Subpart C—Privacy Act

802.11 Purpose and scope.
802.12 Definitions.
802.13 Verifying your identity.
802.14 Requests for access to records.
802.15 Denial of request.
802.16 Administrative appeal.
802.17 Documents from other agencies.
802.18 Correction or amendment of record.
802.19 Appeal of denial to correct or amend.
802.20 Accounting of disclosures.
802.21 Appeals.
802.22 Fees.
802.23 Use and disclosure of social security numbers.

Subpart D—Subpoenas or Other Legal Demands for Testimony or the Production or Disclosure of Records or Other Information

802.24 Purpose and scope.
802.25 Definitions.
802.26 Receipt of demand.
802.27 Compliance/noncompliance.

Subpart E—Exemption of Record Systems Under the Privacy Act

802.28 Exemption of the Court Services and Offender Supervision System—limited access.
802.29 Exemption of the Pretrial Services Agency System.

Authority: 5 U.S.C. 301, 552, 552a; Pub. L. 105–33, 111 Stat. 251, 712 (D.C. Code 24–1232, 24–1233).

Subpart A—General

§ 802.1 Introduction.

This part contains regulations of the Court Services and Offender Supervision Agency for the District of Columbia (''CSOSA'' or ''Agency'') and the District of Columbia Pretrial Services Agency (''PSA'' or ''Agency'') which implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a, and provide for the production of records in response to a demand from a court or other non-congressional authority in connection with a proceeding to which the Agency is not a party.

Subpart B—Freedom of Information Act

§ 802.2 Purpose and scope.

The purpose of this subpart is to establish procedures for the release of records in the possession of the Agency pursuant to the provisions of the FOIA.

§ 802.3 Guidelines for disclosure.

(a) The authority to release or deny access to records and information under the FOIA is limited to the General Counsel and his or her designee.

(b) An agency record will be released in response to a written request, unless a valid legal exemption to disclosure is asserted.

(1) Any applicable exemption to disclosure which is provided under the FOIA in 5 U.S.C. 552 may be asserted.

(2) A record must exist and be in the possession and control of the agency at the time of the request to be considered subject to this part and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request.

(3) Hard copy of electronic records that are subject to FOIA requests under 5 U.S.C. 552(a)(3), and that are available to the public through an established distribution system or through the **Federal Register** or the Internet, normally need not be processed under the provisions of the FOIA. However, if the requester insists that the request be processed under the FOIA, then the request shall be processed under the FOIA.

§ 802.4 Definitions.

As used in this subpart, the following terms have the following meanings:

(a) *Agency* has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552(f).

(b) *Appeal* means a request for a review of the agency's determination with regard to a fee waiver, category of requester, expedited processing, or denial in whole or in part of a request for access to a record or records.

(c) *Business information* means trade secrets or other commercial or financial information.

(d) *Business submitter* means any entity which provides business information to the Agency and which has a proprietary interest in the information.

(e) *Computer software* means tools by which records are created, stored, and retrieved. Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium, are not agency records. Proprietary (or copyrighted) software is not an agency record.

(f) *Confidential commercial information* means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(g) *Duplication* refers to the process of making a copy of a record in order to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine-readable documentation (*e.g.*, magnetic tape or disk), among others.

(h) *Electronic records* mean those records and information which are created, stored, and retrievable by electronic means. This ordinarily does not include computer software, which is a tool by which to create, store, or retrieve electronic records.

(i) *Request* means any request for records made pursuant to 5 U.S.C. 552(a)(3).

(j) *Requester* means any person who makes a request for access to records.

(k) *Review,* for fee purposes, refers to the process of examining records located in response to a commercial use request to determine whether any portion of any record located is permitted to be withheld. It also includes processing any records for disclosure; *e.g.*, doing all that is necessary to excise them and otherwise prepare them for release.

(l) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within records. Searches may be done manually or by automated means.

§ 802.5 Freedom of Information Act requests.

(a) *Submission, processing, and release procedures.*

(1) Requests for any record (including policy) ordinarily will be processed pursuant to the Freedom of Information Act, 5 U.S.C. 552. Your request must be made in writing and addressed to the FOIA Officer, Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The requester should clearly mark on the face of the letter and the envelope ''Freedom of Information Request.''

(2) Your request will be considered received as of the date it is received by the FOIA Office. For quickest possible handling, you should mark both your request letter and the envelope ''Freedom of Information Act Request.''

(3) Generally, all FOIA requests will be processed in the approximate order of receipt, unless the requester shows exceptional circumstances exist to justify an expedited response (*see* § 802.8).

(4) You must state in your request a firm agreement to pay the fees for search, duplication, and review as may ultimately be determined. The agreement may state the upper limit (but not less than $25) that the requester is willing to pay for processing the request. A request that fees be waived or reduced may accompany the agreement

to pay fees and will be considered to the extent that such request is made in accordance with § 802.4(b) and provides supporting information to be measured against the fee waiver standard set forth in § 802.9(g). The requester shall be notified in writing of the decision to grant or deny the fee waiver. If a requester has an outstanding balance of search, review, or duplication fees due for FOIA request processing, the requirements of this paragraph are not met until the requester has remitted the outstanding balance due.

(b) *Description of records sought.* You must describe the records that you seek in enough detail to enable Agency personnel to locate them with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient and subject matter of the record. As a general rule, the more specific you are about the records or type of records that you want, the more likely the Agency will be able to locate the records in response to your request. If a determination is made that your request does not reasonably describe records, the Agency will tell you either what additional information is needed or why your request is otherwise insufficient. You will be given the opportunity to discuss your request so that you may modify it to meet the requirements of this section.

(1) If a document contains information exempt from disclosure, any reasonably segregable portion of the record will be provided to you after deletion of the exempt portions.

(2) You will be notified of the decision on the request within 20 days after its receipt (excluding Saturdays, Sundays, and legal public holidays).

§ 802.6 Documents from other agencies.

(a) *Documents from or relating to Federal agencies.* (1) When a request for records includes a document from another Federal agency, the document will be referred to the originating Federal agency for a determination of its releasability. The requester will be informed of the referral. This is not a denial of a FOIA request; thus no appeal rights accrue to the requester.

(2) When a FOIA request is received for a record created by the Agency that includes information originated by another federal agency, the record will be referred to the originating agency for review and recommendation on disclosure. The Agency will not release any such record without prior consultation with the originating agency.

(b) *Documents from non-Federal agencies.* When a request for records includes a document from a non-Federal agency, CSOSA staff must make a determination of its releasability.

§ 802.7 Denial of request.

(a) *Denial in whole or in part.* If it is determined that the request for records should be denied in whole or in part, the requester shall be notified by mail. The letter of notification shall:

(1) State the exemptions relied on in not granting the request;

(2) If technically feasible, indicate the amount of information deleted at the place in the record where such deletion is made (unless providing such indication would harm an interest protected by the exemption relied upon to deny such material);

(3) Set forth the name and title or position of the responsible official;

(4) Advise the requester of the right to administrative appeal in accordance with paragraph (c) of this section; and

(5) Specify the official or office to which such appeal shall be submitted.

(b) *No records found.* If it is determined, after a thorough search for records by the responsible official or his delegate, that no records have been found to exist, the responsible official will so notify the requester in writing. The letter of notification will advise the requester of the right to administratively appeal the determination that no records exist (*i.e.*, to challenge the adequacy of the search for responsive records) in accordance with paragraph (c) of this section. The response shall specify the official or office to which the appeal shall be submitted for review.

(c) *Administrative appeal.*

(1) A requester may appeal an initial determination when:

(i) Access to records has been denied in whole or in part;

(ii) There has been an adverse determination of the requester's category as provided in § 802.10(d);

(iii) A request for fee waiver or reduction has been denied; or

(iv) It has been determined that no responsive records exist.

(2) Appeals must be made within 30 days of the receipt of the letter denying the request. Both the envelope and the letter of appeal should be sent to the Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Room 1220, Washington, DC 20004 and must be clearly marked ''Freedom of Information Act Appeal.''

(3) The General Counsel will make an appeal determination within 20 days (excluding Saturdays, Sundays, and holidays) from the date of receipt of the appeal. However, for a good reason, this time limit may be extended up to an additional 10 days. If, after review, the General Counsel determines that additional information should be released, it will accompany the appeal response. If, after review, the General Counsel determines to uphold the initial review, we will inform you.

§ 802.8 Expedited processing.

(a) Requests and appeals will be taken out of order and given expedited treatment whenever staff determines that they involve:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. The requester must fully explain the circumstances warranting such an expected threat so that the Agency may make a reasoned determination.

(2) With respect to a request made by a person primarily engaged in disseminating information, a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence. A person ''primarily engaged in disseminating information'' does not include individuals who are engaged only incidentally in the dissemination of information. The standard of ''widespread and exceptional media interest'' requires that the records requested pertain to a matter of current exigency to the American public and that delaying a response to a request for records would compromise a significant recognized interest to and throughout the general public. The requester must adequately explain the matter or activity and why it is necessary to provide the records being sought on an expedited basis.

(b) If you seek expedited processing, you must submit a statement, certified to be true and correct to the best of your knowledge and belief. The statement must be in the form prescribed by 28 U.S.C. 1746, ''I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on [date].''

(c) The determination as to whether to grant or deny the request for expedited processing will be made, and the requester notified, within ten days after the date of the request. Because a decision to take a FOIA request out of order delays other requests, simple fairness demands that such a decision be made by the FOIA Officer only upon careful scrutiny of truly exceptional circumstances. The decision will be made solely based on the information

contained in the initial letter requesting expedited processing.

(d) Appeals of initial determinations to deny expedited processing must be made promptly. Both the envelope and the letter of appeal should be sent to the Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Room 1220, Washington, DC 2004 and must be clearly marked ''Expedited Processing Appeal.''

(e) The General Counsel will make an appeal determination regarding expedited processing as soon as practicable.

§ 802.9 Business information.

(a) *In general.* Business information provided to the Agency by a business submitter will not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. Any claim of confidentiality must be supported by a statement by an authorized representative of the company providing specific justification that the information in question is in fact confidential commercial or financial information and has not been disclosed to the public.

(b) *Notice to business submitters.* The Agency will provide a business submitter with prompt written notice of receipt of a request or appeal encompassing its business information whenever required in accordance with paragraph (c) of this section, and except as is provided in paragraph (g) of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the business information.

(c) *When notice is required.*

(1) Notice of a request for business information falling within paragraph (c)(2)(i) or (ii) of this section will be required for a period of not more than ten years after the date of submission unless the business submitter had requested, and provided acceptable justification for, a specific notice period of greater duration.

(2) The Agency shall provide a business submitter with notice of receipt of a request or appeal whenever:

(i) The business submitter has in good faith designated the information as commercially or financially sensitive information, or

(ii) The Agency has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(d) *Opportunity to object to disclosure.*

(1) Through the notice described in paragraph (b) of this section, the Agency shall afford a business submitter ten days from the date of the notice (exclusive of Saturdays, Sundays, and legal public holidays) to provide a detailed statement of any objection to disclosure. Such statement shall specify why the business submitter believes the information is considered to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph might itself be subject to disclosure under the FOIA.

(2) When notice is given to a submitter under this section, the requester shall be advised that such notice has been given to the submitter. The requester shall be further advised that a delay in responding to the request may be considered a denial of access to records and that the requester may proceed with an administrative appeal or seek judicial review, if appropriate. However, the requester will be invited to agree to a voluntary extension of time so that staff may review the business submitter's objection to disclose.

(e) *Notice of intent to disclose.* The Agency will consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever a decision to disclose business information over the objection of a business submitter is made, the Agency shall forward to the business submitter a written notice which shall include:

(1) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date which is not less than ten days (exclusive of Saturdays, Sundays, and legal public holidays) after the notice of the final decision to release the requested information has been mailed to the submitter.

(f) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (c) of this section, the Agency shall promptly notify the business submitter.

(g) *Exception to notice requirement.* The notice requirements of this section shall not apply if:

(1) The Agency determines that the information shall not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

§ 802.10 Fee schedule.

(a) The fees described in this section conform to the Office of Management and Budget Uniform Freedom of Information Act Fee Schedule and Guidelines. They reflect direct costs for search, review (in the case of commercial requesters), and duplication of documents, collection of which is permitted by the FOIA. However, for each of these categories, the fees may be limited, waived, or reduced for the reasons given below or for other reasons.

(b) The term *direct costs* means those expenditures the agency actually makes in searching for, review (in the case of commercial requesters), and duplicating documents to respond to a FOIA request.

(c) Fees shall be charged in accordance with the schedule contained in paragraph (i) of this section for services rendered in responding to requests for records, unless any one of the following applies:

(1) Services were performed without charge;

(2) The fees were waived or reduced in accordance with paragraph (f) of this section.

(d) Specific levels of fees are prescribed for each of the following categories of requesters.

(1) *Commercial use requesters.* These requesters are assessed charges, which recover the full direct costs of searching for, reviewing, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of duplication of documents. Moreover, when a request is received for disclosure that is primarily in the commercial interest of the requester, the Agency is not required to consider a request for a waiver or reduction of fees based upon the assertion that disclosure would be in the public interest. The Agency may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records, or no records are located.

(2) *Educational and non-commercial scientific institution requesters.* Records shall be provided to requesters in these categories for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible, requesters must show that the request is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. These categories do not include requesters who want records for

use in meeting individual academic research or study requirements.

(3) *Requesters who are representatives of the news media.* Records shall be provided to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages.

(4) *All other requesters.* Requesters who do not fit any of the categories described in paragraphs (d)(1) through (3) of this section shall be charged fees that will recover the full direct cost of searching for and duplicating records that are responsive to the request, except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge. The Agency may recover the cost of searching for records even if there is ultimately no disclosure of records, or no records are located. Requests from persons for records about themselves filed in a systems of records shall continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for duplication.

(e) *Fee waiver determination.* Where the initial request includes a request for reduction or waiver of fees, the responsible official shall determine whether to grant the request for reduction or waiver before processing the request and notify the requester of this decision. If the decision does not waive all fees, the responsible official shall advise the requester of the fact that fees shall be assessed and, if applicable, payment must be made in advance pursuant to paragraph (g) of this section.

(f) *Waiver or reduction of fees.*

(1) Fees may be waived or reduced on a case-by-case basis in accordance with this paragraph by the official who determines the availability of the records, provided such waiver or reduction has been requested in writing. Fees shall be waived or reduced by this official when it is determined, based upon the submission of the requester, that a waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Fee waiver/reduction requests shall be evaluated against the current fee waiver policy guidance issued by the Department of Justice.

(2) Appeals from denials of requests for waiver or reduction of fees shall be decided in accordance with the criteria set forth in this section by the official authorized to decide appeals from denials of access to records. Appeals shall be addressed in writing to the Office of the General Counsel, Court Services and Offender Supervision Agency, Office of the General Counsel, 633 Indiana Avenue, NW., Washington, DC 20004 within 30 days of the denial of the initial request for waiver or reduction and shall be decided within 20 days (excluding Saturdays, Sundays and holidays).

(3) Appeals from an adverse determination of the requester's category as described in paragraphs (d)(1) through (3) of this section shall be decided by the official authorized to decide appeals from denials of access to records and shall be based upon a review of the requester's submission and the Agency's own records. Appeals shall be addressed in writing to the office or officer specified in § 802.7(c)(2) within 30 days of the receipt of the Agency's determination of the requester's category and shall be decided within 20 days (excluding Saturdays, Sundays, and holidays).

(g) *Advance notice of fees.*

(1) When the fees for processing the request are estimated to exceed the limit set by the requester, and that amount is less than $250.00, the requester shall be notified of the estimated costs. The requester must provide an agreement to pay the estimated costs; however, the requester will also be given an opportunity to reformulate the request in an attempt to reduce fees.

(2) If the requester has failed to state a limit and the costs are estimated to exceed $250.00, the requester shall be notified of the estimated costs and must pre-pay such amount prior to the processing of the request, or provide satisfactory assurance of full payment if the requester has a history of prompt payment of FOIA fees. The requester will also be given an opportunity to reformulate the request in an attempt to reduce fees.

(h) *Form of payment.*

(1) Payment may be made by check or money order payable to the Treasury of the United States.

(2) The Court Services and Offender Supervision Agency reserves the right to request prepayment after a request is processed and before documents are released in the following circumstances.

(i) When costs are estimated or determined to exceed $250.00, the Agency shall either obtain satisfactory assurance of full payment of the estimated cost where the requester has a history of prompt payment of FOIA fees or require the requester to make an advance payment of the entire estimated or determined fee before continuing to process the request.

(ii) If a requester has previously failed to pay a fee within 30 days of the date of the billing, the requester shall be required to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Agency begins to process a new request or the pending request. Whenever interest is charged, the Agency shall begin assessing interest on the 31st day following the day on which billing was sent. Interest shall be at the rate prescribed in 31 U.S.C. 3717.

(i) *Amounts to be charged for specific services.* The fees for services performed by an employee of the Agency shall be imposed and collected as set forth in this paragraph.

(1) *Duplicating records.* All requesters, except commercial requesters, shall receive the first 100 pages duplicated without charge; the first two hours of search time free; or charge which total $10.00 or less. Fees for the copies are to be calculated as follows:

(i) The duplication cost is calculated by multiplying the number of pages in excess of 100 by $0.25.

(ii) Photographs, films, and other materials—actual cost of duplication.

(iii) Other types of duplication services not mentioned above—actual cost.

(iv) Material provided to a private contractor for copying shall be charged to the requester at the actual cost charged by the private contractor.

(2) *Search services.* The cost of search time is calculated by multiplying the number of quarter hours in excess of two hours by the following rates for the staff conducting the search:

(i) $7.00 per quarter hour for clerical staff;

(ii) $10.00 per quarter hour for professional staff; and

(iii) $14.00 per quarter hour for managerial personnel.

(3) *Only fees in excess of $10.00 will be assessed.* This means that the total cost must be greater than $10.00, either for the cost of the search (for time in excess of two hours), for the cost of duplication (for pages in excess of 100), or for both costs combined.

(j) *Searches for electronic records.* The Agency shall charge for actual direct cost of the search, including computer search time, runs, and the operator's salary. The fee for computer output shall be actual direct costs. For requesters in the ''all other'' category, when the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search (*i.e.*, the operator), the charge for the computer search will begin.

(k) *Aggregating requests.* When the Agency reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Agency shall aggregate any such requests and charge accordingly.

Subpart C—Privacy Act

§ 802.11 Purpose and scope.

The regulations in this subpart apply to all records which are contained in a system of records maintained by the Agency and which are retrieved by an individual's name or personal identifier. This subpart implements the Privacy Act by establishing Agency policy and procedures providing for the maintenance of and guaranteed access to records. Under these procedures:

(a) You can ask us whether we maintain records about you or obtain access to your records; and

(b) You may seek to have your record corrected or amended if you believe that your record is not accurate, timely, complete, or relevant.

§ 802.12 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) *Agency* has the meaning as defined in 5 U.S.C. 552(e).

(b) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) *Maintain* includes maintain, collect, use, or disseminate.

(d) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Agency. This includes, but is not limited to, the individual's education, financial transactions, medical history, and criminal or employment history and that contains the name, or an identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or a photograph.

(e) *System of records* means a group of any records under the control of the Agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(f) *Statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

(g) *Routine use* means the disclosure of a record that is compatible with the purpose for which the record was collected.

(h) *Request for access* means a request made pursuant to 5 U.S.C. 552a(d)(1).

(i) *Request for amendment* means a request made pursuant to 5 U.S.C. 552a(d)(2).

(j) *Request for accounting* means a request made pursuant to 5 U.S.C. 552a(c)(3).

§ 802.13 Verifying your identity.

(a) *Requests for your own records.* When you make a request for access to records about yourself, you must verify your identity. You must state your full name, current address, and date and place of birth. You must sign your request and your signature must either be notarized or submitted by you under 28 U.S.C. 1746. In order to help the identification and location of requested records, you may also, at your option, include your social security number.

(b) *Requests on behalf of another.* Information that concerns an individual and that is contained in a system of records maintained by the Agency shall not be disclosed to any person, or to another agency, except under the provisions of the Privacy Act, 5 U.S.C. 552a, or the Freedom of Information Act, 5 U.S.C. 552.

(c) *Disclosure criteria.* Staff may disclose information from an agency system of records only if one or more of the following criteria apply:

(1) With the written consent of the individual to whom the record pertains.

(2) Pursuant to a specific exception listed under the Privacy Act (5 U.S.C. 552a(b)). For example, specific exceptions allow disclosure:

(i) To employees within the Agency who have a need for the record in the performance of their duties.

(ii) If disclosure is required under FOIA when the public interest in disclosure of the information outweighs the privacy interest involved.

(iii) For a routine use described in the agency system of records as published in the **Federal Register**.

(A) The published notices for these systems describe the records contained in each system and the routine uses for disclosing these records without first obtaining the consent of the person to whom the records pertain.

(B) CSOSA publishes notices of system of records, including all pertinent routine uses, in the **Federal Register**.

§ 802.14 Requests for access to records.

(a) *Submission and processing procedures.*

(1) Requests for any agency record about yourself ordinarily will be processed pursuant to the Privacy Act, 5 U.S.C. 552a. Such a request must be made in writing and addressed to the FOIA Officer, Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The requester should clearly mark on the face of the letter and the envelope ''Privacy Act Request.''

(2) Your request will be considered received as of the date it is received by the Office of the General Counsel. For quickest possible handling, you should mark both your request letter and the envelope ''Privacy Act Request.''

(3) You must describe the records that you seek in enough detail to enable Agency personnel to locate them with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient and subject matter of the record. As a general rule, the more specific you are about the records or type of records that you want, the more likely the Agency will be able to locate the records in response to your request. If a determination is made that your request does not reasonably describe records, the Agency will tell you either what additional information is needed or why your request is otherwise insufficient. You will be given the opportunity to discuss your request so that you may modify it to meet the requirements of this section.

(b) *Release and review procedures.* Upon written request by an individual to gain access to his or her records which are not otherwise exempted, CSOSA shall permit the individual and, upon the individual's request, a person of his or her choosing to accompany him or her, to review the record and have a copy of all or any portion of the record. If a document contains information exempt from disclosure under the Privacy Act, any reasonably segregable portion of the record will be provided to the requester after deletion of the exempt portions.

(2) A requester will be notified of the decision on the request in writing.

(3) Generally, all Privacy Act requests will be processed in the approximate order of receipt, unless the requester shows exceptional circumstances exist to justify an expedited response (*see* § 802.8).

§ 802.15 Denial of request.

(a) *Denial in whole or in part.* If it is determined that the request for records should be denied in whole or in part, the requester shall be notified by mail. The letter of notification shall:

(1) State the PA and FOIA exemptions relied on in not granting the request;

(2) If technically feasible, indicate the amount of information deleted at the place in the record where such deletion is made (unless providing such indication would harm an interest protected by the exemption relied upon to deny such material);

(3) Set forth the name and title or position of the responsible official;

(4) Advise the requester of the right to an administrative appeal in accordance with § 802.16; and

(5) Specify the official or office to which such appeal shall be submitted.

(b) *No records found.* If it is determined, after a thorough search for records by the responsible official or his delegate, that no records have been found to exist, the responsible official will so notify the requester in writing. The letter of notification will advise the requester of the right to administratively appeal the determination that no records exist (*i.e.*, to challenge the adequacy of the search for responsive records) in accordance with § 802.16. The notification shall specify the official or office to which the appeal shall be submitted for review.

§ 802.16 Administrative appeal.

(a) A requester may appeal an Agency initial determination when:

(1) Access to records has been denied in whole or in part; or

(2) It has been determined that no responsive records exist.

(b) Appeals of initial determinations must be made within 30 days of the receipt of the letter denying the request. Both the envelope and the letter of appeal should be sent to the Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Room 1220, Washington, DC 20004 and must be clearly marked ''Privacy Act Appeal.''

(c) The General Counsel will make an appeal determination within 30 days (excluding Saturdays, Sundays, and holidays) from the date of receipt of the appeal. However, for a good reason, this time limit may be extended. If, after review, the General Counsel determines that additional information should be released, it will accompany the appeal response. If, after review, the General Counsel determines to uphold the initial review, we will inform you of that decision.

§ 802.17 Documents from other agencies.

(a)(1) *Documents from or pertaining to Federal agencies.* When a request for records includes a document from another Federal agency, the document will be referred to the originating Federal agency for a determination of its releasability. The requester will be informed of the referral. This is not a denial of a Privacy Act request; thus no appeal rights accrue to the requester.

(2) When a Privacy Act request is received for a record created by the Agency that includes information originated by another Federal agency, the record will be referred to the originating agency for review and recommendation on disclosure. The Agency will not release any such record without prior consultation with the originating agency.

(b) *Documents from non-Federal agencies.* When a request for records includes a document from a non-Federal agency, CSOSA staff must make a determination of its releasability.

§ 802.18 Correction or amendment of records.

This section applies to all records kept by the Agency except for records of earnings. If you believe your record is not accurate, relevant, timely, or complete, you may request that your record be corrected or amended. A request for correction or amendment must identify the particular record in question, state the correction or amendment sought, and set forth the justification for the correction. To amend or correct your record, you should write to the Office of the General Counsel identified in § 802.14(a)(1). You should submit any available evidence to support your request. Both the request and the envelope must be clearly marked ''Privacy Act Correction Request.'' Your request should indicate:

(a) The system of records from which the record is retrieved;

(b) The particular record which you want to correct or amend;

(c) Whether you want to add, delete or substitute information in the records; and

(d) Your reasons for believing that your record should be corrected or amended.

§ 802.19 Appeal of denial to correct or amend.

(a) The system manager may grant or deny requests for correction of agency records. One basis for denial may be that the records are contained in an agency system of records that has been published in the **Federal Register** and exempted from the Privacy Act provisions allowing amendment and correction.

(1) Any denial of a request for correction should contain a statement of the reason for denial and notice to the requester that the denial may be appealed to the General Counsel by filing a written appeal.

(2) The appeal should be marked on the face of the letter and the envelope, ''PRIVACY APPEAL—DENIAL OF CORRECTION,'' and be addressed to the Office of the General Counsel, address cited at § 802.14(a)(1).

(3) The General Counsel will review your request within 30 days from the date of receipt. However, for a good reason, this time limit may be extended. If, after review, the General Counsel determines that the record should be corrected, the record will be corrected. If, after review, the General Counsel refuses to amend the record exactly as you requested, we will inform you:

(i) That your request has been refused and the reason;

(ii) That this refusal is the Agency's final decision;

(iii) That you have a right to seek court review of this request to amend the record; and

(iv) That you have a right to file a statement of disagreement with the decision. Your statement should include the reason you disagree. We will make your statement available to anyone to whom the record is subsequently disclosed, together with a statement of our reasons for refusing to amend the record.

(b) Requests for correction of records prepared by other federal agencies shall be forwarded to that agency for appropriate action and the requester will be immediately notified of the referral in writing.

(c) When the request is for correction of non-Federal records, the requester will be advised to write to that non-Federal entity.

§ 802.20 Accounting of disclosures.

(a) We will provide an accounting of all disclosures of a record for five years or until the record is destroyed, whichever is longer, except that no accounting will be provided to the record subject for disclosures made to law enforcement agencies and no accounting will be made for:

(1) Disclosures made under the FOIA;

(2) Disclosures made within the agency; and

(3) Disclosures of your record made with your written consent.

(b) The accounting will include:

(1) The date, nature, and purpose of the disclosure; and

(2) The name and address of the person or entity to whom the disclosure is made.

(c) You may request access to an accounting of disclosures of your record. Your request should be in accordance with the procedures in § 802.14. You will be granted access to an accounting of the disclosures of your record in accordance with the procedures of this part which govern

access to the related record, excepting disclosures made for an authorized civil or criminal law enforcement agency as provided by subsection (c)(3) of the Privacy Act. You will be required to provide reasonable identification.

§ 802.21 Appeals.

You may appeal a denial of a request for an accounting to the Office of the General Counsel in the same manner as a denial of a request for access to records (See § 802.16) and the same procedures will be followed.

§ 802.22 Fees.

The Agency shall charge fees under the Privacy Act for duplication of records only. These fees shall be at the same rate the Agency charges for duplication fees under the Freedom of Information Act (*See* § 802.10(i)(1)).

§ 802.23 Use and disclosure of social security numbers.

(a) *In general.* An individual shall not be denied any right, benefit, or privilege provided by law because of such individual's refusal to disclose his or her social security number.

(b) *Exceptions.* The provisions of paragraph (a) of this section do not apply with respect to:

(1) Any disclosure which is required by Federal statute, or

(2) The disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(c) *Requests for disclosure of social security number.* If the Agency requests an individual to disclose his or her social security account number, we shall inform that individual whether:

(1) Disclosure is mandatory or voluntary.

(2) By what statutory or other authority such number is solicited, and

(3) What uses will be made of it.

Subpart D—Subpoenas or Other Legal Demands for Testimony or the Production or Disclosure of Records or Other Information

§ 802.24 Purpose and scope.

(a) These regulations state the procedures which the Court Services and Offender Supervision Agency (''CSOSA'' or ''Agency'') and the District of Columbia Pretrial Services Agency (''PSA'' or ''Agency'') follow in response to a demand from a Federal, state, or local administrative body for the production and disclosure of material in connection with a proceeding to which the Agency is not a party.

(b) These regulations do not apply to congressional requests. Neither do these regulations apply in the case of an employee making an appearance solely in his or her private capacity in judicial or administrative proceedings that do not relate to the Agency (such as cases arising out of traffic accidents, domestic relations, etc.).

(c) This part is not intended and does not create and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States or specifically CSOSA or PSA.

§ 802.25 Definitions.

Demand means a request, order, or subpoena for testimony or documents to use in a legal proceeding.

Employee includes a person employed in any capacity by CSOSA or PSA, currently or in the past; any person appointed by, or subject to the supervision, jurisdiction, or control of the head of the Agency, or any Agency official, currently or in the past. A person who is subject to the Agency's jurisdiction or control includes any person who hired as a contractor by the agency, any person performing services for the agency under an agreement, and any consultant, contractor, or subcontractor of such person. A former employee is also considered an employee only when the matter about which the person would testify is one in which he or she was personally involved while at the Agency, or where the matter concerns official information that the employee acquired while working at the Agency, such as sensitive or confidential agency information.

Legal Proceeding includes any pretrial, trial, and post-trial state of any existing or reasonably anticipated judicial or administrative action, hearing, investigation, or similar proceeding before a court, commission, board, agency, or other tribunal, authority or entity, foreign or domestic. Legal proceeding also includes any deposition or other pretrial proceeding, including a formal or informal request for testimony made by an attorney or other person, or a request for documents gathered or drafted by an employee.

§ 802.26 Receipt of demand.

If, in connection with a proceeding to which the Agency is not a party, an employee receives a demand from a court or other authority for material contained in the Agency's files, any information relating to material contained in the Agency's files, or any information or material acquired by an employee as a part of the performance of that person's official duties or because of that person's official status, the employee must:

(a) Immediately notify the Office of the General Counsel and forward the demand to the General Counsel if the demand pertains to CSOSA; or

(b) Immediately notify the Deputy Director of PSA and forward the demand to the Deputy Director if the demand pertains to PSA.

§ 802.27 Compliance/noncompliance.

The General Counsel is responsible for determining if CSOSA should comply or not comply with the demand, and the Deputy Director of PSA is responsible for determining if PSA should comply with the demand.

(a) An employee may not produce any documents, or provide testimony regarding any information relating to, or based upon Agency documents, or disclose any information or produce materials acquired as part of the performance of that employee's official duties, or because of that employee's official status without prior authorization from the General Counsel or Deputy Director. The reasons for this policy are as follows:

(1) To conserve the time of the agency for conducting official business;

(2) To minimize the possibility of involving the agency in controversial issues that are not related to the agency's mission;

(3) To prevent the possibility that the public will misconstrue variances between personal opinions of agency employees and agency policies;

(4) To avoid spending the time and money of the United States for private purposes;

(5) To preserve the integrity of the administrative process; and

(6) To protect confidential, sensitive information and the deliberative process of the agency.

(b) An attorney from the Office of the General Counsel shall appear with any CSOSA employee upon whom the demand has been made (and with any PSA employee if so requested by the Deputy Director), and shall provide the court or other authority with a copy of the regulations contained in this part. The attorney shall also inform the court or authority that the demand has been or is being referred for prompt consideration by the General Counsel or Deputy Director. The court or other authority will be requested respectfully to stay the demand pending receipt of the requested instructions from the General Counsel or Deputy Director.

(c) If the court or other authority declines to stay the effect of the demand

pending receipt of instructions from the General Counsel or Deputy Director, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the General Counsel or Deputy Director not to produce the material or disclose the information sought, the employee upon whom the demand was made shall respectfully decline to produce the information under *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951). In this case, the Supreme Court held that a government employee could not be held in contempt for following an agency regulation requiring agency approval before producing government information in response to a court order.

(d) To achieve the purposes noted in paragraphs (a)(1) through (6) of this section, the agency will consider factors such as the following in determining whether a demand should be complied with:

(1) The Privacy Act, 5 U.S.C. 522a;

(2) Department of Health and Human Services statute and regulations concerning drug and alcohol treatment programs found at 42 U.S.C. 290dd and 42 CFR 2.1 *et seq.*;

(3) The Victims Rights Act, 42 U.S.C. 10606(b);

(4) D.C. statutes and regulations;

(5) Any other state or federal statute or regulation;

(6) Whether disclosure is appropriate under the rules of procedure governing the case or matter in which the demand arose;

(7) Whether disclosure is appropriate under the relevant substantive law concerning privilege;

(8) Whether disclosure would reveal a confidential source or informant, unless the investigative agency and the source or informant have no objection; and

(9) Whether disclosure would reveal investigatory records compiled for law enforcement purposes, and would interfere with enforcement proceedings or disclose investigative techniques and procedures the effectiveness of which would thereby be impaired.

Subpart E—Exemption of Records Systems Under the Privacy Act

§ 802.28 Exemption of the Court Services and Offender Supervision Agency System—limited access.

The Privacy Act permits specific systems of records to be exempt from some of its requirements.

(a)(1) The following systems of records are exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1)–(3), (4)(G)–(I), (5) and (8), (f) and (g):

(i) Background Investigation (CSOSA–2).

(ii) Supervision Offender Case File (CSOSA–9).

(iii) Pre-Sentence Investigations (CSOSA–10).

(iv) Supervision & Management Automated Record Tracking (SMART) (CSOSA–11).

(v) Recidivism Tracking Database (CSOSA–12).

(vi) [Reserved].

(vii) Substance Abuse Treatment Database (CSOSA–15).

(viii) Screener (CSOSA–16).

(ix) Sex Offender Registry (CSOSA–18).

(2) Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because offenders will not be permitted to gain access or to contest contents of these record systems under the provisions of subsection (d) of 5 U.S.C. 552a. Revealing disclosure accountings can compromise legitimate law enforcement activities and CSOSA responsibilities.

(ii) From subsection (c)(4) because exemption from provisions of subsection (d) will make notification of formal disputes inapplicable.

(iii) From subsection (d), (e)(4)(G) through (e)(4)(I), (f) and (g) because exemption from this subsection is essential to protect internal processes by which CSOSA personnel are able to formulate decisions and policies with regard to offenders, to prevent disclosure of information to offenders that would jeopardize legitimate correctional interests of rehabilitation, and to permit receipt of relevant information from other federal agencies, state and local law enforcement agencies, and federal and state probation and judicial offices.

(iv) From subsection (e)(1) because primary collection of information directly from offenders about criminal history or criminal records is highly impractical and inappropriate.

(A) It is not possible in all instances to determine relevancy or necessity of specific information in the early stages of a criminal or other investigation.

(B) Relevance and necessity are questions of judgment and timing; what appears relevant and necessary when collected ultimately may be deemed unnecessary. It is only after the information is assessed that its relevancy and necessity in a specific investigative activity can be established.

(C) In interviewing individuals or obtaining other forms of evidence or information during an investigation, information could be obtained, the nature of which would leave in doubt its relevancy and necessity. Such information, however, could be relevant to another investigation or to an investigative activity under the jurisdiction of another agency.

(v) From subsection (e)(2) because the nature of criminal and other investigative activities is such that vital information about an individual can only be obtained from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely upon information furnished by the individual concerning his/her own activities.

(vi) From subsection (e)(3) because disclosure would provide the subject with substantial information which could impede or compromise the investigation. The individual could seriously interfere with investigative activities and could take appropriate steps to evade the investigation or flee a specific area.

(vii) From subsection (e)(8) because the notice requirements of this provision could seriously interfere with a law enforcement activity by alerting the subject of a criminal or other investigation of existing investigative interest.

(viii) Those sections would otherwise require CSOSA to notify an individual of investigatory materials contained in a record pertaining to him/her, permit access to such record, permit requests for its correction (section 552a(d), (e)(4)(G), and (H)); make available to him/her any required accounting of disclosures made of the record (section 552a(c)(3)), publish the sources of records in the system (section 552a(4)(I)); and screen records to insure that there is maintained only such information about an individual as is relevant to accomplish a required purpose of the Agency (section 552(e)(1)). In addition, screening for relevancy to Agency purposes, a correction or attempted correction of such materials could require excessive amounts of time and effort on the part of all concerned.

(b)(1) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1)–(e)(3), (4)(H), (5), (8) and (g):

(i) Office of Professional Responsibility Record (OPR) (CSOSA–17).

(ii) [Reserved].

(2) Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because release of disclosure accounting could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and the fact that they

are subjects of the investigation, and reveal investigative interest by not only the OPR but also by the recipient agency. Since release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, release could result in activities that would impede or compromise law enforcement such as: the destruction of documentary evidence; improper influencing of witnesses; endangerment of the physical safety of confidential sources, witnesses, and law enforcement personnel; fabrication of testimony; and flight of the subject from the area. In addition, release of disclosure accounting could result in the release of properly classified information which could compromise the national defense or disrupt foreign policy.

(ii) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(iii) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could provide the subject of an investigation with information concerning law enforcement activities such as that relating to an actual or potential criminal, civil or regulatory violation; the existence of an investigation; the nature and scope of the information and evidence obtained as to his activities; the identity of confidential sources, witnesses, and law enforcement personnel; and information that may enable the subject to avoid detection or apprehension. Such disclosure would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation; endanger the physical safety of confidential sources, witnesses, and law enforcement personnel; and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(iv) From subsection (e)(1) because the application of this provision could impair investigations and interfere with the law enforcement responsibilities of the OPR for the following reasons:

(A) It is not possible to detect relevance or necessity of specific information in the early stages of a civil, criminal or other law enforcement investigation, case, or matter, including investigations in which use is made of properly classified information. Relevance and necessity are questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(B) During the course of any investigation, the OPR may obtain information concerning actual or potential violations of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OPR should retain this information as it may aid in establishing patterns of criminal activity, and can provide valuable leads for Federal and other law enforcement agencies.

(C) In interviewing individuals or obtaining other forms of evidence during an investigation, information may be supplied to an investigator which relates to matters incidental to the primary purpose of the investigation but which may relate also to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(v) From subsection (e)(2) because, in some instances, the application of this provision would present a serious impediment to law enforcement for the following reasons:

(A) The subject of an investigation would be placed on notice as to the existence of an investigation and would therefore be able to avoid detection or apprehension, to improperly influence witnesses, to destroy evidence, or to fabricate testimony.

(B) In certain circumstances the subject of an investigation cannot be required to provide information to investigators, and information relating to a subject's illegal acts, violations of rules of conduct, or any other misconduct must be obtained from other sources.

(C) In any investigation it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to verify the evidence necessary for successful litigation.

(vi) From subsection (e)(3) because the application of this provision would provide the subject of an investigation with substantial information which could impede or compromise the investigation. Providing such notice to a subject of an investigation could interfere with an undercover investigation by revealing its existence, and could endanger the physical safety of confidential sources, witnesses, and investigators by revealing their identities.

(vii) From subsection (e)(5) because the application of this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment it is collected. In the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Material which may seem unrelated, irrelevant, or incomplete when collected may take on added meaning or significance as an investigation progresses. The restrictions of this provision could interfere with the preparation of a complete investigation report, and thereby impede effective law enforcement.

(viii) From subsection (e)(8) because the application of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation, and could reveal investigation techniques, procedures, and/or evidence.

(ix) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j)(2), (k)(1), and (k)(2) of the Privacy Act.

§ 802.29 Exemption of the Pretrial Services Agency System.

The Privacy Act permits specific systems of records to be exempt from some of its requirements.

(a)(1) The following systems of records are exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1)–(3), (4)(G)–(I), (5) and (8), (f) and (g):

(i) Automated Bail Agency Database (ABADABA) (CSOSA/PSA–1).

(ii) Drug Test Management System (DTMS) (CSOSA/PSA–2).

(iii) Interview and Treatment Files (CSOSA/PSA–3).

(iv) Pretrial Realtime Information Systems Manager (PRISM) (CSOSA/PSA–6).

(2) Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because defendants/offenders will not be permitted to gain access or to contest contents of these record systems under the provisions of subsection (d) of 5 U.S.C. 552a. Revealing disclosure accountings can compromise legitimate law enforcement activities and CSOSA/PSA responsibilities.

(ii) From subsection (c)(4) because exemption from provisions of subsection (d) will make notification of formal disputes inapplicable.

(iii) From subsection (d), (e)(4)(G) through (e)(4)(I), (f) and (g) because exemption from this subsection is essential to protect internal processes by which CSOSA/PSA personnel are able to formulate decisions and policies with regard to defendants/offenders, to prevent disclosure of information to defendants/offenders that would jeopardize legitimate correctional interests of rehabilitation, and to permit receipt of relevant information from other federal agencies, state and local law enforcement agencies, and federal and state probation and judicial offices.

(iv) From subsection (e)(1) because primary collection of information directly from defendants/offenders about criminal history or criminal records is highly impractical and inappropriate.

(A) It is not possible in all instances to determine relevancy or necessity of specific information in the early stages of a criminal or other investigation.

(B) Relevancy and necessity are questions of judgment and timing; what appears relevant and necessary when collected ultimately may be deemed unnecessary. It is only after the information is assessed that its relevancy and necessity in a specific investigative activity can be established.

(C) In interviewing individuals or obtaining other forms of evidence or information during an investigation, information could be obtained, the nature of which would leave in doubt its relevancy and necessity. Such information, however, could be relevant to another investigation or to an investigative activity under the jurisdiction of another agency.

(v) From subsection (e)(2) because the nature of criminal and other investigative activities is such that vital information about an individual can only be obtained from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely upon information furnished by the individual concerning his/her own activities.

(vi) From subsection (e)(3) because disclosure would provide the subject with substantial information which could impede or compromise the investigation. The individual could seriously interfere with investigative activities and could take appropriate steps to evade the investigation or flee a specific area.

(vii) From subsection (e)(8) because the notice requirements of this provision could seriously interfere with a law enforcement activity by alerting the subject of a criminal or other investigation of existing investigative interest.

(viii) Those sections would otherwise require CSOSA to notify an individual of investigatory materials contained in a record pertaining to him/her, permit access to such record, permit requests for its correction (section 552a(d), (e)(4)(G), and (H)); make available to him/her any required accounting of disclosures made of the record (section 552a(c)(3)), publish the sources of records in the system (section 552a(4)(I)); and screen records to insure that there is maintained only such information about an individual as is relevant to accomplish a required purpose of the Agency (section 552(e)(1)). In addition, screening for relevancy to Agency purposes, a correction or attempted correction of such materials could require excessive amounts of time and effort on the part of all concerned.

(b) [Reserved].

[FR Doc. 03–13764 Filed 6–2–03; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–001]

RIN 1625–AA00 (Formerly RIN 2115–AA97)

Safety Zone Regulation; Fort Vancouver Fireworks Display, Columbia River, Vancouver, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Captain of the Port Portland will begin enforcing the safety zone for the Fort Vancouver Fireworks Display established by 33 CFR 165.1314 on May 28, 2003. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with the fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: 33 CFR 165.1314 will be enforced July 4, 2003, from 9:30 p.m. (P.d.t.) until 11 p.m. (P.d.t.).

SUPPLEMENTARY INFORMATION: On May 28, 2003, the Coast Guard published a final rule (68 FR 31609) establishing safety zones, in 33 CFR 165.1314, to provide for the safety of vessels in the vicinity of fireworks displays one of which is the Fort Vancouver fireworks display. The safety zone will include all waters of the Columbia River at Vancouver, Washington bounded by a line commencing at the northern base of the Interstate 5 highway bridge at latitude 45°37″16.5 seconds N, longitude 122°40″22.5′ W; thence south along the Interstate 5 highway bridge to Hayden Island, Oregon at latitude 45°36″51.5′ N, longitude 122°40″39′ W; thence east along Hayden Island to latitude 45°36″36′ N, longitude 122°39″48′ W (not to include Hayden Bay); thence north across the river thru the preferred channel buoy, RG Fl(2+1)R 6s, to the Washington shoreline at latitude 45°37′1.5′ N, longitude 122°39″29′ W; thence west along the Washington shoreline to the point of origin. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port Portland will enforce this safety zone on July 4, 2003, from 9:30 p.m. (P.d.t.) until 11 p.m. (P.d.t.). The Captain of the Port may be assisted by other Federal, State, or local agencies in enforcing this security zone.

FOR FURTHER INFORMATION CONTACT: Captain of the Port Portland, 6767 N. Basin Ave, Portland, OR 97217 at (503) 240–9370 to obtain information concerning enforcement of this rule.

Dated: May 27, 2003.

Paul D. Jewell,

Captain, Coast Guard, Captain of the Port, Portland.

[FR Doc. 03–13847 Filed 6–2–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP PHILADELPHIA 03–003]

RIN 1625–AA00

Security Zone; Salem and Hope Creek Generation Stations, Delaware River, Salem County, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone on the waters adjacent to the Salem and Hope Creek Generation Stations. This will protect the safety and security of the plants from subversive activity, sabotage, or terrorist attacks initiated

from surrounding waters. This action will close water areas around the plants.

DATES: This rule is effective from 5 p.m. eastern daylight time on May 13, 2003, to 5 p.m. eastern standard time on January 24, 2004.

ADDRESSES: Documents as indicated in this preamble are available as part of docket COTP Philadelphia 03–003 for inspection or copying at Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania, 19147, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Xaimara Vicencio-Roldan or Lieutenant Junior Grade Kevin Sligh, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4889.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after publication in the **Federal Register**. Based upon the warnings from national security and intelligence personnel, this rule is urgently required to protect the plant from subversive activity, sabotage or possible terrorist attacks initiated from the waters surrounding the plants.

Delaying the effective date of the rule would be contrary to the public interest, since immediate action is needed to protect the persons at the facilities, the public and surrounding communities from the release of nuclear radiation. This security zone should have minimal impact on vessel transits due to the fact that the security zone does not block the channel.

Background and Purpose

Due to the continued warnings from national security and intelligence officials that future terrorist attacks are possible, such as those launched against New York and Washington, DC on September 11, 2001, heightened security measures are necessary for the area surrounding the Salem and Hope Creek Generation Stations. This rule will provide the Captain of the Port Philadelphia with enforcement options to deal with potential threats to the security of the plants. The Coast Guard intends to implement a permanent security zone surrounding the plants. The Coast Guard will be publishing a NPRM to establish a permanent security zone that is temporarily effective under this rule. The Coast Guard will use the effective period of this Temporary Final Rule to engage in notice and comment rulemaking to develop a permanent regulation tailored to the present and foreseeable security environment within the Captain of the Port, Philadelphia, Pennsylvania zone.

Discussion of Rule

No person or vessel may enter or remain in the prescribed security zone at any time without the permission of the Captain of the Port, Philadelphia, PA or designated representative. Federal, State, and local agencies may assist the Coast Guard in the enforcement of this rule.

Regulatory Evaluation

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

The primary impact of this rule will be on vessels wishing to transit the affected waterway. Although this rule restricts traffic from freely transiting portions of the Delaware River, that restriction affects only a limited area and will be well publicized to allow mariners to make alternative plans.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: Owners or operators of fishing vessels and recreational vessels wishing to transit the portions of the Delaware River.

The rule will not have a significant impact on a substantial number of small entities for the following reasons: the restrictions affect only a limited area and traffic will be allowed to transit through the zone with permission of the Coast Guard or designated representative. The opportunity to engage in recreational and charter fishing outside the geographical limits of the security zone will not be disrupted. Therefore, this regulation should have a negligible impact on recreational and charter fishing activity.

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 the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not affect a taking of private property or otherwise have

taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f) and (g), of Commandant Instruction M16475.lD, from further environmental documentation.

A final ''Environmental Analysis Checklist'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add § 165.T05–078.

§ 165.T05–078 Security Zone; Salem and Hope Creek Generation Stations, Delaware River, Salem County, New Jersey.

(a) *Location.* The following area is a security zone: the waters of the Delaware River in the vicinity of the Salem and Hope Creek Generation Stations bounded by a line drawn from a point located at 39° 28′ 08.0″ N, 075° 32′ 31.7″ W to 39° 28′ 06.5″ N, 075° 32′ 47.4″ W, thence to 39° 27′ 28.4″ N, 075° 32′ 15.8″ W, thence to 39° 27′ 28.8″ N, 075° 31′ 56.6″ W, thence to 39° 27′ 39.9″ N, 075° 31′ 51.6″ W. All coordinates reference Datum: NAD 1983.

(b) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in § 165.33 of this part.

(2) No person or vessel may enter or navigate within this security zone unless authorized to do so by the Coast Guard or designated representative. Any person or vessel authorized to enter the security zone must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the security zone immediately if the Coast Guard or designated representative so orders.

(3) The Coast Guard or designated representative enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(4) The Captain of the Port will notify the public of any changes in the status of this security zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHz).

(c) *Definitions.* For the purposes of this section, Captain of the Port means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act as a designated representative on his behalf.

(d) *Effective dates.* This section is effective from 5 p.m. on May 13, 2003 to 5 p.m. on January 24, 2004.

Dated: May 13, 2003.

Jonathan D. Sarubbi,

Captain, Coast Guard, Captain of the Port, Philadelphia.

[FR Doc. 03–13848 Filed 6–2–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD 13–03–017]

RIN 1625–AA00

Safety Zone; Fireworks Display on Siuslaw River, Florence, Oregon and on Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing safety zones on the Siuslaw River near Florence, Oregon and on the Willamette River near Portland, Oregon during two fireworks displays. The Captain of the Port, Portland, is taking this action to safeguard watercraft and their occupants from safety hazards associated with the fireworks display. Entry into these safety zones is prohibited unless authorized by the Captain of the Port.

DATES: This rule is effective on July 4, 2003, from 9:15 p.m. (P.d.t.) to 10:30 (P.d.t.).

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (CGD 13–03–017) and are available for inspection or copying at the U.S. Coast Guard MSO/Group Portland, 6767 N. Basin Ave, Portland, Oregon 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Tad Drozdowski at (503) 240–9370.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this

regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. A final rule, which established safety zones around fireworks displays for the Captain of the Port Portland area of responsibility, was recently published in the **Federal Register** (CGD13–03–008, 33 CFR 165.1315, 68 FR XXXX, May 30, 2003). An amendment cannot be successfully be made to 33 CFR 165.1315 in time to ensure the safety of vessels and spectators gathering in the vicinity of these fireworks display. The Coast Guard intends to amend 33 CFR 165.1315 using normal rule-making procedures in the near future by adding these safety zone to that regulation.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Waiting 30 days for this rule to be effective is contrary to public interest. Due to the complex planning and coordination of the event, the event sponsor was unable to provide the Coast Guard with notice of details of the event in time to allow for notice and comment and a 30-day waiting period prior to the effective date after publication. Because immediate action is necessary to ensure the safety of vessels and spectators gathered in the vicinity of the fireworks launching barges it is in the public interest to make the rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The Coast Guard is establishing temporary safety zone regulations to allow for safe fireworks displays. These safety zones will be in effect from 9:15 p.m. (P.d.t.) to 10 p.m. (P.d.t.) on the Willamette River and from 9:30 p.m. (P.d.t.) to 10:30 p.m. (P.d.t.) on the Siuslaw River. These events will result in a large number of vessels congregating near the fireworks launching area. These safety zones are needed to provide for the safety of spectators and their watercraft from the inherent safety hazards associated with fireworks displays. Without providing an adequate safety zone, the public could be exposed to falling burning debris and would likely be within the blast range should a catastrophic accident occur on the launching barge. These safety zones will be enforced by representatives of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other federal and local agencies.

Discussion of Rule

This rule, for safety concerns, will control vessel movements in a regulated area surrounding a fireworks launching barge. Entry into this zone would be prohibited unless authorized by the Captain of the Port, Portland or his designated representative. Coast Guard personnel would enforce this safety zone. The Captain of the Port may be assisted by other federal and local agencies.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of 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 unnecessary. This expectation is based on the fact that the regulated area established by the proposed regulation will encompass less than one-half of a mile of the Willamette and Siuslaw Rivers for 75 minutes in the late evening when vessel traffic is low.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit a portion of the Willamette and Siuslaw Rivers between 9:15 p.m. (P.d.t.) and 10:30 p.m. (P.d.t.) on July 4, 2003. These safety zones will not have significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for 75 minutes at night when vessel traffic is low. Traffic will be allowed to pass through the zone with the permission of the Captain of the Port or his designated representatives on scene, if it is deemed safe to do so. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this rule will not have a significant economic impact on a substantial number of small entities.

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 the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 165

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

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

PART 165—[AMENDED]

■ 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; Department of Homeland Security Delegation No. 0170.

■ 2. A temporary § 165.T13–009 is added to read as follows:

§ 165.T13–009 Safety Zone; Fireworks Display on Siuslaw River, Florence, OR and on Willamette River, Portland, OR

(a) *Oaks Park Celebration.*

(1) *Location.* An area of water 500 feet in diameter on the Willamette River located around a fireworks launching barge centered at 45°28′22″ North, 122°39′59″ West [NAD 83]. This area is located between the Sellwood Bridge and Ross Island in Portland, OR.

(2) *Enforcement period.* July 4, 2003 from 9:15 p.m. (PDT) to 10 p.m. (PDT).

(b) *Florence Chamber of Commerce.*

(1) *Location.* An area of water 1000 feet in diameter on the Siuslaw River located around a fireworks launching barge centered at 43°57′52″ North, 124°6′16″ West [NAD 83].

(2) *Enforcement Period.* July 4, 2003 from 9:30 p.m. (PDT) to 10:30 p.m. (PDT).

(c) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, this Temporary Final Rule applies to any vessel or person in the navigable waters of the United States. No person or vessel my enter the above safety zone unless authorized by the Captain of the Port or his designated representatives. Vessels and persons granted authorization to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or his designated representative.

Dated: May 27, 2003.

Paul D. Jewell,

Captain, Coast Guard, Captain of the Port.

[FR Doc. 03–13849 Filed 6–2–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD131–3091a; FRL–7503–7]

Approval and Promulgation of Air Quality Implementation Plans, Maryland; Amendments to the Control of Volatile Organic Compounds From Chemical Production and Polytetrafluoroethylene Installations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). The revisions consist of amendments to Maryland's air pollution control regulations governing specific processes that emit volatile organic compounds (VOC). These requirements initially included organic chemicals and are being expanded to include inorganic chemicals and polytetrafluoroethylene (PTFE) products. The revisions also include establishment of a VOC content limit for PTFE coating installations and clarification of applicability thresholds. EPA is fully approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on August 4, 2003, without further notice, unless EPA receives adverse written comments by July 3, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Makeba Morris, Branch Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108,Washington, DC 20460; and Maryland Department of the Environment, 1800 Washington Blvd., Suite 730, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Betty Harris, (215) 814–2168, or by e-mail at *harris.betty@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 6, 2001 and November 6, 2002, the State of Maryland submitted formal revisions to its State Implementation Plan (SIP). The SIP revisions, submitted by the Maryland Department of the Environment (MDE), consist of amended volatile organic compound requirements to specific processes Code of Maryland Administrative Regulations (COMAR) 26.11.19. The December 6, 2001 revision (#01–15) was published in the *Maryland Register* on September 21, 2001, a public hearing was held on October 23, 2001, adopted on November 6, 2001 and became effective on December 10, 2001. The November 6, 2002 revision (#02–07) was published in the *Maryland Register* on August 9, 2002, a public hearing was held on September 11, 2002, adopted on October 3, 2002 and became effective on November 11, 2002.

II. Summary of SIP Revision

(A) On December 6, 2001, MDE submitted amendments to COMAR 26.11.19.30. The existing regulation establishes reasonably available control technology (RACT) for chemical plants that produce organic chemicals. The revised regulation is being expanded to include VOC requirements for chemical production facilities and PTFE products facilities.

(1) The revisions to COMAR 26.11.19.30B add the following definitions: (a) Dipping trough, (b) inorganic chemical production installation, (c) PTFE, (d) PTFE installation, and (e) product condenser.

(2) COMAR 26.11.19.30C, which addresses applicability, is revised to include inorganic chemical production installations and PTFE installations.

(3) COMAR 26.11.19.30D is revised to address general requirements for both organic and inorganic chemical production facilities. In addition, the date to implement good operating practice and procedures is revised from March 30, 2001 to March 30, 2002.

(4) COMAR 26.11.19.30E is revised to create general requirements for PTFE installations. These requirements are as follows: (a) A person who owns or operates a PTFE installation that has uncontrolled VOC emissions of 50 pounds or more per day shall vent the emissions into a thermal oxidizer or use other approved methods to destroy or reduce VOC emissions by 85 percent or more. (b) If a thermal oxidizer is installed, the oxidizer combustion chamber shall be operated at a specified minimum temperature that is demonstrated to achieve compliance with the regulation. In addition, the thermal oxidizer combustion chamber should be equipped with a continuous temperature monitor, an alarm system for safety, and with an interlock system. (c) If a source uses an approved alternative control method, it shall be monitored. (d) Emission treatment or monitoring equipment shall be operated, maintained and calibrated in accordance with the equipment vendor's specifications. (e) A person who owns or operates a PTFE compounding and tape or shape-forming installation shall minimize fugitive VOC emissions by enclosing all wet PTFE and covering dipping troughs when not in operation.

(B) On November 6, 2002, MDE submitted amendments to COMAR 26.11.19.30. These amendments include (a) Minor modification to the definition of PTFE, (b) Deletion of the definition of PTFE installation, and (c) The addition of definitions for PTFE coating installation, PTFE process installation and total actual uncontrolled VOC emissions. In addition, these amendments clarify applicability requirements for PTFE coating and process installations found at COMAR 26.11.19.30C. COMAR 26.11.19.30E is modified to address general requirements for PTFE process installations and to add requirements for PTFE coating installation. The new PTFE coating installation requirement states that an installation that has actual uncontrolled VOC emissions of 20 pounds or more per day may not use a coating that has a VOC content exceeding 2.9 pounds per gallon unless it is equipped with a control device that meets specified requirements. These new requirements comport with EPA standards for coating operations.

III. Final Action

EPA is approving SIP revisions submitted by MDE on December 6, 2001 and November 6, 2002. The amendments establish specific VOC requirements for the production facilities that produce organic, inorganic chemicals and PTFE products. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on August 4, 2003, without further notice unless EPA receives adverse comment by July 3, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255,

August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 4, 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 pertains to Maryland's amendments to VOC requirements from chemical production and PTFE installations and 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, Volatile organic compounds.

Dated: May 20, 2003.

Abraham Ferdas,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

■ 2. Section 52.1070 is amended by adding paragraph (c)(176) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(176) Revisions to the Maryland State Implementation Plan submitted by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of December 6, 2001 from the Maryland Department of the Environment transmitting revisions to Maryland's State Implementation Plan concerning VOC requirements for facilities that produce inorganic chemicals and polytetrafluoroethylene (PTFE) products.

(B) The following revisions to Code of Maryland Administrative Regulation (COMAR) 26.11.19.30 (Control of Volatile Organic Compounds from Chemical Production and Polytetrafluoroethylene Installations), effective December 10, 2001:

(*1*) Revised title for COMAR 26.11.19.30.

(*2*) Addition of paragraphs .30B(3–1), .30B(3–2), .30B(4–1), .30B(4–2), .30B(5)(b), and .30E(1) through (5) inclusive.

(*3*) Renumbering of former paragraphs .30B(5), .30C(3), and .30E(1) as paragraphs .30B(5)(a), .30C(2) and .30F respectively.

(*4*) Revisions to paragraphs .30C(1), renumbered .30C(2), .30D. (paragraph title), .30D(1), .30D(2), .30D(3), .30D(4) (introductory paragraph) and .30F.

(*5*) Removal of former paragraphs .30C(2) and .30E(2).

(C) Letter of November 6, 2002 from the Maryland Department of the Environment transmitting revisions to Maryland's State Implementation Plan concerning VOC requirements for facilities that produce inorganic chemicals and polytetrafluoroethylene (PTFE) products.

(D) The following revisions to Code of Maryland Administrative Regulation (COMAR) 26.11.19.30 (Control of Volatile Organic Compounds from Chemical Production and Polytetrafluoroethylene Installations), effective November 11, 2002:

(*1*) Revisions to paragraphs .30B(4–1), .30B(4–2), .30C(2), .30C(3), and .30E(1).

(*2*) Addition of paragraphs .30B(4–3), .30B(4–4), and .30E(6).

(ii) Additional Material.—Remainder of the State submittal pertaining to the revision listed in paragraph (c)(176)(i) of this section.

[FR Doc. 03–13700 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV038/053–6026a; FRL–7500–2]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Regulation To Prevent and Control Air Pollution From the Emission of Sulfur Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the West Virginia State Implementation Plan (SIP). The SIP revision is a regulation to prevent and control air pollution from the emission of sulfur oxides. EPA is approving this revision in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on August 4, 2003, without further notice, unless EPA receives adverse written comment by July 3, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Makeba Morris, Branch Chief, Air Quality Planning and Information Services Branch, 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street,

Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and the West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Jill Webster (215) 814–2033 or Ellen Wentworth (215) 814–2034, or by e-mail at *webster.jill@epa.gov* or *wentworth.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 29, 1996 and September 21, 2000, West Virginia submitted revisions to a regulation (45CSR10) to prevent and control air pollution from the emission of sulfur oxides as formal revisions to its State Implementation Plan (SIP). The first SIP revision went to public hearing on July 6, 1993 and became effective on April 26, 1994. This SIP revision proposes approval of a temporary sulfur dioxide emissions control and mitigation plan which would be used during periods when maintenance of coke oven desulfurization equipment is being carried out. The second SIP revision went to public hearing on July 19, 1999 and became effective on August 31, 2000. This SIP revision includes additional and revised definitions; new provisions for the establishment of alternative individual stack sulfur dioxide limits; a manufacturing process compliance test averaging time change; additions and revisions to compliance testing, monitoring, and recordkeeping provisions; exemptions from compliance determination requirements for gas, oil, and wood-fired fuel burning units; deletion of outdated compliance schedule provisions; and the addition of a circumvention section. Since the most recent of the SIP revisions incorporates all of the changes from the earlier SIP revisions, EPA will incorporate by reference the version of 45CSR10 submitted to EPA on September 21, 2000 into the SIP.

II. Summary and Evaluation of SIP Revision

(A) The following definitions were added: ''Continuous Emission Monitoring System,'' ''Distillate Oil,'' ''Indirect Heat Exchanger,'' ''Malfunction,'' ''Natural Gas,'' ''Potential to Emit,'' and ''Process Heater.'' The following definition was deleted: ''Division of Environmental Protection.'' The following definitions were revised: ''Director;'' and ''Person.''

(B) The SIP revision provides that no person may permit the combustion of any refinery process gas stream or any other process gas stream that contains hydrogen sulfide in a concentration greater than 50 grains per 100 cubic feet except in the case of a person operating in compliance with an emission control and mitigation plan approved by the Director and EPA. The SIP revision also establishes the conditions for approval for such a plan.

(C) The SIP revision adds provisions allowing the operator of a source subject to sulfur dioxide weight emission standards for fuel burning units which have more than one stack to petition the Director for individual stack allowable emission rates different from those calculated under subdivision 3.4.a of the regulation. These alternative stack emissions cannot be used where stack emission changes are a result of a physical change or a change in method of operation that would otherwise require pre-construction permitting. The West Virginia Department of Environmental Protection (WVDEP) submitted a letter to EPA on March 19, 2003, clarifying that 45CSR10 requires that alternative standards be embodied in a federally enforceable permit issued under the authority of 45CSR13. The letter also states that prior to issuing the permit, WVDEP will submit the permit establishing alternative emission limitations to EPA for review and approval. The letter further clarifies that a petition for alternative emission limitations in no way supercedes any provisions regarding pre-construction review (45CSR14) or new or modified sources (45CSR19). This letter has been included in the administrative record for the rulemaking action on this SIP revision.

A revision to compliance requirements for fuel burning units clarifies that a continuous twenty-four (24) hour period is defined as one (1) calendar day.

(D) An exemption is provided for the owner or operator of a manufacturing process source operation which has the potential to emit less than 500 pounds per year of sulfur oxides from the provisions of the emission standards for manufacturing source operations. The SIP revision also revises the compliance determination for the allowable sulfur dioxide concentration limitations from manufacturing process source operations to be based on a block three (3) hour averaging time rather than the previous averaging time of two (2) hours.

(E) A provision has been added requiring that compliance with the allowable hydrogen sulfide concentration limitations for combustion sources be based on a block three (3) hour averaging time.

(F) Specific permit time filing and review requirements have been deleted and revisions include references to the permit requirements of 45CSR13, 14, 19, and 20.

(G) Testing provisions have been revised to define the requirements applicable to any fuel burning unit(s), manufacturing process source(s) or combustion source(s) and requires those sources to comply with the emission limitations for such sources (subsections 3, 4, or 5). The provisions also require that testing be conducted in accordance with the appropriate test method set forth in 40 CFR part 60, appendix A, Method 6, Method 15, or another equivalent EPA testing method approved by the Director. The Director or his duly authorized representative, may conduct other tests deemed necessary to evaluate air pollution emissions other than sulfur dioxide. As noted previously, WVDEP submitted a letter, which is part of the administrative record for this rulemaking action, to EPA on March 19, 2003, clarifying the interpretation and implementation of certain regulations on air pollution control. In that letter, WVDEP clarified that these tests are for pollutants in addition to sulfur dioxide.

The SIP revision allows the owner or operator of fuel burning unit(s), manufacturing process source(s) or combustion source(s) to demonstrate compliance with the requirements for such sources (sections 3, 4 and 5) by testing and/or monitoring in accordance with one or more of the following: 40 CFR part 60, appendix A, Method 6, Method 15, continuous emissions monitoring systems (CEMS) or fuel sampling and analysis as set forth in an approved monitoring plan for each emission unit. In their letter dated March 19, 2003, WVDEP clarified that fuel sampling and analysis are required to be conducted in accordance with any applicable method or procedure formally established by EPA or otherwise in accordance with methods established by the American Society for Testing and Materials (ASTM).

(H) This SIP revision provides for excursions of operating parameters in an approved monitoring plan which are not necessarily violations. In their letter

dated March 19, 2003, WVDEP clarified that WVDEP enforcement staff evaluate excursions where parametric monitoring is an element of or the primary component of a monitoring plan, on a case-specific basis. In some instances, deviations in an operating parameter would very strongly indicate a probable violation of sulfur dioxide limits or of 45CSR10–3, 4, or 5. The letter also affirms that in a situation involving a likely emission exceedance, the burden of proof would be placed on the source to demonstrate that the parametric excursion did not cause an exceedance of the sulfur dioxide limit. West Virginia has clarified that in such an instance, emissions testing under conditions identical to or very similar to the excursion situation and subsequent analysis would be required to conclude whether a violation actually occurred. It should also be noted that larger sources of sulfur dioxide are now required to use CEMs or ASTM-based fuel monitoring and analysis or periodic emissions tests (EPA Method 6), as the primary compliance determination method.

(I) A section has been added to the SIP for recordkeeping and reporting, requiring the owners or operators of fuel burning unit(s), manufacturing process source(s) or combustion source(s) subject to the regulation requirements for those sources to maintain on-site records of all required monitoring data, pursuant to monitoring plans established in the monitoring provisions of this regulation (subsection 8.2c). These records are required to be available to the Director or his duly authorized representative and are to be retained on-site for a minimum of five years. Periodic exception reports are due to the Director, and are required to detail any excursions outside the range of measured emissions or monitored parameters established in the source's approved monitoring plan. In addition, operators of fuel burning unit(s) or combustion(s) source(s) are required to maintain records of the operating schedule and the quantity and quality of fuel consumed in each unit. Fuel burning sources utilizing CEMs are exempt from this requirement.

(J) An exemption has been revised for any fuel burning unit having a design heat input under 10 million BTUs per hour to include an exemption from the registration, permitting, testing, monitoring, recordkeeping and reporting requirements for such sources (sections 6–8), as well as from the sulfur dioxide emission standards for fuel burning units (section 3). An exemption has been added for fuel burning unit(s) which combust natural gas, wood, or distillate oil, alone or in combination, exempting these units from the testing, monitoring, recordkeeping and reporting requirements for fuel burning units, manufacturing process sources or combustion sources (section 8).

(K) A section entitled, ''Circumvention'' has been added to this regulation which prohibits any owner or operator subject to the provisions of this regulation to build, erect, install, modify or use any article, machine, equipment or process which purposely conceals an emission which would constitute a violation of an applicable standard.

(L) A section entitled, ''Inconsistency Between Rules'' has been added to this regulation which provides that any inconsistencies between 45CSR10 and any other WVDEP regulation be resolved by the application of the more stringent requirement.

Additional details pertaining to these revisions are included in the Technical Support Document for this rulemaking.

These revisions strengthen the SIP by clarifying and updating definitions, and revising and streamlining monitoring, recordkeeping and reporting requirements for sulfur dioxide fuel burning units, manufacturing process source operations, and combustion sources. The revision also adds requirements for the registration of alternative emission limits for multiple stacks at a single source.

III. Final Action

EPA is approving the revisions to 45CSR10, ''To Prevent and Control Air Pollution from the Emission of Sulphur Oxides,'' submitted by West Virginia on April 29, 1996, and September 21, 2000. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on August 4, 2003, without further notice unless EPA receives adverse comment by July 3, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 4, 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, to prevent and control air pollution from the emission of sulfur oxides in West Virginia, 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: May 8, 2003.

James W. Newsom,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart XX—West Virginia

■ 2. Section 52.2520 is amended by adding paragraph (c)(53) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(53) Revisions to West Virginia's Regulations to prevent and control air pollution from the emission of sulfur oxides, submitted on September 21, 2000 by the West Virginia Division of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of September 21, 2000 from the West Virginia Division of Environmental Protection to EPA transmitting the regulation to prevent and control air pollution from the emission of sulfur oxides.

(B) Revisions to Title 45, Series 10, 45CSR10, To Prevent and Control Air Pollution from the Emission of Sulfur Oxides, effective August 31, 2000.

(ii) Additional Material.

(A) Letter of April 29, 1996 from the West Virginia Division of Environmental Protection to EPA transmitting the regulation to prevent and control air pollution from the emission of sulfur oxides.

(B) Letter of March 19, 2003 from the West Virginia Department of Environmental Protection to EPA providing clarification on the interpretation and implementation of certain regulations on air pollution control.

(C) Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(53)(i) of this section.

[FR Doc. 03–13702 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 267–0394a; FRL–7495–4]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) and particulate matter (PM–10) emissions from commercial charbroiling and VOC emissions from solvent cleaning. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on August 4, 2003 without further notice, unless EPA receives adverse comments by July 3, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; *steckel.andrew@epa.gov.*

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

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

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

A copy of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.*

Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, U.S. Environmental Protection Agency, Region IX, (415) 947–4118.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal
A. What rules did the State submit?
B. Are there other versions of these rules?
C. What is the purpose of the submitted rules or rule revisions?
II. EPA's Evaluation and Action
A. How is EPA evaluating the rules?
B. Do the rules meet the evaluation criteria?
C. Public comment and final action
III. Background information
Why were these rules submitted?
IV. Statutory and Executive Order Reviews

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule number	Rule title	Adopted or amended	Submitted
SJVUAPCD	4692	Commercial Charbroiling	Adopted 3/21/2	5/21/2.
SCAQMD	1171	Solvent Cleaning Operations	Amended 8/2/2	12/23/2.

On August 6, 2002 and December 30, 2002, respectively, these rule submittals were found to meet the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

There are no previous versions of SJVUAPCD Rule 4692 in the SIP. We approved a version of SCAQMD Rule 1171 into the SIP on August 13, 1999 (64 FR 44134). The SCAQMD adopted revisions to the SIP-approved version on October 8, 1999 and CARB submitted them to us on January 21, 2000. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

C. What Is the Purpose of the Submitted Rules or Rule Revisions?

The purposes of new Rule 4692 are as follows:

- To reduce emissions of VOCs and PM–10 from chain-driven commercial charbroilers. The charbroiler must be equipped with a catalytic oxidizer control device on the exhaust gases, or a unit certified by the SCAQMD must be used, or another control device may be used if it is as effective as a catalytic oxidizer. The purposes of the changes to SCAQMD 1171 are as follows:
- Paragraph (c)(1)(D)(vi) on UV ink application is changed to include the similar EB ink application.
- Paragraph (c)(1) advances the requirement for lower VOC content from July 1, 2005 forward to January 1, 2003. The cleaning operations affected include (A) product cleaning and surface preparation—general, (B) repair and maintenance cleaning—general, (C) cleaning of ink application equipment—general, flexographic printing, packaging, and removable press components, and (D) cleaning of polyester resin application equipment.
- Paragraph (e)(4) prohibits the use in automotive maintenance and repair of (A) perchloroethylene, (B) methylene chloride, or (C) trichloroethylene solvents.
- Paragraphs (h)(3) and (h)(5) have deleted obsolete exemptions for cleaning of plastics and handwipe cleaning of equipment.
- Paragraph (h)(7) clarifies that the 25 grams/liter limit for general cleaning of ink application equipment shall not take place until July 1, 2005.
- The allowance for a person to apply for a Clean Air Solvent Certificate is deleted.
- Obsolete paragraphs describing future limitations on solvent concentration are deleted.

The TSD has more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The SJVUAPCD is a severe ozone nonattainment area and a serious PM–10 nonattainment area (see 40 CFR part 81). There are no major sources of VOC in the chain-driven commercial charbroiling source category in SJVUAPCD, and therefore the rule does not need to fulfill RACT for VOC. Section 189(b) of the CAA requires serious PM–10 nonattainment areas with major sources or significant source categories of PM–10 to adopt best available control measures (BACM), including best available control technology (BACT). BACM is not required for source categories that are not significant (*de minimis*) and there are no major sources. See *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 59 FR 41998 (August 16, 1994). The chain-driven commercial charbroiling source category is *de minimis* with about 0.02% of the total PM–10 emissions and does not have any major sources. Therefore Rule 4292 does not need to fulfill BACM/BACT for PM–10.

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements consistently include the following:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations*, EPA (May 25, 1988) (the Bluebook).
- *Guidance Document for Correcting Common VOC & Other Rule Deficiencies*, EPA Region 9 (August 21, 2001) (the Little Bluebook).
- *Determination of RACT and BARCT for Organic Solvent Cleaning Degreasing Operations*, California Air Resources Board (July 7, 1991).
- *Control of VOE from Solvent Metal Cleaning*, EPA–450–2–77–022 (November 1977).
- *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 57 FR 13498, 13540 (April 16, 1992).
- *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 59 FR 41998 (August 16, 1994).
- *PM–10 Guideline Document* (EPA–452/R–93–008).

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by July 3, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on August 4, 2003. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this direct final rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Background Information

Why Were These Rules Submitted?

VOCs help produce ground-level ozone, smog, and particulate matter which harm human health and the environment. EPA has established National Ambient Air Quality Standards (NAAQS) for ozone. Section 110(a) of the CAA requires states to submit regulations in order to achieve and maintain the NAAQS. Table 2 lists some of the national milestones leading to the submittal of local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671*q*.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Statutory and Executive Order Reviews

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). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 4, 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, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 28, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(310) and (c)(311) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(310) New and amended rules for the following districts were submitted on May 21, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4692, adopted on March 21, 2002.

(311) New and amended rules for the following districts were submitted on December 23, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(*1*) Rule 1171, adopted on August 2, 1991 and amended on August 2, 2002.

* * * * *

[FR Doc. 03–13705 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–213–9952(a); FRL–7506–8]

Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to the Tennessee State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the Tennessee Department of Environment and Conservation's definition of Volatile Organic Compounds submitted on February 3, 1999 by the state of Tennessee. These revisions are designed for the State Implementation Plan (SIP) to attain the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (CAA). The additional compounds HFC43–10mee, HCFC–225ca, and HCFC–225cb are added to the list of exempt compounds on the basis that they have negligible contribution to the tropospheric ozone formation.

DATES: This direct final rule is effective August 4, 2003 without further notice, unless EPA receives adverse comment by July 3, 2003. If adverse comment is received, EPA 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: All comments should be addressed to: Steve Scofield or Nacosta Ward; Regulatory Development Section; Air Planning Branch; Air, Pesticides, and Toxics Management Division; U. S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. [Steve Scofield, 404–562–9034 or Nacosta Ward, 404–562–9140]. Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531. 615–532–0554.

FOR FURTHER INFORMATION CONTACT: Steve Scofield or Nacosta Ward; Regulatory Development Section; Air Planning Branch; Air, Pesticides, and Toxics Management Division; U. S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Scofield and Ms. Ward can also be reached by telephone at 404–562–9034 and 404–562–9140, or by electronic mail at *scofield.steve@epa.gov* and *ward.nacosta@epa.gov,* respectively.

SUPPLEMENTARY INFORMATION:

I. Analysis of State's Submittal

On February 3, 1999, the state of Tennessee through the Tennessee Department of Environment and Conservation submitted a revision to chapter 1200–3–18, Volatile Organic Compounds, which provides SIP definitions. The revision to chapter 1200–3–18 provides greater clarity to the existing definition. The additional compounds HFC43–10mee, HCFC–225ca, and HCFC–225cb are added to the list of exempt compounds on the basis that they have negligible contribution to the tropospheric ozone formation.

II. Final Action

EPA is approving the aforementioned changes to the State of Tennessee's SIP because they are consistent with the CAA and EPA policy. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective August 4, 2003 without further notice unless the Agency receives adverse comments by July 3, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 4, 2003 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

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). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 4, 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, Carbon monoxide, Intergovernmental relations, Incorporate by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 20, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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

PART 52—[AMENDED]

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

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

Subpart RR—Tennessee

■ 2. Section 52.2220(c) is amended by revising the entry for ''Section 1200–3–18–.01'' to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	Adoption date	EPA approval date	Explanation
*	*	*	*	*
Chapter 1200–3–18 Volatile Organic Compounds				
Section 1200–3–18–.01	Definitions	01/12/98	June 3, 2003, [Insert citation of publication].	
*	*	*	*	*

* * * * *

[FR Doc. 03–13707 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV050–6029a; FRL–7503–9]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Regulation to Prevent and Control Particulate Matter Air Pollution From Manufacturing Processes and Associated Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the West Virginia State Implementation Plan (SIP). The SIP revision is a regulation to prevent and control particulate matter air pollution from manufacturing processes and associated operations such as storage facilities. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on August 4, 2003, without further notice, unless EPA receives adverse written comment by July 3, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning and Information Services Branch, 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Kathleen Anderson, (215) 814–2173, or by e-mail at *anderson.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 29, 1996, December 7, 1998 and September 21, 2000, West Virginia submitted revisions to a regulation (45CSR7) to prevent and control particulate matter air pollution from manufacturing operations as formal revisions to its State Implementation Plan (SIP). The first SIP revision went to public hearing on July 6, 1993 and became effective on April 27, 1994. This SIP revision provides an exemption for ferroalloy electric submerged arc furnaces from visible emissions and fugitive particulate matter standards during blowing taphole, poling and oxygen lancing operations. The second SIP revision went to public hearing on March 27, 1997 and became effective on May 1, 1998. This SIP revision provides alternative stack limits for fiberglass manufacturing operations using the flame attenuation method. The third SIP revision went to public hearing on July 19, 1999. This SIP revision added several exemptions and alternative limitations for visible emission and mass particulate emission standards. Since the most recent of the three SIP revisions incorporates all of the changes from the earlier SIP revisions, EPA will incorporate by reference the version of 45CSR7 submitted to EPA on September 21, 2000 into the SIP.

II. Summary of SIP Revision

(A) The following definitions were revised: (1) Definitions of ''Commission,'' ''Ringelmann Smoke Chart,'' ''Chief of Air Quality,'' ''Division of Environmental Protection,'' were deleted, (2) ''Director'' was modified to include persons delegated authority by the Director; (3) ''Person'' was modified to include the State of West Virginia and the United States, and (4) Definitions for ''Ferroalloy electric submerged arc furnace,'' ''Furnace charge,'' ''Tapping,'' ''Blowing tap,'' ''Poling,'' ''Oxygen lancing,'' ''Maintenance Operation,'' ''Malfunction,'' ''Potential to Emit'' were added.

(B) As a result of a petition by Elkem Metals and American Alloys certain events at ferroalloy electric submerged arc furnaces are exempt from fugitive particulate matter and visible emission standards. These events include blowing taphole, poling and oxygen lance operations. Blowing taphole events have been considered by EPA as uncontrollable, unpredictable events best characterized as malfunctions. This rationale was explained in an EPA development document for the federal rule titled ''Supplemental Information on Standards of Performance for Ferroalloy Production Facilities,'' issued in March 1976, which states that a blowing tap event is ''a process malfunction condition which is not wholly preventable. Periods in which the tapping hood is swung aside for poling/lancing or removal of metal or slag from the spout are failures of the process to operate in a normal or usual manner. As malfunctions, these periods are not subject to the standards.'' EPA interprets West Virginia's exemption to apply only to the extent that the above operations qualify as malfunctions caused by circumstances beyond the control of the source that could not have been prevented through installation of proper control equipment or proper operation and maintenance.

(C) The SIP revision exempts maintenance operations from particulate matter rate limitations on the condition that such operations are conducted in a manner consistent with good air pollution control practices for minimizing emissions. The State defines maintenance activities as operations having a zero process (input) weight rate. However, process weight rate is defined as the total weight of all materials introduced into a source operation, excluding solid, liquid, and gaseous fuels used solely as fuels and excluding all process and combustion air. This means that sources such as kilns, furnaces and ovens could be exempt from mass emission standards when operated in an idling mode, regardless of the types of fuels being combusted. However, the regulation does not exempt maintenance operations from visible emissions standards. Compliance with a visible emissions standard can be assessed over a broad range of operations, unlike compliance with a weight-based particulate matter limitation which is usually assessed by stack testing during normal and/or peak manufacturing operations. Therefore, a visible emissions standard can be an appropriate means to control emissions during maintenance operations.

(D) Exemptions are provided for insignificant sources, except for particulate matter classified as hazardous air pollutants. EPA believes that these exemptions are for very small sources that have little or no impact on ambient air quality.

All of the above exemptions are predicated on operating and maintaining manufacturing processes in a manner consistent with good air pollution control practices for minimizing emissions. The proposed SIP revision states that the Director may determine whether or not the exemption

should be applied based on ''information available to the Director.'' EPA interprets this subsection to place the burden of proof on the owner or operator to document, as appropriate, that the exemption applies. In other words, failure of the source to provide documentation that it has conducted maintenance operations in a manner consistent with good air pollution control practices should not prevent either the State or EPA from exercising its enforcement authority.

(E) Revisions to 45CSR7 include provisions for alternative emission limitations. As a result of a petition by Schuller International, Inc., West Virginia set alternative particulate matter limits for fiberglass production facilities using flame attenuation in the manufacturing process in lieu of limits that would otherwise be set by the duplicate source provisions in Table 45–7A of 45CSR7. The Schuller facility, now known as John Mansville International, Inc. (JM), is located in Vienna, West Virginia. Under the duplicate source provisions in 45CSR7, the allowable emission rate for each individual source would be established using the ratio of process input weight for the individual stack to the total process input weight, times the allowable emission rate for the combined sources. Since the relationship between the allowable emission rate and the process input rate is less than linear, the duplicate source provisions become more stringent as multiple sources are added. Abatement equipment and techniques to reduce particulate matter emissions were determined by West Virginia to be economically and technically infeasible to meet the duplicate source emission limitations at the John Mansville facility. Therefore, alternative particulate emission rate limits have been set that are based on best actual limits achieved in practice.

These alternative emission limitations are framed such that they generically apply to all fiberglass production facilities that use the flame attenuation process. The John Mansville facility is the only such manufacturing facility in the state and the rule names and applies limits to the specific stacks at this facility. EPA believes that the rule is inconsistent in applying a site-specific set of emission limitations as generic standards for all flame attenuation plants, regardless of whether other plants exist. To resolve this inconsistency, EPA interprets the regulation to apply only to the Johns Mansville facility. Should other flame attenuation plants locate in the State, they will be subject to the duplicate source provisions of 45CSR7.

(F) An owner or operator may petition the Director for alternative visible emission standards during periods of start-up and shut-down. The petitioner must: (1) Demonstrate that it cannot comply with existing standards, (2) document the need for an alternative standard based on monitoring results and inspections, (3) demonstrate that mass emission standards are being met, and (4) maintain and operate manufacturing processes and air pollution control equipment in a manner consistent with good air pollution control practices. Section 110(a)(2)(A) of the Clean Air Act requires SIPs to include federally enforceable emission limitations. The West Virginia Department of Environmental Protection (WVDEP) submitted a letter to EPA on March 19, 2003, clarifying how the State intends to interpret and implement its air control regulations. This letter states that all alternative visible emission standards will be established as specific conditions of permits issued in accordance with federally enforceable permitting programs. The letter also states that prior to issuing such permits, the WVDEP shall submit them to EPA for review. This letter has been included in the administrative record for the rulemaking action on this SIP revision.

(G) A new section titled ''Alternative Emission Limits for Duplicate Source Operations'' provides a process for owners or operators to apply for alternative mass particulate emission rates. These alternative limits will not allow the overall site limit determined by Tables 45–7A and B in the regulation to be relaxed but will provide some flexibility on what may be emitted from individual stacks. The regulation requires the petitioner to conduct an air quality impact analysis to demonstrate that the alternative standard(s) will not interfere with attainment or maintenance of any federal air quality standard or cause an unacceptable increase over the baseline concentration of particulate matter. In addition, the alternative standard is required to be implemented through 45CSR13, which is a federally enforceable permit program. As noted previously, WVDEP submitted a letter to EPA on March 19, 2003, which is part of the administrative record for this rulemaking action, stating that alternative mass emission limits issued under the authority of 45CSR13 will be established and implemented as conditions of permits issued in accordance with federally approved and enforceable programs and, that prior to issuance such permits shall be submitted to EPA for review. The letter also affirms that a successful petition for alternative emission limits under this subsection may in no way supercede any provisions in 45CSR14 or 45CSR19 regarding pre-construction review of new or modified sources.

(H) The SIP revision removes the restriction that the Director may only require a stack test when there is evidence of a violation. EPA believes that this revision substantially enhances West Virginia's ability to determine compliance with the particulate matter standard.

(I) A section on delayed compliance orders was deleted and a section titled ''Inconsistency Between Rules'' allows the Director to determine applicability of conflicting rules based on imposing the more stringent provisions.

Additional details and a description of minor revisions are included in the Technical Support Document for this rulemaking.

These revisions strengthen the SIP by clarifying and updating definitions and updating opacity standards. The revisions also require EPA review of alternative emission limits and establish acceptable periods when emission standards do not apply.

III. Final Action

EPA is approving the revisions to 45CSR7, ''To Prevent and Control Particulate Matter Air Pollution from Manufacturing Processes and Associated Operations'', submitted by West Virginia on September 21, 2000. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on August 4, 2003 without further notice unless EPA receives adverse comment by July 3, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Regulatory Assessment Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is

not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (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). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 4, 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, to approve West Virginia's Regulation 45CSR7, 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 20, 2003.

Abraham Ferdas,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart XX—West Virginia

■ 2. Section 52.2520 is amended by adding paragraph (c)(55) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(55) Revisions to West Virginia's Regulations to prevent and control particulate matter air pollution from manufacturing processes and associated operations, submitted on September 21, 2000 by the West Virginia Division of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of September 21, 2000 from the West Virginia Division of Environmental Protection.

(B) Revisions to Title 45, Series 7, 45 CSR7, To Prevent and Control Particulate Matter Air Pollution from Manufacturing Processes and Associated Operations, effective August 31, 2000.

(ii) Additional Material.

(A) Letter of March 19, 2003 from the West Virginia Division of Environmental Protection to EPA providing clarification on the interpretation and implementation of certain regulations on air pollution control.

(B) Letter of March 29, 1996 from the West Virginia Division of Environmental Protection to EPA transmitting the regulation to prevent and control particulate matter air pollution from manufacturing processes and associated operations.

(C) Letter of December 7, 1998 from the West Virginia Division of Environmental Protection to EPA transmitting the regulation to prevent and control particulate matter air pollution from manufacturing processes and associated operations.

(D) Remainder of the State submittals pertaining to the revisions listed in paragraph (c)(55)(i) of this section.

[FR Doc. 03–13709 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA158–4206a; FRL–7504–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Removal of Alternative Emission Reduction Limitations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the Commonwealth of Pennsylvania State Implementation Plan (SIP) submitted by the Pennsylvania Department of Environmental Protection (PADEP). The revision removes alternative emission reduction limitations for air contaminant sources at eight facilities. EPA is approving these revisions to the SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on August 4, 2003, without further notice, unless EPA receives adverse written comment by July 3, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to Makeba Morris, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Kathleen Anderson, (215) 814–2173, or by e-mail at *anderson.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 6, 2000, the Commonwealth of Pennsylvania submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of the removal of alternative emission reduction limitations for the facilities and pollutants listed in Table 1. Public hearings were held on July 28, July 30 and August 5, 1997. The final rule removing the alternative emission reduction limitations became effective on October 19, 1999.

II. Summary of SIP Revision

As part of the Commonwealth's Regulatory Basics Initiative, the PADEP was required to review existing regulations and identify those that were, among other things, obsolete or no longer necessary. As a result of this initiative, PADEP identified certain regulations for source specific alternative emission reduction limitations, codified in title 25, chapter 128 of the Commonwealth's regulations, as no longer necessary due to changes in processes, equipment or the closing of the affected facility. Chapter 128 allows sources to submit proposals to implement an alternative emission reduction option for existing sources known as the ''bubble'' policy. The specific alternative emission reduction limitations to be removed from the Commonwealth's SIP, including the names of the affected sources and pollutants, are listed in Table 1.

TABLE 1.—LIST OF AFFECTED ALTERNATIVE EMISSION REDUCTION LIMITATIONS

Name of facility	PADEP citation	Pollutant	40 CFR part 52 citation
Andre Greenhouses, Inc., Southampton	§ 128.11	SO_2	52.2020(c)(35)
Andre Greenhouses, Inc., Doylestown	§ 128.12	SO_2	52.2020(c)(35)
Andre Greenhouses, Inc., Wyndmoor	§ 128.13	SO_2	52.2020(c)(35)
U.S. Steel Corp., Fairless Hills	§ 128.15	SO_2	52.2020(c)(55)
U.S. Steel Corp., Fairless Hills	§ 128.16	Particulate Matter	52.2020(c)(51)
Scott Paper Co., Chester	§ 128.17	SO_2	52.2020(c)(54)
Arbogast & Bastian, Inc., Allentown	§ 128.18	SO_2	52.2020(c)(54)
J.H. Thompson, Inc., Kennett Square	§ 128.19	SO_2	52.2020(c)(54)
Bethlehem Steel Corp., Bethlehem	§ 128.20	Particulate Matter	52.2020(c)(52)

III. Final Action

EPA is approving as a revision to the Pennsylvania SIP the removal of alternative emission reduction limitations, codified under 25 PA Code section 128, for eight facilities.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on August 4, 2003, without further notice unless EPA receives adverse comment by July 3, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (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). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to remove eight alternative emission reduction limitations from the Pennsylvania SIP must be filed in the United States Court of Appeals for the appropriate circuit by August 4, 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, Particulate matter, Sulfur oxides.

Dated: May 20, 2003.

Abraham Ferdas,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

■ 2. Section 52.2020 is amended by adding paragraphs (c)(204) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *(204) Revisions to the Pennsylvania Regulations to remove alternative emission reduction limitations for Andre Greenhouses, U.S. Steel, Scott Paper Company, Arbogast & Bastian, Inc., J.H. Thompson, Inc., and Bethlehem Steel Corp., submitted on March 6, 2000 by the Pennsylvania Department of Environmental Protection.

(i) Incorporation by reference.

(A) Letter of March 6, 2000 from the Pennsylvania Department of Environmental Protection transmitting the removal of 25 Pennsylvania Code Subpart C, Article II, Chapter 128.11 through 128.13 and 128.15 through 128.20, the alternative emission reduction limitations for Andre Greenhouses, U.S. Steel, Scott Paper Company, Arbogast & Bastian, Inc., J.H. Thompson, Inc., and Bethlehem Steel Corporation, respectively.

(B) Removal of 25 Pennsylvania Code Subpart C, Article II, Chapter 128.11 through 128.13 and 128.15 through 128.20, effective September 5, 1998.

(ii) Remainder of State submittal pertaining to the revisions listed in paragraph (c)(204)(i) of this section.

[FR Doc. 03–13711 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–200325; FRL–7500–9]

Approval and Promulgation of Air Quality Implementation Plans; Georgia Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is updating the materials submitted by Georgia that are incorporated by reference (IBR) into the State implementation plan (SIP). The regulations affected by this update have been previously submitted by the State agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the Office of the Federal Register (OFR), the Air and Radiation Docket and Information Center located in the Ariel Rios Building, Washington, DC and the Regional Office.

EFFECTIVE DATES: This action is effective June 3, 2003.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303; Office of Air and Radiation, Docket and Information Center (Air Docket), EPA, Ariel Rios Building (Mail Code 6102), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Scott M. Martin at the above Region 4 address or at (404) 562–9031. Email: *martin.scott@epa.gov.*

SUPPLEMENTARY INFORMATION: The SIP is a living document which the State can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997, (62 FR 27968) EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and OFR. The description of the revised SIP document, IBR procedures and ''Identification of plan'' format are discussed in further detail in the May 22, 1997, **Federal Register** document. On May 21, 1999, EPA published a document in the **Federal Register** (64

FR 27699) beginning the new IBR procedure for Georgia. In this document EPA is updating the IBR material.

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs.

Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by updating citations.

Statutory and Executive Order Reviews

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). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 4, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 28, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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

PART 52—[AMENDED]

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

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

Subpart L—Georgia

■ 2. Section 52.570 paragraph (b), (c) and (d) is revised to read as follows:

§ 52.570 Identification of plan.

* * * * *

(b) Incorporation by reference.

(1) Material listed in paragraph (c) and (d) of this section with an EPA approval date prior to April 10, 2003, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after April 10, 2003, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of April 10, 2003.

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street, SW., Atlanta, GA 30303; the Office of the Federal Register,

800 North Capitol Street, NW., Suite 700, Washington, DC; or at the EPA, Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460.

(c) EPA approved regulations.

EPA APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
391–3–1–.01	Definitions	12/26/01	7/11/02, 67 FR 45909.	
391–3–1–.02	Provisions.			
391–3–1–.02(1)	General Requirements	03/20/79	09/18/79, 44 FR 54047.	
391–3–1–.02(2)	Emission Standards	06/23/96	06/27/96, 61 FR 33372.	
391–3–1–.02(2)(a)	General Provisions	01/09/91	01/26/93, 58 FR 6093.	
391–3–1–.02(2)(b)	Visible Emissions	01/17/79	09/18/79, 44 FR 54047.	
391–3–1–.02(2)(c)	Incinerators	06/15/98	12/02/99, 64 FR 67491.	
391–3–1–.02(2)(d)	Fuel-burning Equipment	01/17/79	09/18/79, 44 FR 54047.	
391–3–1–.02(2)(e)	Particulate Emission from Manufacturing Processes.	01/17/79	09/18/79, 44 FR 54047.	
391–3–1–.02(2)(f)	Normal Superphosphate Manufacturing Facilities.	01/17/79	09/18/79, 44 FR 54047.	
391–3–1.–02(2)(g)	Sulfur Dioxide	12/03/86	58 FR 6093.	
391–3–1–.02(2)(h)	Portland Cement Plants	01/17/79	09/18/79, 44 FR 54047.	
391–3–1–.02(2)(i)	Nitric Acid Plants	01/17/79	09/18/79, 44 FR 54047.	
391–3–1–.02(2)(j)	Sulfuric Acid Plants	01/17/79	09/18/79, 44 FR 54047.	
391–3–1–.02(2)(k)	Particulate Emission from Asphaltic Concrete Hot Mix Plants.	01/17/79	09/18/79, 44 FR 54047.	
391–3–1–.02(2)(l)	Conical Burners	01/17/79	09/18/79, 44 FR 54047.	
391–3–1–.02(2)(m)	repealed	06/30/75	10/03/75, 40 FR 45818.	
391–3–1–.02(2)(n)	Fugitive Dust	01/17/79	09/18/79, 44 FR 54047.	
391–3–1–.02(2)(o)	Cupola Furnaces for Metallurgical Melting.	01/27/72	37 FR 10842.	
391–3–1–.02(2)(p)	Particulate Emissions from Kaolin and Fuller's Earth Processes.	12/16/75	08/20/76, 41 FR 35184.	
391–3–1–.02(2)(q)	Particulate Emissions from Cotton Gins.	01/27/72	05/31/72, 37 FR 10842.	
391–3–1–.02(2)(r)	Particulate Emissions from Granular and Mixed Fertilizer Manufacturing Units.	01/27/72	05/31/72 37, FR 10842.	
391–3–1–.02(2)(t)	VOC Emissions from Automobile and Light Duty Truck Manufacturing.	12/20/94	02/02/96, 61 FR 3817.	
391–3–1–.02(2)(u)	VOC Emissions from Can Coating	01/09/91	10/13/92, 57 FR 46780.	
391–3–1–.02(2)(v)	VOC Emissions from Coil Coating	01/09/91	10/13/92, 57 FR 46780.	
391–3–1–.02(2)(w)	VOC Emissions from Paper Coating	01/09/91	10/13/92, 57 FR 46780.	
391–3–1–.02(2)(x)	VOC Emissions from Fabric and Vinyl Coating.	01/09/91	10/13/92, 57 FR 46780.	
391–3–1–.02(2)(y)	VOC Emissions from Metal Furniture Coating.	01/09/91	10/13/92, 57 FR 46780.	
391–3–1–.02(2)(z)	VOC emissions from Large Appliance Surface Coating.	01/09/91	10/13/92, 57 FR 46780.	
391–3–1–.02(2)(aa)	VOC Emissions from Wire Coating	01/09/91	10/13/92, 57 FR 46780.	
391–3–1–.02(2)(bb)	Petroleum Liquid Storage	01/09/91	10/13/92, 57 FR 46780.	
391–3–1–.02(2)(cc)	Bulk Gasoline Terminals	01/09/91	10/13/92, 57 FR 46780.	
391–3–1–.02(2)(dd)	Cutback Asphalt	01/17/79	09/18/79, 44 FR 54047.	
391–3–1–.02(2)(ee)	Petroleum Refinery	01/09/91	10/13/92, 57 FR 46780.	
391–3–1–.02(2)(ff)	Solvent Metal Cleaning	05/29/96	04/26/99, 64 FR 20186.	
391–3–1–.02(2)(gg)	Kraft Pulp Mills	06/03/88	09/30/88, 53 FR 38290.	
391–3–1–.02(2)(hh)	Petroleum Refinery Equipment Leaks	06/24/94	02/02/96, 61 FR 3817.	
391–3–1–.02(2)(ii)	VOC Emissions from Surface Coating of Miscellaneous Metal Parts and Products.	10/7/99	7/10/01, 66 FR 35906.	
391–3–1–.02(2)(jj)	VOC Emissions from Surface Coating of Flat Wood Paneling.	04/03/91	10/13/92, 57 FR 46780.	
391–3–1–.02(2)(kk)	VOC Emissions from Synthesized Pharmaceutical Manufacturing.	12/18/80	11/24/81, 46 FR 57486.	
391–3–1–.02(2)(ll)	VOC Emissions from the Manufacture of Pneumatic Rubber Tires.	12/18/80	11/24/81, 46 FR 57486.	
391–3–1–.02(2)(mm)	VOC Emissions from Graphic Arts Systems.	04/03/91	10/13/92, 57 FR 46780.	
391–3–1–.02(2)(nn)	VOC Emissions from External Floating Roof Tanks.	12/18/80	11/24/81, 46 FR 57486.	
391–3–1–.02(2)(oo)	Fiberglass Insulation Manufacturing Plants.	12/18/80	11/24/81, 46 FR 57486.	
391–3–1–.02(2)(pp)	Bulk Gasoline Plants	04/03/91	10/13/92, 57 FR 46780.	
391–3–1–.02(2)(qq)	VOC Emissions from Large Petroleum Dry Cleaners.	04/03/91	10/13/92, 57 FR 46780.	

EPA APPROVED GEORGIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
391–3–1–.02(2)(rr)	Gasoline Dispensing Facility—Stage I.	12/26/01	7/11/02, 67 FR 45909	
391–3–1–.02(2)(ss)	Gasoline Transport Vehicles and Vapor Collection Systems.	12/26/01	7/11/02, 67 FR 45909	
391–3–1–.02(2)(tt)	VOC Emissions from Major Sources	2/16/00	7/10/01, 66 FR 35906	
391–3–1–.02(2)(uu)	Visibility Protection	10/31/85	01/28/86, 51 FR 3466	
391–3–1–.02(2)(vv)	Volatile Organic Liquid Handling and Storage.	2/16/00	7/10/01, 66 FR 35906	
391–3–1–.02(2)(ww)	Perchloroethylene Dry Cleaners	11/15/94	06/27/96, 61 FR 33372	Repealed.
391–3–1–.02(2)(yy)	Emissions of Nitrogen Oxides from Major Sources.	2/16/00	7/10/01, 66 FR 35906	
391–3–1–.02(2)(zz)	Gasoline Dispensing Facilities—Stage II.	12/26/01	7/11/02, 67 FR 45909	
391–3–1–.02(2)(aaa)	Consumer and Commercial Products	10/27/93	04/26/99, 64 FR 20186	
391–3–1–.02(2)(bbb)	Gasoline Marketing	7/18/01	2/22/02, 67 FR 8200	
391–3–1–.02(2)(ccc)	VOC Emissions from Bulk Mixing Tanks.	2/16/00	7/10/01, 66 FR 35906	
391–3–1–.02(2)(ddd)	VOC Emissions from Offset Lithography.	2/16/00	7/10/01, 66 FR 35906	
391–3–1–.02(2)(eee)	VOC Emissions from Expanded Polystyrene Products Manufacturing.	2/16/00	7/10/01, 66 FR 35906	
391–3–1–.02(2)(fff)	Particulate Matter Emissions from Yarn Spinning Operations.	06/15/98	12/02/99, 64 FR 67491	
391–3–1–.02(2)(hhh)	Wood Furniture Finishing and Cleaning Operations.	2/16/00	7/10/01, 66 FR 35906	
391–3–1–.02(2)(jjj)	NO_X Emissions from Electric Utility Steam Generating Units.	2/16/00	7/10/01, 66 FR 35906	
391–3–1–.02(2)(kkk)	VOC Emissions from Aerospace Manufacturing and Rework Facilities.	2/16/00	7/10/01, 66 FR 35906	
391–3–1–.02(2)(lll)	NO_X Emissions from Fuel-burning Equipment.	2/16/00	7/10/01, 66 FR 35906	
391–3–1–.02(2)(mmm)	NO_X Emissions from Stationary Gas Turbines and Stationary Engines used to Generate Electricity.	2/16/00	7/10/01, 66 FR 35906	
391–3–1–.02(2)(nnn)	NO_X Emissions from Large Stationary Gas Turbines.	2/16/00	7/10/01,66 FR 35906	
391–3–1–.02(2)(ooo)	Heavy Duty Diese Engine Requirements.	2/16/00	7/10/01, 66 FR 35906	
391–3–1–.02(3)	Sampling	06/15/98	12/02/99, 64 FR 67491	
391–3–1–.02(4)	Ambient Air Standards	01/09/91	12/14/92, 57 FR 58989	
391–3–1–.02(5)	Open Burning	8/16/00	7/10/01, 66 FR 35906	
391–3–1–.02(6)	Source Monitoring	12/28/00	7/11/02, 67 FR 45909	
391–3–1–.02(7)	Prevention of Significant Deterioration of Air Quality (PSD).	06/15/98	12/02/99, 64 FR 67491	
391–3–1.02(11)	Compliance Assurance Monitoring	06/15/98	12/02/99, 64 FR 67491	
391–3–1–.03	Permits	12/26/01	7/11/02, 67 FR 45909	Paragraph (9) Permit Fees; Paragraph (10) Title V Operating Permits are not federally approved.
391–3–1–.04	Air Pollution Episodes	11/20/75	08/20/76 41 FR 35184	
391–3–1–.05	Regulatory Exceptions	11/22/92	02/02/96, 61 FR 3819	
391–3–1–.07	Inspections and Investigations	11/20/75	08/20/76, 41 FR 35184	
391–3–1–.08	Confidentiality of Information	11/20/75	08/20/76, 41 FR 35184	
391–3–1–.09	Enforcement	11/22/92	02/02/96, 61 FR 3819	
391–3–1-.10	Continuance of Prior Rules	11/22/92	02/02/96, 61 FR 3819	
391–3–20	Enhanced Inspection and Maintenance.	12/26/01	7/11/02, 67 FR 45909.	
391–3–22	Clean Fueled Fleets	06/15/98	12/02/99, 64 FR 67491.	

(d) EPA-approved State Source specific requirements.

EPA-APPROVED GEORGIA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanation
Georgia Power Plant Bowen	EPD–AQC–180	11/17/80	08/17/81, 46 FR 41498.	
Georgia Power Plant Harllee Branch.	4911–117–6716–0	04/23/80	05/05/81, 46 FR 25092.	
ITT Rayonier, Inc.	2631–151–7686–C	11/04/80	08/14/81, 46 FR 41050.	
Georgia Power Plant Bowen	EPD–AQC–163	05/16/79	01/03/80, 45 FR 781.	
Union Camp	2631–025–7379–0	12/18/81	04/13/82, 47 FR 15794.	
Blue Bird Body Company	3713–111–8601	01/27/84	01/07/85, 50 FR 765.	
Plant McDonough	4911–033–5037–0 conditions 10 through 22.	12/27/95	03/18/99, 64 FR 13348.	
Plant Yates	4911–038–4838–0 conditions 19 through 32.	12/27/95	03/18/99, 64 FR 13348.	
Plant Yates	4911–038–4839–0 conditions 16 through 29.	12/27/95	03/18/99, 64 FR 13348.	
Plant Yates	4911–038–4840–0 conditions 16 through 29.	12/27/95	03/18/99, 64 FR 13348.	
Plant Yates	4911–038–4841–0 conditions 16 through 29.	12/27/95	03/18/99, 64 FR 13348.	
Plant Atkinson	4911–033–1321–0 conditions 8 through 13.	11/15/94	03/18/99, 64 FR 13348.	
Plant Atkinson	4911–033–1322–0 conditions 8 through 13.	11/15/94	03/18/99, 64 FR 13348.	
Plant Atkinson	4911–033–6949 conditions 5 through 10.	11/15/94	03/18/99, 64 FR 13348.	
Plant Atkinson	4911–033–1320–0 conditions 8 through 13.	11/15/94	03/18/99, 64 FR 13348.	
Plant Atkinson	4911–033–1319–0 conditions 8 through 13.	11/15/94	03/18/99, 64 FR 13348.	
Plant McDonough	4911–033–6951 conditions 5 through 10.	11/15/94	03/18/99, 64 FR 13348.	
Atlanta Gas Light Company	4922–028–10902 conditions 20 and 21.	11/15/94	03/18/99, 64 FR 13348.	
Atlanta Gas Light Company	4922–031–10912 conditions 27 and 28.	11/15/94	03/18/99, 64 FR 13348.	
Austell Box Board Corporation	2631–033–11436 conditions 1 through 5.	11/15/94	03/18/99, 64 FR 13348.	
Emory University	8922–044–10094 conditions 19 through 26.	11/15/94	03/18/99, 64 FR 13348.	
General Motors Corporation	3711–044–11453 conditions 1 through 6 and Attachment A.	11/15/94	03/18/99, 64 FR 13348.	
Georgia Proteins Company	2077–058–11226 conditions 16 through 23 and Attachment A.	11/15/94	03/18/99, 64 FR 13348.	
Owens-Brockway Glass Container, Inc.	3221–060–10576 conditions 26 through 28 and Attachment A.	11/15/94	03/18/99, 64 FR 13348.	
Owens-Corning Fiberglass Corporation.	3296–060–10079 conditions 25 through 29.	11/15/94	03/18/99, 64 FR 13348.	

* * * * *

[FR Doc. 03–13713 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 264–0398; FRL–7505–5]

Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of a revision to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on February 26, 2003 and concerns oxides of nitrogen (NO_X) emissions from stationary gas turbines. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action will approve VCAPCD Rule 74.23.

EFFECTIVE DATE: This rule is effective on July 3, 2003.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

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

Ventura County Air Pollution Control District, 669 County Square Dr., 2nd Fl., Ventura, CA 93003–5417

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that

this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, EPA Region IX, (415) 947–4120.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

I. Proposed Action

On February 26, 2003 (68 FR 8869), EPA proposed to approve the following rule into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
VCAPCD	74.23	Stationary Gas Turbines	01/08/02	03/15/02

We proposed to approve this rule because we determined that it complied with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received one comment from the following party:

1. Manuel Ceja, Site Environmental Leader, The Procter & Gamble Paper Products Company, 8000 North Rice Avenue, Oxnard, California 93030, letter dated March 27, 2003.

The commenter fully supports the approval of VCAPCD Rule 74.23 which allows NO_X emission limit changes for LM–2500 and LM–5000 turbines. The commenter is affected by this change and encourages the EPA to proceed with this approval as expeditiously as possible.

III. EPA Action

No comments were submitted that change our assessment that the submitted rule complies with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving this rule into the California SIP.

IV. 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

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.*)

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 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. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

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).

D. Unfunded Mandates Reform Act

Under sections 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 approval action promulgated does 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 approves 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 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 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. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

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. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective July 3, 2003.

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 August 4, 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 28, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(297) (i)(A)(*4*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(297) * * *

(i) * * *

(A) * * *

(*4*) Rule 74.23, adopted on January 8, 2002.

* * * * *

[FR Doc. 03–13714 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 97

[ET Docket No. 02–98; FCC 03–105]

Amateur Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document provides access to channels in or near the 5250–5400 kHz band on a secondary basis for the amateur service, and upgrade the existing secondary amateur service allocation to primary status in the 2400–2402 MHz band. The rule changes will enhance the ability of amateur operators to communicate at 5000 kHz when propagation conditions do not permit communication at 3500 or 7000 kHz, and provide additional protection for the amateur operators now using the 2400–2402 MHz band. We are declining to make an allocation to the amateur service in the 135.7–137.8 kHz or the 160–190 kHz bands, due to potential interference to other operations. We are also declining to add a primary allocation to the amateur satellite service in the 2400–2402 MHz band, due to possible spectrum use conflicts.

DATES: Effective July 3, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Derenge, Office of Engineering

and Technology (202) 418–2451, e-mail: *tderenge@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* ET Docket No. 02–98, FCC 03–105, adopted April 29, 2003, and released May 14, 2003. The full text of this document is available on the Commission's Internet site at *http://www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Qualex International, Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 863–2893; fax (202) 863–2898; e-mail *qualexint@aol.com.*

Summary of the Report and Order

1. The amateur radio service, governed by part 97 of the Commission's rules, provides spectrum for amateur radio service licensees to participate in a voluntary noncommercial communications service which provides emergency communications and allows experimentation with various radio techniques and technologies to further the understanding of radio use and the development of new technologies. In the *Report and Order* (''R&O''), we are providing access to 5 channels in or near the 5250–5400 kHz band on a secondary basis for the amateur service, and upgrading the existing secondary amateur service allocation to primary status in the 2400–2402 MHz band.

2. On May 2, 2002, the Commission adopted a *Notice of Proposed Rulemaking* (''NPRM'') in response to three *Petitions for Rulemaking* submitted by the National Association for Amateur Radio (''ARRL''). The first of these petitions requested that a secondary allocation to the amateur service be made in the 135.7–137.8 kHz and 160—190 kHz bands to permit experimentation in the Low Frequency (''LF'') range. The second petition requested a secondary amateur allocation in the 5250–5400 kHz band to enhance amateur emergency communications and experimentation when propagation conditions are not favorable in the 3500 kHz and 7000 kHz bands. The third petition requested an upgrade to primary status for the existing secondary amateur allocation and a new primary allocation for the amateur-satellite service in the 2400–2402 MHz band to protect existing amateur operations from future commercial systems which may utilize the band.

135.7–137.8 kHz and 160—190 kHz Bands (RM–9404)

3. While we agree that amateur experimentation in the 135.7–137.8 kHz and 160–190 kHz portions of the LF spectrum could serve to increase the pool of individuals having knowledge of LF transmissions, we conclude that such operations would pose the potential for harmful interference to systems protecting and controlling the national power grid. Therefore, we find that a new amateur allocation in the LF range of the radio spectrum is not justified when balanced against the greater public interest of an interference-free power grid. Further, we find that the opportunity to experiment with LF operations provided to amateur radio operators under our part 15 rules and through our experimental licensing process, while less attractive to amateur operators than their own proposal, provides the appropriate means for such use in light of the compelling uses in the band.

4. We disagree with ARRL's and the amateur operators' assertions concerning the consideration we should accord incumbent part 15 use in these bands in deciding whether to provide an allocation for amateur services. Our decision must be based upon the facts at hand and our evaluation of any potential changes to the spectral environment due to our decision. In evaluating whether new operations should be added to a band, licensed or not, we must consider the potential for interference conflicts between the operations. While unlicensed Power Line Carrier (''PLC'') operations have no protection status, they provide a vital public service. Therefore, we disagree with amateur comments that we should not consider the impact on unlicensed operations when making spectrum allocation decisions.

5. We note the significant potential for interference between the proposed amateur operations and the incumbent PLCs. ARRL concedes that amateur operations and power lines with attached PLCs would have to be separated in order to prevent interference. We find that separation distances on the order of 950 meters would be necessary to protect the PLCs from interference. We also find that this distance, coupled with the larger-than-expected number of PLCs potentially impacted by this proposed allocation, increases the likelihood that a PLC-equipped powerline will be close enough to an amateur station to receive interference. We will not jeopardize the reliability of electrical service to the public.

6. We believe that the utility companies have raised a valid concern that an allocation to the amateur service could result in the need for PLCs to modify or cease their operations to avoid causing interference to amateurs. Amateur operators have expressed concern that there may be interference to their operations from the power lines and from PLC devices. While it appears that other techniques could be used to control the power grid, we find that the utility companies have come to rely on PLC systems for monitoring and control of the power grid, and that the alternatives suggested may not be as effective, and would be costly. We are persuaded that the costs of replacing PLC systems would be significant, would be disruptive to the public, and are not justified merely to open this band to amateur use on a secondary basis.

7. We decline to make an allocation to the amateur service in the LF spectrum at this time. We do believe there is potential for some limited operation in these bands under individual experimental licenses. Operations at LF under our experimental license program will allow amateur use to be coordinated with utility companies on a case-by-case basis, and allow empirical data to be developed on the sharing possibilities in this band for future consideration. In addition, amateurs may still make use of the 160–190 kHz band under our part 15 rules, which are much more restrictive, and therefore more protective of PLCs, than the limits proposed in the *NPRM.*

5250–5400 kHz Band (RM–10209)

8. We believe that frequencies in the 5250–5400 kHz range may be useful for completing disaster communications links at times when the 3 and 7 MHz bands are not available due to ionospheric conditions, and appreciate the desire of the amateur radio community to assist with disaster communications. At the same time, since the majority of the affected users are Federal government licensees with homeland security responsibilities, we give considerable weight to the concerns NTIA has expressed about the potential for interference to these users. Thus, we conclude that it is not reasonable to grant ARRL's original request for the whole of the 5250–5400 kHz band. NTIA has reviewed its assignments and has found that five channels are lightly used and could be used on a secondary basis by amateur stations. While we recognize that these five channels will not give the amateur service the 150

kilohertz of spectrum in the 5000 kHz range it originally asked for or the flexibility to use multiple transmission modes, this appears to be the best compromise available to give the amateur service access to new spectrum while assuring the Federal government agencies that their use is protected. We also concur with NTIA's basic proposals that amateur service operations on these channels be limited to SSB–SC modulation, upper sideband voice transmissions only, with power not to exceed the equivalent of 50 W PEP transmitter output power into an antenna with a gain of 0 dBd, or 50 W effective radiated power (''e.r.p''). These operating rules will decrease the interference potential between amateur stations and Federal government users. We have amended §§ 2.106, and 97.303 of our rules to provide a secondary allocation to the amateur service on the channels 5332 kHz, 5348 kHz, 5368 kHz, 5373 kHz and 5405 kHz as specified by NTIA, and to require that amateur operations be limited to an (e.r.p.) of 50 W and emission type 2K8J3E, upper sideband voice transmissions only centered on each frequency. For the purpose of computing e.r.p., the transmitter peak envelope power will be multiplied with the antenna gain relative to a dipole or the equivalent calculation in decibels. A half wave dipole antenna will be presumed to have a gain of 0 dBd. Licensees using other antennas must maintain in their station records either manufacturer data on the antenna gain or calculations of the antenna gain. In addition, because we have permitted amateur stations to transmit on five discrete frequencies and are limiting the transmission mode to single sideband only, dividing the band into smaller sub-bands to be used for other emission types is not practical or necessary. Lastly, we have permitted these frequencies to be used by amateur service licensees with a General Class, Advanced Class, or Amateur Extra Class operator license. We believe that the limited number of frequencies and the emission restriction will protect against interference to primary service operations.

9. Because the broadband PLCs would be new services operating in new frequency bands and are not yet deployed, we do not have the same concerns as with the incumbent PLC systems in the 160–190 kHz band. Because these new PLC systems are still in development, we expect that they can be designed to be compatible with the other operations in this band, and we deny the United Power Line Council (''UPLC'') and Power Line Carrier Association (''PLCA'') request to delay action in this proceeding. The power levels we are adopting are 1/30th of the power levels supported by the UPLC and the e.r.p. restriction provides a limit to the antenna height. We believe that the permitted e.r.p limitation will significantly reduce the possibility of interference to and from broadband PLCs. Because the allowable power level will be very low, we do not believe that we need additional out-of-band emission limits for amateur operations in this band.

10. We deny Homeplug's request for a 10-year safe harbor. Unlicensed devices operated in accordance with the part 15 rules should not cause interference to licensed, allocated services. It is not apparent that there will be significant interference from Homeplug devices, whose signals attenuate quickly, to ARRL operations on these frequencies, which are expected to be sporadic. There is ample alternative spectrum on which Homeplug devices can operate. As a practical matter, we would expect amateur services to take into account the extant Homeplug devices, although they are not required to do so.

2400–2402 MHz Band (RM–9949)

11. We have upgraded the existing amateur service (except amateur-satellite service) allocation at 2400–2402 MHz from secondary to primary status. This modification will provide additional protection to the amateur service in this band from future licensed operations. The allocation changes we are making will not alter the interference protection rights among the current users of the band. Even under the current secondary allocation, amateur services are entitled to interference protection from part 15 devices, and ISM devices are entitled to protection from both amateur operations and part 15 devices. These relationships will remain the same under the amateur service primary allocation. We observe that the amateur operators have successfully shared this band with part 15 and part 18 operations and we have no reason to believe that this sharing will not continue to be successful. Part 15 devices are limited in power and this interference potential from them is limited to an area very close to their transmit location. We therefore modify rule §§ 2.106, 97.303(j)(2)(iii) and 97.303 (j)(2)(iv) to provide a primary allocation for the amateur service (except amateur-satellite service), consistent with our decision.

12. Our analysis regarding an amateur-satellite service allocation at 2400–2402 MHz differs from the case of terrestrial use in this band. The amateur-satellite service currently operates on a non-interference basis (''NIB'') to other services under international footnote 5.282, not on a secondary basis as some parties suggest. This means that these operations are on an equal footing with part 15 devices. As both the amateur and unlicensed proponents recognize, the sensitivity of amateur satellite receivers makes them more vulnerable to aggregate interference from other users in this band. The 2400–2402 MHz band is heavily used by both part 15 and part 18 devices, and, unlike terrestrial amateur operations, amateur satellite receivers are at greater risk from aggregate interference. We thus conclude that an allocation for the amateur-satellite service would be impractical and difficult to implement, given the protection status afforded ISM devices and the large number of part 15 devices that operate in the band. Further, maintaining NIB status for the amateur-satellite service in this 2 megahertz band is consistent with the NIB status that an amateur satellite system would operate under in the 2400–2450 MHz band, so amateur satellite use of this 2 megahertz band is not prejudiced by our decision. Because we are maintaining NIB status for the amateur-satellite service, we will not place any restrictions on these operations (*e.g.*, down-link only operation as some parties suggest).

13. Although ARRL is correct that unlicensed users do not have protection rights vis-a-vis licensed users in a band, it is incorrect when it asserts that we need not consider unlicensed use of this band when deciding whether to modify the allocation. The issue here is whether different uses are compatible and promote efficient use of spectrum. This analysis requires that we consider both licensed and unlicensed use. We conclude that, in the 2400–2402 MHz band, the status quo provides the best mix of uses to promote spectrum efficiency. The extensive use of the band to date by parts 15 and 18 and amateur users under the existing rules supports this conclusion. ARRL's suggestion to license those devices that have the potential to cause interference to licensed services does not alter our analysis. Even among licensed services, we consider whether uses are compatible and promote efficient use of spectrum. ARRL's approach would merely have us identify the priority between the amateur service and another licensed service.

14. We also conclude that, because we are maintaining the relative allocation

status in this band, it is not necessary to implement a ''safe harbor'' for part 15 devices. Unlicensed devices operated in accordance with the part 15 rules should not cause interference to the amateur service, and amateur services can take into account these well known technical characteristics used by unlicensed devices as they operate in the band. The amateur service and unlicensed devices have successfully shared this band in the past, and we have no reason to conclude that these sharing arrangements will not continue to be successful.

Final Regulatory Flexibility Certification

15. The Regulatory Flexibility Act of 1980, as amended (RFA),[1] requires that an initial regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.''[2] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[3] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[4] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[5]

16. In the *R&O,* we make five channels in or near the 5250–5400 kHz frequency band available on a secondary basis and upgrade the allocation of the 2400–2402 MHz frequency band to the amateur service. The amateur radio service is a voluntary non-commercial communications service comprised of individuals or groups of individuals holding amateur radio licenses issued by the Commission. [6] These individuals are prohibited from using spectrum allocated to the amateur service for communications for hire or for material compensation, or for communications in which the amateur radio operator has a pecuniary interest.[7] Therefore, amateur radio operators do not fit any part of the definition of ''small entities'' described above, and thus are not classified as such.

17. In addition, even if the amateur radio licensees were hypothetically considered as ''small entities,'' the rule changes promulgated in this *R&O* simply make spectrum available for the amateur radio operations and impose no additional fees, costs, or compliance burdens on an operator. Since the amateur radio service is a voluntary service, it would be up to each individual amateur to purchase or modify equipment to use the new bands. There is no cost associated with the upgrade of the allocation. On the contrary, the amateur radio service receives the positive benefits of access to additional spectrum.

18. Lastly, the use of these five new frequencies in or near the 5250–5400 kHz band on a secondary basis by the amateur service does not impact any small entities because it is primarily used by the Federal Government. The allocation upgrade in the 2400–2402 MHz band also does not impact any small entities because there are currently only part 15 and part 18 operations in that frequency band. The part 18 operations maintain their right to operate under international footnote 5.150.[8] The current amateur service allocation status is higher than the status of part 15 operations, so that there will be no additional impact due to this action.

19. Therefore, we certify that the rules in this *R&O* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Report and Order,* including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.[9] In addition, the *Report and Order* and this Final Certification will be sent to the Chief Counsel for Advocacy of the SBA.[10]

Ordering Clauses

20. Pursuant to sections 1, 4, 301, 302(a), and 303(c) and (f), of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154, 301, 302(a), and 303(c) and (f), parts 2 and 97 of the Commission's rules have been amended and will be effective July 3, 2003.

21. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the *Report and Order*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 2 and 97

Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 97 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106, the Table of Frequency Allocations, is amended by revising pages 11 and 51 and in the list of United States footnotes, add footnote US 381 to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

BILLING CODE 6712–01–P

[1] The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, title II, 110 Stat. 857 (1996).

[2] 5 U.S.C. 605(b).

[3] 5 U.S.C. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[5] 15 U.S.C. 632.

[6] See 47 CFR 97.1 and 97.3(a).

[7] See 47 CFR 97.113(a)(2).

[8] See 47 CFR 2.106, footnote 5.150.

[9] See 5 U.S.C. 801(a)(1)(A).

[10] See 5 U.S.C. 605(b).

5060-9040 kHz (HF)					Page 11
International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
5060-5250 FIXED Mobile except aeronautical mobile 5.133			5060-5450 FIXED Mobile except aeronautical mobile US212 US340 US381		Maritime (80) Aviation (87) Private Land Mobile (90) Amateur (97)
5250-5450 FIXED MOBILE except aeronautical mobile					
5450-5480 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE	5450-5480 AERONAUTICAL MOBILE (R)	5450-5480 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE	5450-5680 AERONAUTICAL MOBILE (R) 5.111 5.115 US283 US340		Aviation (87)
5480-5680 AERONAUTICAL MOBILE (R) 5.111 5.115					
5680-5730 AERONAUTICAL MOBILE (OR) 5.111 5.115			5680-5730 AERONAUTICAL MOBILE (OR) 5.111 5.115 US340		
5730-5900 FIXED LAND MOBILE	5730-5900 FIXED MOBILE except aeronautical mobile (R)	5730-5900 FIXED Mobile except aeronautical mobile (R)	5730-5900 FIXED MOBILE except aeronautical mobile (R) US340		Maritime (80) Aviation (87)
5900-5950 BROADCASTING 5.134 5.136			5900-5950 BROADCASTING FIXED MOBILE except aeronautical mobile (R) US340 US366		Radio Broadcast (HF) (73) Maritime (80) Aviation (87)
5950-6200 BROADCASTING			5950-6200 BROADCASTING US340		Radio Broadcast (HF) (73)
6200-6525 MARITIME MOBILE 5.109 5.110 5.130 5.132 5.137			6200-6525 MARITIME MOBILE 5.109 5.110 5.130 5.132 US82 US296 US340		Maritime (80)
6525-6685 AERONAUTICAL MOBILE (R)			6525-6685 AERONAUTICAL MOBILE (R) US283 US340		Aviation (87)

2345-2655 MHz (UHF)					Page 51
International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 2300-2450 MHz			See previous page for 2310-2360 MHz	2345-2360 FIXED MOBILE US339 RADIOLOCATION BROADCASTING-SATELLITE US327 5.396	Wireless Communications (27)
			2360-2385 MOBILE US276 RADIOLOCATION G2 Fixed G120	2360-2385 MOBILE US276	
			2385-2390 US363	2385-2390 FIXED MOBILE NG174 US363	Wireless Communications (27)
			2390-2400 G122	2390-2400 AMATEUR	Amateur (97)
			2400-2402 5.150 G123	2400-2417 AMATEUR	ISM Equipment (18) Amateur (97)
			2402-2417 5.150 G122	5.150 5.282	
			2417-2450 Radiolocation G2 5.150 G124	2417-2450 Amateur 5.150 5.282	
2450-2483.5 FIXED MOBILE Radiolocation 5.150 5.397	2450-2483.5 FIXED MOBILE RADIOLOCATION 5.150 5.394		2450-2483.5 5.150 US41	2450-2483.5 FIXED MOBILE Radiolocation 5.150 US41	ISM Equipment (18) Private Land Mobile (90) Fixed Microwave (101)

BILLING CODE 4712–01–C

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United States (US) Footnotes

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US381 The frequencies 5332 kHz, 5348 kHz, 5368 kHz, 5373 kHz, and 5405 kHz are allocated to the amateur service on a secondary basis. Amateur use of these frequencies shall be limited to: (1) A maximum effective radiated power (e.r.p.) of 50 W; and, (2) single sideband suppressed carrier modulation (emission designator 2K8J3E), upper sideband voice transmissions only.

PART 97—AMATEUR RADIO SERVICE

■ 3. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended: 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

■ 4. Section 97.303 is amended by revising paragraphs (j)(2)(iii), (j)(2)(iv), and adding paragraph (s) to read as follows:

§ 97.303 Frequency sharing requirements.

* * * * *

(j) * * *

(2) * * *

(iii) The 2390–2417 MHz segment is allocated to the amateur service on a primary basis, and amateur stations operating within the 2400–2417 MHz segment must accept harmful interference that may be caused by the proper operation of industrial, scientific, and medical devices operating within the band.

(iv) The 2417–2450 MHz segment is allocated to the amateur service on a co-secondary basis with the Federal Government radiolocation service. Amateur stations operating within the 2417–2450 MHz segment must accept harmful interference that may be caused by the proper operation of industrial, scientific, and medical devices operating within the band.

* * * * *

(s) An amateur station having an operator holding a General, Advanced or Amateur Extra Class license may only transmit single sideband, suppressed carrier, (emission type 2K8J3E) upper sideband on the channels 5332 kHz, 5348 kHz, 5368 kHz, 5373 kHz, and 5405 kHz. Amateur operators shall ensure that their transmission occupies only the 2.8 kHz centered around each of these frequencies. Transmissions shall not exceed an effective radiated power (e.r.p) of 50 W PEP. For the purpose of computing e.r.p. the transmitter PEP will be multiplied with the antenna gain relative to a dipole or the equivalent calculation in decibels. A half wave dipole antenna will be presumed to have a gain of 0 dBd. Licensees using other antennas must maintain in their station records either manufacturer data on the antenna gain or calculations of the antenna gain. No amateur station shall cause harmful interference to stations authorized in the mobile and fixed services; nor is any amateur station protected from interference due to the operation of any such station.

[FR Doc. 03–13781 Filed 6–2–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 2002–D019]

Defense Federal Acquisition Regulation Supplement; Transportation of Supplies by Sea—Commercial Items

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add an alternate version of a clause, pertaining to transportation of supplies by sea, to the list of clauses included in contracts for commercial items to implement statutes or Executive orders. The alternate version of the clause applies to contracts at or below the simplified acquisition threshold.

EFFECTIVE DATE: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2002–D019.

SUPPLEMENTARY INFORMATION:

A. Background

This rule corrects an oversight in the final rule published at 67 FR 38020 on May 31, 2002, under DFARS Case 2000–D014, Ocean Transportation by U.S.-Flag Vessels. That rule added requirements for contractors to use U.S.-flag vessels when transporting supplies by sea under contracts at or below the simplified acquisition threshold, in accordance with 10 U.S.C. 2631. The rule provided an Alternate III for use with the clause at DFARS 252.247–7023, Transportation of Supplies by Sea, in contracts at or below the simplified acquisition threshold, to minimize the information required from contractors under these contracts. This final rule adds Alternate III of 252.247–7023 to the list of clauses at 252.212–7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items, as it was inadvertently omitted from the previous DFARS rule.

DoD published a proposed rule at 67 FR 65528 on October 25, 2002. DoD received no comments on the proposed rule and, therefore, is adopting the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies 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 entities providing ocean transportation of freight are not small businesses, and the rule minimizes the information required from contractors under contracts valued at or below the simplified acquisition threshold.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget, under Clearance Number 0704–0245, for use through July 31, 2004.

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Part 252 is amended as follows:

■ 1. The authority citation for 48 CFR Part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 2. Section 252.212–7001 is amended as follows:

■ a. By revising the clause date to read ''(JUN 2003)''; and

■ b. In paragraph (b), by revising entry ''252.247–7023'' to read as follows:

252.212–7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

* * * * *

(b) * * *

___252.247–7023 Transportation of Supplies by Sea (MAY 2002) (Alternate I) (MAR 2000) (Alternate II) (MAR 2000) (Alternate III) (MAY 2002) (10 U.S.C. 2631).

* * * * *

[FR Doc. 03–13535 Filed 6–2–03; 8:45 am]

BILLING CODE 5001–08–P

Proposed Rules

Federal Register
Vol. 68, No. 106
Tuesday, June 3, 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

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 00–112–1]

Cattle From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the animal importation regulations to prohibit the importation of Holstein cross steers and Holstein cross spayed heifers from Mexico. The regulations currently prohibit the importation of Holstein steers and Holstein spayed heifers from Mexico due to the high incidence of tuberculosis in that breed, but do not place any special restrictions on the importation of Holstein cross steers and Holstein cross spayed heifers from Mexico. Given that the incidence of tuberculosis in Holstein cross steers and Holstein cross spayed heifers from Mexico is comparable to the incidence of tuberculosis in Holstein steers and Holstein spayed heifers, this action is necessary to protect the health of domestic livestock in the United States.

DATES: We will consider all comments that we receive on or before August 4, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 00–112–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–112–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 00–112–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Roger Perkins, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8419.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 prohibit or restrict the importation of certain animals, birds, and poultry into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart D of part 93 (§§ 93.400 through 93.435, referred to below as the regulations) governs the importation of ruminants. Section 93.427 of the regulations contains restrictions on the importation of ruminants from Mexico.

Bovine tuberculosis is an infectious disease caused by the bacterium *Mycobacterium bovis.* Although commonly defined as a chronic debilitating disease, bovine tuberculosis can occasionally assume an acute, rapidly progressive course. Any body tissue can be affected, but lesions are most frequently observed in the lymph nodes, lungs, intestines, liver, spleen, pleura, and peritoneum. Although cattle are considered to be the true hosts of *M. bovis,* the disease has been reported in several other species of both domestic and nondomestic animals.

Since May 1994, the regulations in § 93.427 have prohibited the importation of Holstein steers and Holstein spayed heifers from Mexico. Holstein steers and spayed heifers are much more likely to be infected with tuberculosis than other breeds of cattle, due to the fact that they almost always originate from or are raised on dairy farms, where animals are kept in close proximity, typically for several years. Because dairy cattle [1] are kept in such close proximity for extended periods of time, the potential for cattle infected with tuberculosis to transmit the disease to other cattle is considerably higher than for non-dairy cattle.

Holstein cross steers and Holstein cross spayed heifers are typically raised under the same type of conditions in Mexico as purebred Holstein steers and Holstein spayed heifers. For that reason, Holstein cross steers and Holstein cross spayed heifers from Mexico present essentially the same tuberculosis risk as purebred Holstein steers and Holstein spayed heifers from Mexico. We are, therefore, proposing to prohibit the importation of Holstein cross steers and Holstein cross spayed heifers from Mexico.

In our May 1994 final rule prohibiting the importation of Holstein steers and spayed heifers from Mexico, we did not prohibit the importation of Holstein cross steers and spayed heifers due to the fact that few Holstein cross steers and spayed heifers were being imported at the time. However, the volume of imported Mexican Holstein cross-bred cattle has increased significantly since 1997. Data on number of imports of cattle are available, but do not accurately distinguish between breeds, especially cross-breeds, or between sexually intact cattle and spayed or neutered cattle. However, the available import data, coupled with observations by APHIS personnel at ports of entry, suggest that imports of Holstein cross steers and spayed heifers have doubled or tripled since 1997.

Currently, all areas of the United States are considered to be free of tuberculosis except for Texas, Michigan, and California. Given the increased volumes of Holstein cross cattle that are being imported from Mexico and the tuberculosis risk presented by those animals, we are proposing to prohibit the importation of Holstein cross steers and spayed heifers from Mexico in order to eliminate a pathway for the

[1] The regulations specifically address Holstein dairy cattle because few other breeds of dairy cattle are imported into the United States from Mexico.

introduction of tuberculosis into the United States.

Executive Order 12866 and Regulatory Flexibility Act

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

We are proposing to amend the animal importation regulations to prohibit the importation of Holstein cross steers and Holstein cross spayed heifers from Mexico. The regulations currently prohibit the importation of Holstein steers and Holstein spayed heifers from Mexico due to the high incidence of tuberculosis in that breed, but do not place any special restrictions on the importation of Holstein cross steers and Holstein cross spayed heifers from Mexico. Given that the incidence of tuberculosis in Holstein cross steers and Holstein cross spayed heifers from Mexico is comparable to the incidence of tuberculosis in Holstein steers and Holstein spayed heifers, this action is necessary to protect the health of domestic livestock in the United States.

Given the size of U.S. livestock inventories and the volume of animal and animal product sales, consequences of a large tuberculosis outbreak in the United States could be catastrophic. Cattle in U.S. herds in 2000 were valued at $67 billion, with 1999 cash receipts of $36.5 billion from the sale of cattle, calves, beef, and veal. Cash receipts from the sale of milk and cream in 1999 reached $23.2 billion. The value of fresh beef and veal exports by the United States totaled $2.7 billion in 1999 and $3 billion in 2000. A widespread tuberculosis outbreak in the United States could potentially cause significant production and trade losses.

Economic Effects of the Proposed Rule

As shown in table 1, the value of cattle imported from Mexico in 1998 through 2001 represented less than 1 percent of the value of the total U.S. domestic cattle supply.

TABLE 1.—VALUE OF U.S. SUPPLY AND IMPORTS OF LIVE CATTLE IN COMPARISON TO VALUE OF CATTLE IMPORTED FROM MEXICO MEXICAN

Year	U.S. imports of live cattle from Mexico (millions)	U.S. supply of live cattle [1] (millions)	Mexican imports as a share of total U.S. cattle supply (percent)	U.S. imports of live cattle from the world (millions)	Mexican imports as a share of total U.S. imports (percents)
1998	$208.54	$61,193.11	0.3	$1,162.87	18
1999	296.46	59,681.54	0.5	1,021.81	29
2000	405.56	67,985.32	0.6	1,157.49	35
2001	411.00	71,707.06	0.6	1,482.21	28

[1] Supply = Domestic production + Imports − Exports).

Sources: Imports and Exports: U.S. Department of Commerce, Bureau of the Census, as reported by the World Trade Atlas. Domestic production from Table 7–1, Chapter VII, Agricultural Statistics 2000, NASS/USDA.

Further, as shown in table 2, the volume of U.S. imports of live cattle from Mexico has generally increased since 1997. Imports of Holstein cross-bred steers and spayed heifers have generally increased during the same period.

TABLE 2.—NUMBER OF LIVE CATTLE IMPORTED INTO THE UNITED STATES FROM MEXICO AND THE WORLD

	1997	1998	1999	2000	2001
Imports from Mexico	653,798	703,412	458,188	1,183,227	1,141,368
Imports from all other countries	2,083,493	2,036,746	1,949,566	2,191,199	2,439,200

Source: FAOSTAT electronic databases for ''all cattle breeds'' category of imports.

Effect on Small Entities

Under the Regulatory Flexibility Act, agencies are required to analyze the economic effects of their regulations on small businesses and to use flexibility to provide regulatory relief when regulations create economic disparities between different-sized entities. According to the Small Business Administration's Office of Advocacy, regulations create economic disparities based on size when they have a significant economic impact on a substantial number of small entities.

U.S. livestock importers, breeders, and producers would be the entities that could be directly affected if this proposed rule is adopted. There are no specific data available on numbers of cattle importers; however, there are approximately 2,000 wholesale livestock traders (North American Industry Classification System [NAICS] code 422520), many of whom may also be cattle importers. It is likely that the majority of these firms are small entities according to the Small Business Administration's (SBA's) criterion of 100 or fewer employees. There are approximately 1 million livestock producers and breeders (NAICS code 112111) in the United States, approximately 99 percent of which are small entities according to SBA's criterion of annual receipts of $750,000 or less.

However, given that (1) imported Mexican cattle account for less than 1 percent of the value of the U.S. cattle supply, and (2) the volume of Holstein cross steers and spayed heifers imported from Mexico is believed to represent a small fraction of total cattle imports from Mexico, we expect that the economic effects on the U.S. livestock industry of the prohibition would be negligible. The proposed prohibition also would not have a significant effect on U.S. cattle importers, breeders, or producers because such persons could easily substitute other breeds of cattle for Mexican Holstein cross steers and spayed heifers.

This proposed prohibition on the importation of Holstein cross steers and spayed heifers would benefit the U.S.

livestock industry and U.S. consumers by helping to prevent the introduction of tuberculosis into the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 would continue to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. In § 93.427, paragraph (c)(4) would be revised to read as follows:

§ 93.427 Cattle from Mexico.

* * * * *

(c) * * *

(4) The importation of Holstein steers, Holstein spayed heifers, Holstein cross steers, and Holstein cross spayed heifers from Mexico is prohibited.

* * * * *

Done in Washington, DC, this 29th day of May, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–13838 Filed 6–2–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–03–AD]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Models PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31T, PA–31T1, PA–31T2, PA–31T3, and PA–31P–350 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all The New Piper Aircraft, Inc. (Piper) Models PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31T, PA–31T1, PA–31T2, PA–31T3, and PA–31P–350 airplanes. This proposed AD would require you to install an inspection hole, conduct a detailed visual inspection of the rudder torque tube and associated ribs for corrosion, and, if corrosion is found, replace the rib/rudder torque tube assembly. This proposed AD is the result of reports of rudder tube corrosion. The actions specified by this proposed AD are intended to detect and correct corrosion in the rudder torque tube assembly and rudder rib, which could result in failure of the rudder torque tube. Such failure could lead to loss of rudder control.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before August 11, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–03–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE–7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2003–CE–03–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; facsimile: (772) 978–6584. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: William O. Herderich, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6082; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the proposed rule's docket number and submit your comments to the address specified under the caption ''**ADDRESSES.**'' We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the proposed rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2003–CE–03–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The FAA has received several reports of rudder tube and rib corrosion on Piper PA–31 Series airplanes. The area surrounding the rudder torque tube assembly and rudder rib does not have a means or access to inspect in this area

and neither means nor exits for water to drain out.

What Are the Consequences if the Condition Is Not Corrected?

Corrosion in the rudder torque tube assembly and rudder rib could result in failure of the rudder torque tube. Such failure could lead to loss of rudder control.

Is There Service Information That Applies to This Subject?

Piper has issued Service Bulletin No. 1105, dated September 4, 2002.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for:

—Installing an inspection hole in the rudder skin;

—Performing an inspection for corrosion; and

—Installing/repairing with the rib/rudder torque tube assembly replacement kit.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—the unsafe condition referenced in this document exists or could develop on other Models PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31T, PA–31T1, PA–31T2, PA–31T3, and PA–31P–350 of the same type design;

—the actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 2,269 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish this proposed installation of inspection and drain holes and inspection of torque tube and associated ribs for corrosion:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × $60 per hour = $180	$10.	$190.	2,269 × $190 = $431,110.

We estimate the following costs to accomplish any necessary corrosion repairs/replacements of the rib/torque tube assembly that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need such repair/replacement:

Labor cost	Parts cost	Total cost per airplane
16 workhours × $60 per hour = $960	$800.	$1,760.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The New Piper Aircraft, Inc.: Docket No. 2003–CE–03–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
PA–31, PA–31–300, PA–31–325.	31–2 through 31–8312019.
PA–31–350	31–5001 through 31–8553002.
PA–31P	31P–1 through 31P–7730012.
PA–31P–350 ..	31P–8414001 through 31P–8414050.
PA–31T	31T–7400001 through 31T–8120104.
PA–31T1	31T–7804001 through 31T–1104017.
PA–31T2	31T–8166001 through 31T–1166008.
PA–31T3	31T–8275001 through 31T–5575001.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct corrosion in the rudder torque tube assembly and rudder rib, which could result in failure of the rudder torque tube. Such failure could lead to loss of rudder control.

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

Actions	Compliance	Procedures
(1) Install an inspection hole in the rudder skin for the rudder torque tube assembly.	Within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.	In accordance with The New Piper Aircraft, Inc. Service Bulletin No. 1105, dated September 4, 2002.
(2) Visually inspect the rudder torque tube and associated ribs for corrosion.	Prior to further flight after the installation required in paragraph (d)(1) of this AD and thereafter at intervals not to exceed 12 calendar months.	In accordance with The New Piper Aircraft, Inc. Service Bulletin No. 1105, dated September 4, 2002.
(3) If corrosion damage is found, replace the rib/rudder torque tube assembly.	Prior to further flight after any inspection required in paragraph (d)(2) of this AD where corrosion damage is found.	In accordance with The New Piper Aircraft, Inc. Service Bulletin No. 1105, dated September 4, 2002.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Atlanta Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact William O. Herderich, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6082; facsimile: (770) 703–6097.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; facsimile: (772) 978–6584. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on May 27, 2003.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–13792 Filed 6–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

[CO–033–FOR]

Colorado Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Colorado regulatory program (hereinafter, the ''Colorado program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Colorado proposes revisions to and additions of rules about land use definitions, alluvial valley floor application contents, permit decisions, soil surveys, permit review criteria, requests for formal hearings on minor permit revision application decisions, bond release procedures, culverts and bridges, sedimentation ponds and other treatment facilities, topsoil handling, mulching and soil-stabilizing practices, revegetation, normal husbandry practices, and prime farmland.

Colorado also proposes a memorandum of understanding (MOU) between the Division of Minerals and Geology and the State Historic Preservation Officer.

This document gives the times and locations that the Colorado program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., m.d.t. on July 3, 2003. If requested, we will hold a public hearing on the amendment on June 30, 2003. We will accept requests to speak until 4 p.m., m.d.t. on June 18, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to James Fulton at the address listed below.

You may review copies of the Colorado program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting the Office of Surface Mining Reclamation and Enforcement's (OSM) Denver Field Division.

James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, Colorado 80202–5733.

David A. Berry, Coal Program Supervisor, Colorado Division of Minerals and Geology, 1313 Sherman Street, Room 215, Denver, Colorado 80203.

FOR FURTHER INFORMATION CONTACT: James Fulton, Telephone: 303–844–1400, extension 1424. Internet: *jfulton@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Colorado Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of [the] Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to [the] Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Colorado program on December 15, 1980. You can find background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program in the December 15, 1980, **Federal Register** (45 FR 82173). You can also find later actions concerning Colorado's program and program amendments at 30 CFR 906.15, 906.16, and 906.30.

II. Description of the Proposed Amendment

By letter dated March 27, 2003, Colorado sent us a proposed amendment to its program (State Amendment Tracking System No. CO–033, administrative record No. CO–696–1) under SMCRA (30 U.S.C. 1201 *et seq.*). Colorado submitted the amendment in response to the letters that we sent to Colorado in accordance with 30 CFR 732.17(c) on May 7, 1986; June 9, 1987; and March 22, 1990. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

In the amendment, Colorado proposes to revise or add the following rules of the Colorado Mined Land Reclamation Board at 2 Code of Colorado Regulations (CCR) 407–2: 1.04(71)(f) and (g), land use definitions; 2.04.13(1)(e), annual reclamation report; 2.06.8(4)(a)(i), alluvial valley floor application contents; 2.06.8(5)(b)(i), permit approval or denial; 2.06.6(2)(a) and (g), soil surveys; 2.07.6(1)(a)(ii), criteria for review of permits; 2.07.6(2)(n), criteria for permit approval or denial; 2.08.4(6)(c)(iii), request for formal hearing on minor permit revision application decision; 3.03.2, bond release application decision by the Division of Minerals and Geology; 3.03.2(1)(e), procedures for seeking release of performance bond; 4.03.1(4)(e), culverts and bridges; 4.05.2, sedimentation ponds and other treatment facilities; 4.06.1(2), topsoil—general requirements; 4.15.1(5), revegetation general requirements; 4.15.4(5), mulching and other soil-stabilizing practices; 4.15.7(1), (2), (3)(b), (3)(f), and (4), determining revegetation success; 4.15.7(5), normal husbandry practices; 4.15.7(5)(a), repair of rills and gullies; 4.15.7(5)(b), weed control measures; 4.15.7(5)(c), normal husbandry practices for annual crops; 4.15.7(5)(d), normal husbandry for perennial hay cropland; 4.15.7(5)(e), normal husbandry for pastureland; 4.15.7(5)(f), limiting tree or shrub planting; 4.15.7(5)(g), interseeding to enhance rangeland/wildlife habitat; 4.15.8(3)(a), revegetation success criteria—cover; 4.15.8(4), revegetation success criteria—production; 4.15.8(7), revegetation success criteria—woody plants; 4.15.8(8), revegetation success criteria—forestry; 4.15.9, revegetation success criteria—cropland; 4.15.11, revegetation sampling methods and statistical demonstrations for revegetation success; 4.15.11(1)(a), vegetation cover; 4.15.11(1)(b), herbaceous production; 4.15.11(1)(c), woody plant density; 4.15.11(2), sample adequacy and statistical approaches; 4.15.11(3), woody plant density—alternative statistical approaches; and 4.25.2(4), prime farmlands—special requirements.

In the amendment, Colorado also proposes an MOU between the Division of Minerals and Geology and the State Historic Preservation Officer. The MOU concerns historic property reviews for coal mine applications.

Colorado revised the rules and developed the MOU with the intent of making its program consistent with SMCRA and the implementing Federal regulations.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Colorado program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Denver Field Division may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SATS No. CO–033'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Denver Field Division at (303) 844–1400, extension 1424.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law.

Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. 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 review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. on June 18, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects 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. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the state submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on state, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the state submittal, which is the subject of this rule, is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 16, 2003.

James E. Fulton,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 03–13851 Filed 6–2–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SATS ND–044–FOR, Amendment No. XXXIII]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the North Dakota regulatory program (hereinafter, the ''North Dakota program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). North Dakota proposes revisions to and additions of rules pertaining to the definition of ''valid existing rights,'' the process for determining whether or not a mine operator has valid existing rights, lands prohibited from mining, changes in the format of permit applications, general requirements for mining plans, land descriptions for partial bond release requests, filing requirements for copies of reports required by the State Health Department, sediment control measures, and removal of sedimentation ponds.

North Dakota intends to revise its program to be consistent with the corresponding Federal regulations and improve operational efficiency.

DATES: We will accept written comments on this amendment until 4 p.m., mountain standard time (m.s.t.) July 3, 2003. If requested, we will hold a public hearing on the amendment on June 30, 2003. We will accept requests to speak until 4 p.m., m.s.t. on June 18, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Guy Padgett at the address listed below.

You may review copies of the North Dakota program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting the Office of Surface Mining Reclamation and Enforcement (OSM) Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East ''B'' Street, Federal Building, Room 2128, Casper, Wyoming 82601–1918, 307/261–6550, *GPadgett@osmre.gov.*

James R. Deutsch, Director, Reclamation Division, Public Service Commission, State of North Dakota, 600 E. Boulevard Avenue, Dept. 408, Bismarck, North Dakota 58505–0480, *jrd@oracle.psc.state.nd.us.*

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: 307/261–6550. Internet: *GPadgett@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background of the North Dakota Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background of the North Dakota Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the North Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program in the December 15, 1980, **Federal Register** (45 FR 82214). You can also find later actions concerning North Dakota's program and program amendments at 30 CFR 934.12, 934.13, 934.15, and 934.30.

II. Description of the Proposed Amendment

By letter dated February 10, 2003, North Dakota sent us a proposed amendment to its program (Amendment number XXXIII, administrative record No. ND–HH–01 under SMCRA (30 U.S.C. 1201 *et seq.*)). North Dakota sent the amendment in response to an April 2, 2001, letter (administrative record No. ND–HH–02) that we sent to it in accordance with 30 CFR 732.17(c), and to include the changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

The provisions of the North Dakota Administrative Code (NDAC) that North Dakota proposes to revise are: (1) NDAC 69–05.2–01–02(120), Definition of Valid Existing Rights (VER); (2) NDAC 69–05.2–04–01, Processing Requests for Valid Existing Rights and Exceptions from Areas Prohibited from Mining; (3) NDAC 69–05.2–05–01, Copies and format of permit applications; (4) NDAC 69–05.2–09–01, General requirements for mining plans; (5) NDAC 69–05.2–12–12, Bond release requirements; (6) NDAC 69–05.2–16–04, Sediment Control Measures under the general water management requirements; (7) NDAC 69–05.2–16–05, Water discharge reports; and (8) NDAC 69–05.2–16–09, Removal of water management structures.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the North Dakota program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Casper Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SATS No. ND–044–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Casper Field Office at 307/261–6555.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. 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 review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t. on June 18, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

In this rule, the State is proposing valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights rule. The takings implications assessment for the Federal valid existing rights rule appears in Part XXIX.E of the preamble to that rule. *See* 64 FR 70766, 70822–27, December 17, 1999. The provisions in the rule based on other counterpart Federal regulations do not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects 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.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was

prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 21, 2003.

Allen D. Klein,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 03–13852 Filed 6–2–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–142–FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing the proposed removal of a required amendment to the Pennsylvania regulatory program (the ''Pennsylvania program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The required amendment concerns configuration and species composition for reclaimed forest land.

This document gives the times and locations that the Pennsylvania program is available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., e.s.t. July 3, 2003. If requested, we will hold a public hearing on the amendment on June 30, 2003. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on June 18, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to George Rieger, Acting Director, Harrisburg Field Office at the address listed below.

You may review copies of the Pennsylvania program, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

George Rieger, Acting Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036, Internet: *grieger@osmre.gov.*

Joseph Pizarchik, Director, Bureau of Mining and Reclamation, Pennsylvania Department of Environmental Protection, Rachel Carson State Office Building, P.O. Box 8461, Harrisburg, Pennsylvania 17105–8461, Telephone: (717) 787–5103.

FOR FURTHER INFORMATION CONTACT: George Rieger, Telephone: (717) 782–4036. Internet: *grieger@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Description of the Proposed Amendment

Federal regulations at 30 CFR 938.16(fff) require Pennsylvania to submit a proposed amendment to sections 87.151(d), 89.86(e)(2)(ii)(C), and 90.155(d) of the Pennsylvania Code ''to require that the configuration and species composition for reclaimed forest land be reviewed and approved, either on a site-by-site basis or a program wide basis, by the Bureau of Forestry [the Bureau].'' These provisions of the Pennsylvania Code are excerpted below:

Section 87.151(d)

(d) When the approved postmining land use is fish and wildlife habitat, unless alternative plans are approved or required by the Department, a minimum of 75% of the land affected shall be planted with a mixture of woody species which provides a diverse plant community. The remaining affected area shall be planted to an approved herbaceous cover. The configuration and species composition of the cover types shall be established in accordance with guidelines

established by the Fish and Boat Commission and the Game Commission.

Section 89.86(e)(2)(ii)(C)

(C) When the approved postmining land use is wildlife habitat, a minimum of 75% of the land affected shall be planted with a mixture and minimum of 400 woody plants per acre. The configuration and species composition of the cover types shall be established in accordance with guidelines established by the Fish and Boat Commission and the Game Commission.

Section 90.155(d)

(d) When the approved postdisposal land use is wildlife habitat, unless alternative plans are approved by the Department, a minimum of 75% of the land affected shall be planted with a mixture of woody species which provides a diverse plant community. The remaining affected area shall be planted to an approved herbaceous cover. The configuration and species composition of the cover types shall be established in accordance with guidelines of the Fish and Boat Commission and Game Commission.

While similar to the Federal regulations at 30 CFR 816/817.116(b)(3)(i), the regulations cited above do not require that minimum stocking and planting arrangements be established upon consultation and approval by the State agencies responsible for the administration of the forestry program. In Pennsylvania, the Bureau of Forestry is responsible for the administration of the forestry program. Therefore, in the April 8, 1993 **Federal Register** (58 FR 18149), we required Pennsylvania to amend sections 87.151(d), 89.86(e)(2)(ii)(C), and 90.155(d) to require approval by the Bureau of Forestry on either a site-by-site or program-wide basis.

By letter dated January 30, 2002, Pennsylvania Department of Environmental Protection (DEP) submitted a comparison of the State regulations referred to above and the corresponding Federal regulations along with its explanation of why Pennsylvania's regulations are as effective as their Federal counterparts. Following this correspondence, OSM's Harrisburg Field Office, by letter dated February 22, 2002 (Administrative Record No. PA–803.24), submitted a request to the Bureau that it review the regulations at issue. By letter dated March 20, 2002 (Administrative Record No. PA–803.25), the Bureau approved the subject regulations.

In its letter, the Bureau stated that it ''approve[d] of the Pennsylvania DEP Protection Regulations, particularly the relevant portions of sections 87.151(d), 89.86(e)(2)(ii)(C), 90.155(d), 90.155(C), 87.155(b)(2), 89.86(e)(2)(ii), and 90.159(b)(2).'' The latter four regulations approved in the Bureau's letter contain species composition and configuration rules that apply to reclaimed forest land. Because the Bureau has approved the configuration and species composition for reclaimed forest land, as required under 30 CFR 938.16(fff), we are proposing to remove the required amendment.

We note that, in its letter, the Bureau did not specify whether it was approving Pennsylvania's regulations on a site-by-site or a program wide basis, as required in 30 CFR 938.16(fff). However, in its January 30, 2002, letter to us, the State pointed out that ''[c]onsultation with the Pennsylvania Bureau of Forestry occurred on a program wide basis during development of the primacy regulations in the early 1980s. In addition, the configuration and species composition for reclaiming forest land is reviewed and approved on a permit-by-permit basis by foresters in the District Mining Office.''

Finally, the Bureau noted in its approval that ''[w]hile we approve of the regulations as written, we would like to point out that they could be improved with language that promotes the use of native species when practical, and to *not* use the invasive species on [Department of Conservation and Natural Resources] list of invasive species.'' (emphasis in original). We, too, encourage the use of native species, when practical, and discourage the use of invasive species. However, because the Bureau's suggestion is not a contingency on its approval, we are proposing to remove the required amendment.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Harrisburg Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SATS No. PA–142–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Harrisburg Field Office at (717) 782–4036.

Availability of Comment

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. 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 review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on June 18, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public

hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. This proposed rule applies only to the Pennsylvania program and therefore does not affect tribal programs.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 27, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 03–13850 Filed 6–2–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AL45

Board of Veterans' Appeals: Rules of Practice—Notice Procedures Relating to Withdrawal of Services by a Representative

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs' (VA) Board of Veterans' Appeals Rules of Practice to simplify notice procedures relating to withdrawal of services by a representative after certification of an appeal. We believe that these simplified notice procedures would be adequate for establishing proof of service.

DATES: Comments must be received on or before August 4, 2003.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AL45.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202–565–5978).

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is an administrative body that decides appeals from denials by agencies of original jurisdiction (AOJs) of claims for veterans' benefits. This document proposes to amend the Board's Rules of Practice for the purpose of simplifying notice procedures in connection with motions to withdraw services by a representative after certification of an appeal.

Rule 608(b)(2) (38 CFR 20.608(b)(2)) contains various requirements relating to withdrawal of services by a representative after certification of an appeal. The only requirements we propose amending concern the notice procedures. Currently, a representative must send the appellant a copy of the representative's motion to withdraw services by mailing the motion, return receipt requested; after the representative receives the signed receipt showing that the motion was received, the representative must file the signed receipt with the Board. If the appellant files a response, the appellant is required to send the representative a copy of the response by mailing it, return receipt requested, and is required to file the signed receipt with the Board.

We do not believe that the current level of proof of notice is appropriate. First-class mail is used for other important documents affecting the appellants and representatives involved in these appeals, including the AOJ decisions that are the subject of the appeals and the Board's decisions. We are proposing a change to require merely use of first-class mail, postage prepaid, with a certificate of service. This proposed change would be in line with general rules of proof of service in the Federal Rules of Civil Procedure. Fed. R. Civ. P. 5(d) (generally, a certificate of service by a party (or attorney) is sufficient proof of service). We believe these simplified procedures would provide adequate assurance of receipt, when considered in light of the benefits of simplification of the notice procedures. These proposed procedures would remove the extra steps of the current return receipt requirements and would more easily enable the appellant to file a response, either opposing or supporting the representative's motion. Also, these proposed procedures would shorten the time before the motion is ripe for determination by the Board, expediting the possibility of a transition, if appropriate, to a new representative.

Accordingly, we propose amending the rule in cases involving a motion to withdraw services by a representative after certification of an appeal, to provide that proof of service will be accomplished by filing a statement with the Board certifying that the motion has been sent by first-class mail, postage prepaid, to the appellant or that the response has been sent by first-class mail, postage prepaid, to the representative, as applicable.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a new collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This rule would merely concern requirements for proof of service of motions for withdrawal of services by a representative after certification of an appeal before the Board, and for proof of service of responses to such motions. Moreover, such motions and responses are events that occur in only a minor proportion of the cases before the Board. Any economic impact on small entities would be minimal. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Attorneys, Lawyers, Legal services, Procedural rules, Veterans.

Approved: May 27, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is proposed to be amended as set forth:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

§ 20.608 [Amended]

2. Section 20.608, paragraph (b)(2) is amended by:

A. In the third sentence, removing ''permitted.'' and adding, in its place, ''permitted, and a signed statement certifying that a copy of the motion was sent by first-class mail, postage prepaid, to the appellant, setting forth the address to which the copy was mailed.''

B. Removing the sixth and seventh sentences.

C. In the eighth sentence, removing ''motion.'' and adding, in its place, ''motion and must include a signed

statement certifying that a copy of the response was sent by first-class mail, postage prepaid, to the representative, setting forth the address to which the copy was mailed.''

D. Removing the ninth and tenth sentences.

[FR Doc. 03–13797 Filed 6–2–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD131–3091b; FRL–7503–8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Amendments to the Control of Volatile Organic Compounds from Chemical Production and Polytetrafluoroethylene Installations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of Maryland. The revisions consist of amendments to Maryland's air pollution control regulations governing specific processes on volatile organic compound (VOC) requirements that initially included organic chemicals and are being expanded to include inorganic chemicals and polytetrafluoroethylene (PTFE) products. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 3, 2003.

ADDRESSES: Written comments should be addressed to Makeba A. Morris, Branch Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 1800 Washington Blvd., Suite 730, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Betty Harris, (215) 814–2168, at the EPA Region III address above, or by e-mail at *harris.betty@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action for Maryland's amendments to the control of VOCs from chemical production and PTFE installations, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: May 20, 2003.

Abraham Ferdas,

Acting Regional Administrator, Region III.

[FR Doc. 03–13701 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV038/053–6026b; FRL–7500–1]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Regulation To Prevent and Control Air Pollution from the Emission of Sulfur Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia for the purpose of establishing regulations to prevent and control air pollution from the emission of sulfur oxides. In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 3, 2003.

ADDRESSES: Written comments should be addressed to Makeba Morris, Branch Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, and the West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, S.E., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Jill Webster (215) 814–2033, or Ellen Wentworth (215) 814–2034, or by e-mail at *webster.jill@epa.gov.* or *wentworth.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action of West Virginia's regulation to Prevent and Control Air Pollution from the Emission of Sulfur Oxides, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: May 8, 2003.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 03–13703 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 267–0394b; FRL–7495–5]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) and particulate matter (PM–10) emissions from commercial charbroiling and VOC emissions from solvent cleaning. We are proposing approval of local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by July 3, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; *steckel.andrew@epa.gov.*

You can inspect a copy of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revisions and TSDs at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460.

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

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

A copy of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local SJVUAPCD Rule 4292 and SCAQMD Rule 1171. In the Rules section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: April 28, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–13706 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–213–9952(b); FRL–7506–7]

Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to the Tennessee State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is approving revisions to the Tennessee Department of Environment and Conservation's definitions of Volatile Organic Compounds submitted on February 3, 1999, by the State of Tennessee. These revisions are designed for the State Implementation Plan (SIP) to attain the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (CAA). The additional compounds HFC43–10mee, HCFC–225ca, and HCFC–225cb are added to the list of exempt compounds on the basis that they have negligible contribution to the tropospheric ozone formation.

In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before July 3, 2003.

ADDRESSES: All comments should be addressed to: Steve Scofield or Nacosta Ward; Regulatory Development Section; Air Planning Branch; Air, Pesticides, and Toxics Management Division; U. S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (Steve Scofield, 404/562–9034 or Nacosta Ward, 404/562–9140). Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531. 615–532–0554.

FOR FURTHER INFORMATION CONTACT: Steve Scofield or Nacosta Ward; Regulatory Development Section; Air Planning Branch; Air, Pesticides, and Toxics Management Division; U. S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Scofield and Ms. Ward can also be reached by telephone at 404/562–9034 and 404/562–9140, or by electronic mail at *scofield.steve@epa.gov* and *ward.nacosta@epa.gov,* respectively.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: May 20, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–13708 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV050–6029b; FRL–7504–1]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Regulation to Prevent and Control Particulate Matter Air Pollution From Manufacturing Processes and Associated Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia for the purpose of establishing regulations for the prevention and control of particulate matter air pollution from manufacturing processes and associated operations. In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the State submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 3, 2003.

ADDRESSES: Written comments should be addressed to Makeba Morris, Chief, Air Quality Planning and Information Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Kathleen Anderson, (215) 814–2173, or by e-mail at *anderson.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: May 20, 2003.

Abraham Ferdas,

Acting Regional Administrator, Region III.

[FR Doc. 03–13710 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA158–4206b; FRL–7504–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Removal of Alternative Emission Reduction Limitations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of removing alternative emission reduction limitations for eight facilities. In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 3, 2003.

ADDRESSES: Written comments should be addressed to Makeba Morris, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Kathleen Anderson, (215) 814–2173, or by e-mail at *anderson.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: May 20, 2003.

Abraham Ferdas,

Acting Regional Administrator, Region III.

[FR Doc. 03–13712 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 03–102 and 99–261; FCC 03–90]

Above 76 GHz

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on reallocate spectrum in the 76–81 GHz frequency and the frequency bands above 95 GHz to make the domestic and international frequency allocation changes consistent with each other. The realignment is consistent with change made at the 2000 World Radiocommunication Conference (WRC–2000). The primary intent of WRC–2000 was to place scientific services, such as Earth-exploration satellite (EESS) and radio astronomy (RAS) services in spectrum better suited to their needs. This document also seeks comment on adopting the limit for maximum power spectral density that can be delivered to a fixed service transmitter antenna set forth in the U.S. proposal to WRC–2000.

DATES: Written comments are due August 4, 2003, and reply comments are due September 2, 2003.

FOR FURTHER INFORMATION CONTACT: Shameeka Parrott, Office of Engineering and Technology, (202) 418–2062, email: *sparrott@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking,* ET Docket No. 03–102 and 99–261, FCC 03–90, adopted April 16, 2003, and released April 28, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternate formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before August 4, 2003, and reply comments on or before September 2, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Summary of the Notice of Proposed Rule Making

Reallocation of the Frequency Bands Above 76 GHz

1. The primary need for realigning spectrum above 76 GHz is to accommodate the requirements of the RAS and EESS services. Specifically, RAS must operate in bands that meet the requirements for spectral line and wideband continuum observations. Additionally, the EESS must operate in bands that are optimal for microwave limb sounding and nadir sounding of water vapor and other atmospheric constituents. Therefore, we proposed to incorporate WRC–2000 changes into our domestic frequency allocation table. Consistent with proposed allocation changes, we proposed to update several footnotes in the Table (US74, US211, US246, US263, and US342) to incorporate proposed bands which footnotes apply. Also, we proposed to replace international footnote 5.340 and 5.149 with U.S. footnotes US246 and US342, respectively and apply these footnotes to additional bands. Finally, to make the U.S. Table consistent with WRC–2000 changes, we proposed to remove nine U.S. footnotes that were adopted in a previous Commission proceeding. We seek comments on the proposed changes.

Maximum Power Density in the Band 55.78–56.26 GHz

2. We proposed to adopt the U.S. proposal of -28.5 dB (W/MHz) domestically as the maximum power spectral density limit delivered to fixed service transmitter antennas at 55.78–56.26 GHz. This was proposed due to WRC–200 adopting a higher power density limit of -26 dB, which NTIA believes is unacceptable for domestic use. The tighter limit proposed by the U.S. since passive measurements are extremely vulnerable to interference due to the variability of the atmosphere. A new U.S. footnote was proposed to reflect the proposed change in power spectral density limit.

3. We seek comment on the proposed power spectral density limit. Commenters should address the power spectral density in terms of its ability to protect EESS and its impact on equipment development, as well as, alternative power limits for the 55 GHz systems that would provide the same overall protection to EESS services. Commenters should address the impact of this limit on other services in the band.

Initial Regulatory Flexibility Certification

4. The Regulatory Flexibility Act of 1980, as amended (RFA),[1] requires that regulatory flexibility analyses be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' [2] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [3] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[4] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[5]

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[2] 5 U.S.C. 605(b).

[3] 5 U.S.C. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[5] 15 U.S.C. 632.

5. In this proposed rule, we propose to realign allocations in the bands 76–81 GHz and 95–1000 GHz consistent with the international allocation changes obtained at WRC–2000. This proposal would align passive allocations for RAS and Earth-exploration satellite services with spectrum that is more suited for such operations and would continue the Commission's efforts to promote the commercial development and growth of the ''millimeter wave'' spectrum, which will provide for future developments in technology and equipment. We also propose to adopt domestically the United States proposal at WRC–2000 in regards to the maximum power density delivered by a transmitter to the antenna of a fixed service in the 55.78–56.26 GHz band. This proposal will protect EESS from unaccepted interference from fixed and mobile operations. These proposed changes will not cause a significant adverse economic impact to small entities because there are no licensed commercial uses above 76 GHz; that is, no incumbent licensees will be affected. Service rules will be adopted in later proceedings, as appropriate.

6. Therefore, we certify that the proposals in the NPRM, if adopted, will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the NPRM, including a copy of the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.[6]

[6] 5 U.S.C. 605(b).

List of Subjects in 47 CFR Part 2

Radio.

Federal Communications Commission

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 2 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Amend § 2.106 as follows:

a. Revise pages 79 and 81 through 90 of the Table.

b. In the list of United States footnotes, revise footnotes US74, US211, US246, US263, and US342; delete US369, US370, US371, US372, US373, US374, US375, US376, and US377.

c. In the list of United States footnotes, add footnote USXXX.

The additions and revisions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

50.2-65 GHz (EHF)					Page 79
International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
50.2-50.4 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) 5.340 5.555A			50.2-50.4 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) US246		
50.4-51.4 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE Mobile-satellite (Earth-to-space)			50.4-51.4 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE MOBILE-SATELLITE (Earth-to-space) G117	50.4-51.4 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE MOBILE-SATELLITE (Earth-to-space)	
51.4-52.6 FIXED MOBILE 5.547 5.556			51.4-52.6 FIXED MOBILE		
52.6-54.25 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) 5.340 5.556			52.6-54.25 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) US246		
54.25-55.78 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.556A SPACE RESEARCH (passive) 5.556B			54.25-55.78 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.556A SPACE RESEARCH (passive)		
55.78-56.9 EARTH EXPLORATION-SATELLITE (passive) FIXED 5.557A INTER-SATELLITE 5.556A MOBILE 5.558 SPACE RESEARCH (passive) 5.547 5.557			55.78-56.9 EARTH EXPLORATION-SATELLITE (passive) FIXED USxxx INTER-SATELLITE 5.556A MOBILE 5.558 SPACE RESEARCH (passive) US263 US353		
56.9-57 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE 5.558A MOBILE 5.558 SPACE RESEARCH (passive)			56.9-57 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE G128 MOBILE 5.558	56.9-57 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE 5.558 SPACE RESEARCH	

65-86 GHz (EHF) Page 81

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
65-66 EARTH EXPLORATION-SATELLITE FIXED INTER-SATELLITE MOBILE except aeronautical mobile SPACE RESEARCH 5.547			65-66 EARTH EXPLORATION-SATELLITE FIXED MOBILE except aeronautical mobile SPACE RESEARCH	65-66 EARTH EXPLORATION-SATELLITE FIXED INTER-SATELLITE MOBILE except aeronautical mobile SPACE RESEARCH	
66-71 INTER-SATELLITE MOBILE 5.553 5.558 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.554			66-71 MOBILE 5.553 5.558 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.554	66-71 INTER-SATELLITE MOBILE 5.553 5.558 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.554	
71-74 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE MOBILE-SATELLITE (space-to-Earth)			71-74 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE MOBILE-SATELLITE (Earth-to-space) US270		
74-76 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE BROADCASTING BROADCASTING-SATELLITE Space research (space-to-Earth) 5.559A 5.561			74-75.5 FIXED FIXED-SATELLITE (Earth-to-space) US297 MOBILE		
			75.5-76	75.5-76 AMATEUR AMATEUR-SATELLITE	Amateur (97)
76-77.5 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite Space research (space-to-Earth) 5.149			76-77.5 RADIO ASTRONOMY RADIOLOCATION Space research (space-to-Earth) US342	76-77.5 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite Space research (space-to-Earth) US342	

77.5-78 AMATEUR AMATEUR-SATELLITE Radio astronomy Space research (space-to-Earth) 5.149	77.5-78 Radio astronomy Space research (space-to-Earth) US342	77.5-78 AMATEUR AMATEUR-SATELLITE Radio astronomy Space research (space-to-Earth) US342	Amateur (97)
78-79 RADIOLOCATION Amateur Amateur-satellite Radio astronomy Space research (space-to-Earth) 5.149 5.560	78-79 RADIO ASTRONOMY RADIOLOCATION Space research (space-to-Earth) 5.560 US342	78-79 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite Space research (space-to-Earth) 5.560 US342	
79-81 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite Space research (space-to-Earth) 5.149	79-81 RADIO ASTRONOMY RADIOLOCATION Space research (space-to-Earth) US342	79-81 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite Space research (space-to-Earth) US342	
81-84 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE MOBILE-SATELLITE (Earth-to-space) RADIO ASTRONOMY Space research (space-to-Earth) 5.149 5.561A	81-84 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE MOBILE-SATELLITE (space-to-Earth)		
84-86 FIXED FIXED SATELLITE (Earth-to-space) 5.561B MOBILE RADIO ASTRONOMY 5.149	84-86 FIXED MOBILE US211 US377	84-86 FIXED MOBILE BROADCASTING BROADCASTING- SATELLITE US211 US377	

86-116 GHz (EHF)					Page 83
International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
86-92 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340			86-92 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
92-94 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION 5.149			92-95 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIOLOCATION		
94-94.1 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) Radio astronomy 5.562 5.562A					
94.1-95 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION 5.149			US342		
95-100 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.149 5.554			95-100 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.554 US342		
100-102 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.341			100-102 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) 5.341 US246		

102-105 FIXED MOBILE RADIO ASTRONOMY 5.149 5.341	102-105 FIXED MOBILE RADIO ASTRONOMY 5.341 US342	
105-109.5 FIXED MOBILE RADIO ASTRONOMY SPACE RESEARCH (passive) 5.562B 5.149 5.341	105-109.5 FIXED MOBILE RADIO ASTRONOMY SPACE RESEARCH (passive) 5.562B 5.341 US342	
109.5-111.8 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.341	109.5-111.8 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) 5.341 US246	
111.8-114.25 FIXED MOBILE RADIO ASTRONOMY SPACE RESEARCH (passive) 5.562B 5.149 5.341	111.8-114.25 FIXED MOBILE RADIO ASTRONOMY SPACE RESEARCH (passive) 5.562B 5.341 US342	
114.25-116 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.341	114.25-116 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) 5.341 US246	

116-164 GHz (EHF)					Page 85
International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
116-119.98 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.562C SPACE RESEARCH (passive) 5.341			116-122.25 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.562C SPACE RESEARCH (passive) 5.138 5.341 US211		ISM Equipment (18)
119.98-122.25 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.562C SPACE RESEARCH (passive) 5.138 5.341					
122.25-123 FIXED INTER-SATELLITE MOBILE 5.558 Amateur 5.138			122.25-123 FIXED INTER-SATELLITE MOBILE 5.558 5.138	122.25-123 FIXED INTER-SATELLITE MOBILE 5.558 Amateur 5.138	ISM Equipment (18) Amateur (97)
123-130 FIXED SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) RADIONAVIGATION RADIONAVIGATION-SATELLITE Radio astronomy 5.562D 5.149 5.554			123-130 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) RADIONAVIGATION RADIONAVIGATION-SATELLITE Radio astronomy 5.554 US211 US342		
130-134 EARTH EXPLORATION-SATELLITE (active) 5.562E FIXED INTER-SATELLITE MOBILE 5.558 RADIO ASTRONOMY 5.149 5.562A			130-134 EARTH EXPLORATION-SATELLITE (active) 5.562E FIXED INTER-SATELLITE MOBILE 5.558 RADIO ASTRONOMY 5.562A US342		
134-136 AMATEUR AMATEUR-SATELLITE Radio astronomy			134-136 Radio astronomy	134-136 AMATEUR AMATEUR-SATELLITE Radio astronomy	Amateur (97)

136-141 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite 5.149	136-141 RADIO ASTRONOMY RADIOLOCATION US342	136-141 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite US342	Amateur (97)
141-148.5 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION 5.149	141-148.5 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION US342		
148.5-151.5 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340	148.5-151.5 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
151.5-155.5 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION 5.149	151.5-155.5 FIXED MOBILE RADIO ASTRONOMY RADIOLOCATION US342		
155.5-158.5 EARTH EXPLORATION-SATELLITE (passive) 5.562F FIXED MOBILE RADIO ASTRONOMY SPACE RESEARCH (passive) 5.562B 5.149 5.562G	155.5-158.5 EARTH EXPLORATION-SATELLITE (passive) 5.562F FIXED MOBILE RADIO ASTRONOMY SPACE RESEARCH (passive) 5.562B 5.562G US342		
158.5-164 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE MOBILE-SATELLITE (space-to-Earth)	158.5-164 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE MOBILE-SATELLITE (space-to-Earth) US211		

164-217 GHz (EHF)					Page 87
International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
164-167 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340			164-167 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
167-174.5 FIXED FIXED-SATELLITE (space-to-Earth) INTER-SATELLITE MOBILE 5.558 5.149 5.562D			167-174.5 FIXED FIXED-SATELLITE (space-to-Earth) INTER-SATELLITE MOBILE 5.558 US211		
174.5-174.8 FIXED INTER-SATELLITE MOBILE 5.558			174.5-174.8 FIXED INTER-SATELLITE MOBILE 5.558		
174.8-182 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.562H SPACE RESEARCH (passive)			174.8-182 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.562H SPACE RESEARCH (passive)		
182-185 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.563			182-185 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) US246		

185-190 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.562H SPACE RESEARCH (passive)	185-190 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.562H SPACE RESEARCH (passive)	
190-191.8 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) 5.340	190-191.8 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) US246	
191.8-200 FIXED INTER-SATELLITE MOBILE 5.558 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.149 5.341 5.554	191.8-200 FIXED INTER-SATELLITE MOBILE 5.558 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.341 5.554 US211	
200-202 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.341 5.563A	200-209 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive)	
202-209 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.341 5.563A	5.341 5.563A US246	
209-217 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIO ASTRONOMY 5.149 5.341	209-217 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIO ASTRONOMY 5.341 US342	

217-1000 GHz (EHF)					Page 89
International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
217-226 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIO ASTRONOMY SPACE RESEARCH (passive) 5.562B 5.149 5.341			217-226 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIO ASTRONOMY SPACE RESEARCH (passive) 5.562B 5.341 US342		
226-231.5 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340			226-231.5 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) US246		
231.5-232 FIXED MOBILE Radiolocation			231.5-232 FIXED MOBILE Radiolocation		
232-235 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE Radiolocation			232-235 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE Radiolocation		
235-238 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) SPACE RESEARCH (passive) 5.563A 5.563B			235-238 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) SPACE RESEARCH (passive) 5.563A 5.563B		
238-240 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE RADIOLOCATION RADIONAVIGATION RADIONAVIGATION-SATELLITE			238-240 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE RADIOLOCATION RADIONAVIGATION RADIONAVIGATION-SATELLITE		
240-241 FIXED MOBILE RADIOLOCATION			240-241 FIXED MOBILE RADIOLOCATION		

241-248 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite 5.138 5.149	241-248 RADIO ASTRONOMY RADIOLOCATION 5.138 US342	241-248 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite 5.138 US342	ISM Equipment (18) Amateur (97)
248-250 AMATEUR AMATEUR-SATELLITE Radio astronomy 5.149	248-250 Radio astronomy US342	248-250 AMATEUR AMATEUR-SATELLITE Radio astronomy US342	Amateur (97)
250-252 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.563A	250-252 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) 5.563A US246		
252-265 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) RADIO ASTRONOMY RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.149 5.554	252-265 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) RADIO ASTRONOMY RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.554 US211 US342		
265-275 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIO ASTRONOMY 5.149 5.563A	265-275 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIO ASTRONOMY 5.563A US342		
275-1000 (Not allocated) 5.565	275-1000 (Not allocated) 5.565		

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United States (US) Footnotes

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US74 In the bands 25.55–25.67, 73.0–74.6, 406.1–410.0, 608–614, 1400–1427, 1660.5–1670.0, 2690–2700, and 4990–5000 MHz and in the bands 10.68–10.7, 15.35–15.4, 23.6–24.0, 31.3–31.5, 86–92, 100–102, 109.5–111.8, 114.25–116, 148.5–151.5, 164–167, 200–209, and 250–252, the radio astronomy service shall be protected from extraband radiation only to the extent that such radiation exceeds the level which would be present if the offending station were operating in compliance with technical standards or criteria applicable to the service in which it operates. Radio astronomy observations in these bands are performed at the locations listed in US311.

* * * * *

US211 In the bands 1670–1690, 5000–5250 MHz and 10.7–11.7, 15.1365–15.35, 15.4–15.7, 22.5–22.55, 24–24.05, 31.0–31.3, 31.8–32.0, 40.5–42.5, 84–86, 123–130, 158.5–164, 167–168, 191.8–200, and 252–265 GHz, applicants for airborne or space station assignments are urged to take all practicable steps to protect radio astronomy observations in the adjacent bands from harmful interference; however, US74 applies.

* * * * *

US246 No station shall be authorized to transmit in the following bands: 608–614 MHz, except for medical telemetry equipment,[7] 1400–1427 MHz, 1660.5–1668.4 MHz, 2690–2700 MHz, 4990–5000 MHz, 10.68–10.7 GHz, 15.35–15.4 GHz, 23.6–24 GHz, 31.3–31.8 GHz, 50.2–50.4 GHz, 52.6–54.25 GHz, 86–92 GHz, 100–102 GHz, 109.5–111.8 GHz, 114.25–116 GHz, 148.5–151.5 GHz, 164–167 GHz, 182–185 GHz, 190–191.8 GHz, 200–209 GHz, 226–231.5 GHz, 250–252 GHz,

* * * * *

US263 In the bands 21.2–21.4 GHz, 22.21–22.5 GHz, 36–37 GHz, and 56.26–58.2 GHz, the space research and Earth exploration-satellite services shall not receive protection from the fixed and mobile services operating in accordance with the Table of Frequency Allocations.

* * * * *

US342 In making assignments to stations of other services to which the bands: 13360–13410 kHz, 22.81–22.86 GHz, 136–148.5 GHz, 37.5–38.25 MHz, 23.07–23.12 GHz, 151.5–158.5 GHz, 322–328.6 MHz, 31.2–31.3 GHz, 209–226 GHz, 1330–1400 MHz, 36.43–36.5 GHz, 241–250 GHz, 1610.6–1613.8 MHz, 42.5–43.5 GHz, 252–275 GHz 1660–1670 MHz, 48.94–49.04 GHz, 3260–3267 MHz, 76–81 GHz, 3332–3339 MHz, 95–100 GHz, 3345.8–3352.5 MHz, 102–109.5 GHz, 4825–4835 MHz, 111.8–114.25 GHz, 14.47–14.5 GHz, 128.33–128.59 GHz, 22.01–22.21 GHz, 129.23–129.49 GHz, 22.21–22.5 GHz, 130–134 GHz, are allocated, administrations are urged to take all practicable steps to protect the radio astronomy service from harmful interference. Emissions from spaceborne or airborne stations can be particularly serious sources of interference to the radio astronomy service (see Nos. 4.5 and 4.6 and Article 29 of the ITU Radio Regulations).

* * * * *

USxxx In the band 55.78–56.26 GHz, in order to protect stations in the Earth exploration-satellite service (passive), the maximum power density delivered by a transmitter to the antenna of a fixed service station is limited to -28.5 dB(W/MHz).

* * * * *

[7] Medical telemetry equipment shall not cause harmful interference to radio astronomy operations in the band 608–614 MHz and shall be coordinated under the requirements found in 47 CFR 95.1119.

[FR Doc. 03–13780 Filed 6–2–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 206

[DFARS Case 2002–D023]

Defense Federal Acquisition Regulation Supplement; Follow-On Production Contracts for Products Developed Pursuant to Prototype Projects

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to provide an exception from competition requirements to apply to contracts awarded under the authority of Section 822 of the National Defense Authorization Act for Fiscal Year 2002. Section 822 provides for award of a follow-on production contract, without competition, to participants in an ''other transaction'' agreement for a prototype project, if the agreement was entered into through use of competitive procedures, provided for at least one-third non-Federal cost share, and meets certain other conditions of law.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 4, 2003, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil.* Please cite DFARS Case 2002–D023 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan L. Schneider, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D023.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, (703) 602–0326.

SUPPLEMENTARY INFORMATION:

A. Background

Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160; 10 U.S.C. 2371 note) provides authority for DoD to enter into transactions other than contracts, grants, or cooperative agreements, in certain situations, for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by DoD. Such transactions are commonly referred to as ''other transaction'' (OT) agreements for prototype projects.

Section 822 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107) permits award of a follow-on production contract, without competition, to participants in an OT agreement for a prototype project if—

(1) The OT agreement provided for a follow-on production contract;

(2) The OT agreement provided for at least one-third non-Federal cost share for the prototype project;

(3) Competitive procedures were used for the selection of parties for participation in the OT agreement;

(4) The participants in the OT agreement successfully completed the prototype project;

(5) The number of units provided for in the follow-on production contract does not exceed the number of units specified in the OT agreement for such a follow-on production contract; and

(6) The prices established in the follow-on production contract do not exceed the target prices specified in the OT agreement for such a follow-on production contract.

DoD published proposed amendments to the ''Other Transactions'' regulations at 32 CFR part 3 on May 20, 2003 (68 FR 27497), to implement Section 822. This proposed DFARS rule provides the corresponding exemption from competition requirements for follow-on production contracts awarded under the authority of Section 822.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this 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 the rule applies only to production contracts for DoD weapons and weapon systems. Such contracts typically are not awarded to small business concerns. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D023.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any 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 206

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR part 206 as follows:

1. The authority citation for 48 CFR part 206 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 206—COMPETITION REQUIREMENTS

2. Section 206.001 is amended by adding, after paragraph (b), a new paragraph (S–70) to read as follows:

206.001 Applicability.

* * * * *

(S–70) Also excepted from this part are follow-on production contracts for products developed pursuant to the ''other transactions'' authority of 10 U.S.C. 2371 for prototype projects when—

(1) The other transaction agreement includes provisions for a follow-on production contract;

(2) The contracting officer receives sufficient information from the agreements officer and the project manager for the prototype other transaction agreement, which documents that the conditions set forth in 10 U.S.C. 2371 note, subsections (f)(2)(A) and (B) (see 32 CFR 3.9(c)), have been met; and

(3) The contracting officer establishes quantities and prices for the follow-on production contract that do not exceed the quantities and target prices established in the other transaction agreement.

[FR Doc. 03–13536 Filed 6–2–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI74

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Arabis perstellata* (Braun's Rock-cress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and notice of document availability.

SUMMARY: We, the Fish and Wildlife Service (Service), determine that critical habitat is prudent and propose to designate critical habitat for the *Arabis perstellata* (Braun's rock-cress), an endangered species listed under the Endangered Species Act of 1973, as amended (Act). We propose 20 specific geographic areas (units) in Kentucky (17 units) and Tennessee (3 units) as critical habitat for *Arabis perstellata.* These units encompass approximately 408 hectares (ha) (1,008 acres (ac)). Kentucky has approximately 328 ha (810 ac) and Tennessee has approximately 80 ha (198 ac) proposed as critical habitat for *Arabis perstellata.*

Critical habitat identifies specific areas that are essential to the conservation of a listed species, and that may require special management considerations or protection. If this proposal is made final, section 7(a)(2) of the Act requires that Federal agencies ensure that actions they fund, permit, or carry out are not likely to result in the destruction or adverse modification of critical habitat. The regulatory effect of the critical habitat designation does not extend beyond those activities funded, permitted, or carried out by Federal agencies. State or private actions with no Federal involvement are not affected.

Section 4 of the Act requires us to consider the economic and other relevant impacts of specifying any area as critical habitat. We hereby solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We have conducted an analysis of the economic impacts of designating these areas as critical habitat and are announcing its availability for public review. That economic analysis has been conducted in a manner that is consistent with the ruling of the 10th Circuit Court of Appeals in *N.M. Cattle Growers Ass'n* v. *USFWS.*

DATES: We will consider comments received by August 4, 2003. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by July 18, 2003.

ADDRESSES: If you wish to comment on this proposed rule and/or the draft economic analysis, you may submit your comments by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, TN 38501.

2. You may hand-deliver written comments to our Tennessee Field Office at the above address or fax your comments to 931/528–7075.

3. You may send comments by electronic mail (e-mail) to *timothy_merritt@fws.gov.* For directions on how to submit electronic filing of comments, see the ''Public Comments Solicited'' section.

FOR FURTHER INFORMATION CONTACT: Timothy Merritt at the above address (telephone 931/528–6481, extension 211; facsimile 931/528–7075).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule and its associated draft economic analysis. We are particularly interested in comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section

4 of the Act, including whether the benefits of designation will outweigh any threats to the species resulting from designation;

(2) Specific information on the amount and distribution of *Arabis perstellata* and its habitat, and which habitat is essential to the conservation of this species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(5) Economic and other values associated with designating critical habitat for *Arabis perstellata* such as those derived from nonconsumptive uses (*e.g.*, hiking, camping, birdwatching, enhanced watershed protection, improved air quality, increased soil retention, ''existence values,'' and reductions in administrative costs);

(6) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments; and

(7) The inclusion into final critical habitat of the two recently identified populations of *Arabis perstellata,* and any foreseeable economic or other impacts resulting from including the areas encompassing these two new populations into designated critical habitat.

If you wish to comment on this proposed rule and/or the draft economic analysis, you may submit your comments and materials concerning this proposal and its associated draft economic analysis by any one of several methods (see **ADDRESSES**). Comments submitted electronically should be in the body of the e-mail message itself or attached as a text file (ASCII), and should not use special characters or encryption. Please also include ''Attn: Braun's rock-cress,'' your full name, and your return address in your e-mail message. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Ecological Services Office in Cookeville, Tennessee (*see* **ADDRESSES**).

Copies of the proposed rule, draft economic analysis, and information regarding this proposed critical habitat designation are available on the Internet at *http://cookeville.fws.gov.*

Background

Arabis perstellata (Braun's rock-cress) is a perennial herb of the mustard family (Brassicaceae). It was originally described by E. Lucy Braun (1940) from specimens collected between 1936 and 1939 in Franklin County, Kentucky. In 1956, Braun described the growth habits of *Arabis perstellata.* This species has round stems and alternate leaves. The stems and foliage have a grayish coloration due to the large quantity of hairs. The stems arise from horizontal bases and grow up to 80 centimeters (cm) (31.5 inches (in)) long, often drooping from rock ledges. Each year, a circular cluster of leaves radiating from the center is produced close to the ground, and new flowering branches emerge from the old cluster of the previous season. The lower leaves vary from 4 to 15 cm (1.6 to 6.0 in) long and are obovate (egg-shaped) to lanceolate (lance-shaped), with the broad end at the top. The lower leaves also have slightly toothed margins and are cut to the midrib. The upper leaves are smaller—up to 3.5 cm (1.4 in) long—and have relatively rounded ends that are widest at or about the middle, but then taper to a lance shape, with the broad end at the top. The upper leaves also have coarse teeth along their margins. Both surfaces of the leaves are covered in starlike hairs. The flowering section of the plant is elongated, with numerous stalked flowers. The flowers have four petals that are 3 to 4 millimeters (mm) (0.12 to 0.16 in) long, are white to lavender, and have four pale green sepals that are 2 to 3 mm (0.08 to 0.12 in) long. There are six stamens, with two shorter than the other four. The ovary is elongate and two-chambered, and develops into an elongated fruit, much longer than it is broad. Fruiting stalks are about 1 cm (0.4 in) long at maturity; the fruits are up to 4 cm (1.6 in) long and are covered with both simple and starlike hairs. Flowering occurs from late March to early May. Fruits mature from mid-May to early June. The oblong seeds are reddish brown, somewhat flattened, about 1 mm (0.04 in) long, and in places minutely hairy (Jones 1991). Plants are reported to live up to 5 years (Jones 1991).

Although varieties of this species are not recognized in recent taxonomic treatments (Rollins 1993), in the past, two varieties were distinguished based on size and degree of pubescence (Rollins 1960). The formerly recognized varieties are also geographically separated, with the larger variety (*Arabis perstellata* var. *ampla*) occurring in Tennessee and the smaller variety (*Arabis perstellata* var. *perstellata*) occurring in Kentucky (Rollins 1993; Kentucky State Nature Preserves Commission (KSNPC) 1996a). While the final rule for the determination of endangered status for this species recognized the two varieties, these two varieties are no longer recognized by the scientific community. Consequently, we will treat the plants that occur in both geographically separated areas as one species (*Arabis perstellata*) for the purpose of designating critical habitat.

Arabis perstellata is presently known from 41 populations in two separate sections of the Interior Low Plateaus Physiographic Province—the Blue Grass Section (Kentucky) and the Central Basin Section (Tennessee). Both areas where this species is found are predominantly underlain by sediments of Ordovician age (510–438 million years ago) (Quarterman and Powell 1978). The Kentucky populations occur in Franklin, Henry, and Owen Counties along the Kentucky River and its tributaries (primarily Elkhorn Creek). The Tennessee populations occur in Davidson and Rutherford counties, principally along the Stones River, but also along the Cumberland River several miles downstream of the Stones River confluence.

Arabis perstellata occurs on slopes composed of calcium carbonate, calcium, or limestone in moderately moist to almost dry forests. The occurrence of this species does not appear to be limited to a particular slope, aspect, elevation, or moisture regime within the slope forests. The plants survive in full shade or filtered light, but are not found in full sunlight (Jones 1991). The largest and most vigorous populations occur on moist mid- to upper-slope sites. Plants are often found around rock outcrops, in protected sites on the downslope side of

tree bases, and in sites of natural disturbance with little competition, such as a sloping mass of rock debris at the base of a cliff or on animal trails. The plants have a well-developed system of rootstocks that allow them to persist in these inhospitable sites. Sometimes the plants display a weedy tendency, colonizing recent road cuts or animal paths through the woodlands. The plants are rarely found growing among the leaf litter and herbaceous cover of the forest floor.

Within the Bluegrass Section of the Interior Low Plateaus in Kentucky, the Lexington Limestone Formation is common on the slopes entrenched by the Kentucky River and its major drainages (McDowell 1986). All but one of the Kentucky populations of *Arabis perstellata* are found on the Grier and Tanglewood members (laterally continuous distinct layers within a rock formation) of this formation. The exception is the population in Henry County, Kentucky, occurring on what is mapped as Kope and Clays Ferry members that have a higher shale component (Service 1997). However, the plants actually occur on limestone outcrops at this site similar to those occupied by the populations found in the Grier and Tanglewood members.

In Tennessee, *Arabis perstellata* sites are restricted to the Central Basin Section, which, like the Blue Grass Section, is underlain by Ordovician limestones. The primary rocks of the *Arabis perstellata* populations in Davidson County are Lebanon and Carters Limestone, while the sites in Rutherford County are characterized by Leipers and Catheys Limestone, as well as Bigby-Cannon Limestone (Wilson 1965, 1966a, 1966b).

The soils at *Arabis perstellata* sites are limestone-derived, with a rock outcrop component usually present in the soil complex. A clay subsoil is also common, but a notable difference is the acidity of the Tennessee soils (True *et al.* 1977) compared with the neutral to moderately alkaline Kentucky soils (Jones 1991; McDonald *et al.* 1985). The soils at the Tennessee sites are Mimosa-Rock outcrop complexes (True *et al.* 1977). The Kentucky sites contain Fairmont-Rock outcrop complexes and Eden flaggy silty clay (McDonald *et al.* 1985). The majority of the *Arabis* populations in Kentucky occur on Fairmont soils.

Common canopy trees of the slope forests where *Arabis perstellata* occurs are *Acer saccharum* (sugar maple), *Quercus muhlenbergii* (chinquapin oak), *Celtus occidentalis* (hackberry), and *Aesculus glabra* (Ohio buckeye). Jones (1991) listed the native herbaceous species that are most indicative of *Arabis perstellata* habitat as *Saxifraga virginiensis* (early saxifrage), *Sedum pulchellum* (stonecrop), *Arabis laevigate* (smooth rock-cress), *Draba ramosissima* (branched whitlowgrass), *Phacelia bipinnatifida* (forest phacelia), *Asplenium rhizophyllum* (walking fern), *Pellaea atropurpurea* (purple cliff-brake), and *Heuchera* sp. (alum root). These herbaceous species are all common forest forbs (flowering plants) in Kentucky and Tennessee, with the exception of *Draba ramosissima*, which is rare in Tennessee.

The only nonnative species which appears to be an important part of the *Arabis perstellata* plant community is *Alliaria petiolata* (European garlic mustard). Disturbed forests are most susceptible to rapid *Alliaria petiolata* invasion, and disrupted soil is most suitable for its establishment (Nuzzo 1991). This species competes directly with *Arabis perstellata* for areas of natural disturbance once it has become established in a forest. Management schemes for the control of *Alliaria petiolata* are being tested, but the species continues to spread into natural areas. This species poses a severe threat to *Arabis perstellata.*

Arabis perstellata is never a common component of the ground flora. It usually occurs in small groups (especially around rock outcrops) or as scattered individuals. The small size of the populations, the species' specialized habitat, and its apparent inability to expand into available or similar habitats suggests that it is a poor competitor. This inability to compete has likely limited its distribution and abundance. This species cannot withstand vigorous competition from invasive weeds or even native herbaceous species.

This species is most likely pollinated by insects, but we do not know nor do we know whether *Arabis perstellata* is self-fertile. Jones (1991) assumed that the plants are pollinated by insects, most likely by small flies and bees. Seed dispersal is likely occurring through wind or gravity rather than animal movements, as this species has no specific morphological (structural) mechanisms such as hooks or burs for seed dispersal. Seeds are probably most commonly dispersed downslope. Jones (1991) suggested that plants in the stable upper slopes (usually among the rock outcropping at a slope break) may be supplying seeds to chronically eroded areas below.

Arabis perstellata produces viable seeds, and plants can easily be grown from seeds under greenhouse conditions (Service 1997). It is not known whether the plant depends on a seed bank (seeds in the soil from previous seasons) to take advantage of opportunities for seed germination and establishment. Bloom (1988) found that seeds of *Arabis laevigata*, a biennial rock-cress co-occurring with *Arabis perstellata*, remained germinable for several years and found evidence of a seed bank. Bloom (1988) also found that the presence of leaf litter suppressed germination in *Arabis laevigata.* Considering the similar habitat of the two species, it is reasonable to infer that leaf litter may also affect germination of *Arabis perstellata.* In several of the larger populations in Kentucky, the species occurs mostly in areas cleared of herbaceous vegetation and leaf litter by past colluvial slippage. It appears that the lack of leaf litter is likely a requirement for seed germination or seedling survival. The factors affecting seedling establishment are not known, nor is it known whether seed production changes in different environments.

The majority of the land containing *Arabis perstellata* populations is in private ownership. One site (Clements Bluff) in Kentucky is owned by the State and is part of the Kentucky River Wildlife Management Area. This publically owned site is under no formal management agreement at this time. One privately owned site, Strohmeiers Hills in Kentucky, is under a management agreement with the Kentucky Natural Heritage Program. Management activities include sediment and noxious weed control. The agreement is nonbinding and does not restrict the property owner's activities or property rights. Thus, the only protection granted by the management agreement is habitat enhancement.

The primary threats to this species are alteration or loss of habitat through development (primarily home and road construction), competition with native and exotic weedy species, grazing and trampling, and timber harvesting. *Arabis perstellata* is vulnerable to extinction because of its very small range, low abundance, and declining number of populations. Thirty-seven extant populations are known in Kentucky and four in Tennessee. The full range of this species in Kentucky is an approximately 518-square-kilometer (km^2) (200-square-mile (mi^2)) area, with four disjunct populations in Tennessee. This narrow range makes the species vulnerable to potential catastrophic phenomena, such as disease, extreme weather, and insect infestations. Also, population levels are declining (Deborah White, KSNPC, pers. comm. 2003). Eight sites previously known in Kentucky were found to be extirpated during a 1996 survey (KSNPC

1996a). Four historical populations in Tennessee are presumed extirpated (Jones 1991; Tennessee Department of Environment and Conservation (TDEC) 2000).

Previous Federal Action

Federal government actions on this species began with passage of section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*). Please refer to the final listing rule for a complete description of Federal actions concerning this species between the inception of the Act and the proposed listing rule in 1994.

On January 3, 1994, we published a rule in the **Federal Register** (59 FR 53) proposing to list *Arabis perstellata* (inclusive of the two varieties, *Arabis perstellata* var. *ampla* and *Arabis perstellata* var. *perstellata*) as endangered. In that proposed rule, we had made a determination that designation of critical habitat was not prudent because such a designation would not be beneficial to the species, but rather could further threaten the species. On January 3, 1995 (60 FR 56), we published our final rule to list *Arabis perstellata* as endangered. In the final rule, consistent with our determination in the proposed rule, we found that a critical habitat designation was not prudent.

On July 22, 1997, we finalized the *Arabis perstellata* Recovery Plan (Service 1997). The recovery plan established the criteria that must be met prior to the delisting of *Arabis perstellata.* The recovery plan also identified the actions that are needed to assist in the recovery of *Arabis perstellata.*

On October 12, 2000, the Southern Appalachian Biodiversity Project filed suit against us, challenging our not prudent critical habitat determinations for *Arabis perstellata* and 15 other federally listed species (*Southern Appalachian Biodiversity Project* v. *U.S. Fish and Wildlife Service, Babbitt, & Clark* (CN 2:00–CV–361 (E.D. TN))). On November 8, 2001, the District Court of the Eastern District of Tennessee issued an order directing us to reconsider our previous prudency determinations and submit a new prudency determination and proposed critical habitat designation, if prudent, for *Arabis perstellata* to the **Federal Register** no later than May 26, 2003, and a final decision not less than twelve months after the new prudency determination.

This proposal is the product of our reevaluation of our 1995 determination that critical habitat designation for *Arabis perstellata* was not prudent. It reflects our interpretation of recent judicial opinions on critical habitat designation and the standards placed on us for making a prudency determination. If additional information becomes available on the species' biology and distribution, and on threats to the species, we may reevaluate this proposal to designate critical habitat, including proposing additional critical habitat, proposing the deletion or boundary refinement of existing proposed critical habitat, or withdrawing our proposal to designate critical habitat.

Critical Habitat Disclaimer

Designation of critical habitat provides little additional protection to species. In 30 years of implementing the Act, we have found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of scarce conservation resources. The present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation rather than biology, forces decisions to be made before complete scientific information is available, consumes enormous agency resources that would otherwise be applied to actions of much greater conservation benefit, and may impose large social and economic costs. We believe that rational public policy demands serious attention to this issue in order to allow our limited resources to be applied to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987. Env. Manage.11(4):429–437) stated, ''Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.'' Currently, only 306 species or 25 percent of the 1,211 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,211 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. We believe that it is these measures that may make the difference between extinction and survival for many species.

Procedural and Resource Difficulties in Designating Critical Habitat

With a budget consistently inadequate to fund all of the petition review, listing determinations, and critical habitat designation duties required of us by statute, we have in the past prioritized our efforts and focused our limited resources on adding species in need of protection to the lists of threatened or endangered species. We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat designations once they are made. These lawsuits have subjected us to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves us with little ability to prioritize our activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, our own proposals to list critically imperiled species, and final listing determinations on existing proposals are significantly delayed. Litigation over critical habitat issues for species already listed and receiving the Act's full protection has precluded or delayed many listing actions nationwide.

The accelerated schedules of court-ordered designations have left us with almost no ability to provide for adequate public participation or ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with NEPA. All are part of the cost of critical habitat designation. None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Critical Habitat

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

In order for habitat to be included in a critical habitat designation, the habitat features must be ''essential to the conservation of the species.'' Such critical habitat designations identify, to the extent known using the best scientific 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)).

Regulations at 50 CFR 424.02(j) define special management considerations or protection to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species.

When we designate critical habitat, we may not have the information necessary to identify all areas that are essential for the conservation of the species. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available to us.

Within the geographic area of the species, we will designate only currently known essential areas. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area will not be included in the critical habitat designation. Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species'' (50 CFR 424.12(e)). Accordingly, when the best available scientific data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides guidance to ensure that our decisions are based on the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, information that should be considered includes the listing package for the species; the recovery plan; articles in peer-reviewed journals; conservation plans developed by States and Counties; scientific status surveys; studies; biological assessments; unpublished materials; and expert opinion or personal knowledge.

Habitat is often dynamic, however, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. Therefore, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. It is possible that federally funded or assisted projects affecting listed species outside their designated critical habitat areas could jeopardize those species. 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 and recovery efforts if new information available to these planning efforts calls for a different outcome.

A. Prudency Determination

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is listed as endangered or threatened. Regulations at 50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species. In our January 3, 1995, final listing rule (60 FR 56), we determined that the designation of critical habitat was not prudent for *Arabis perstellata* because such designation would not be beneficial to the species and such a designation could further threaten the species.

However, in the past few years, several of our determinations that the designation of critical habitat would not be prudent have been overturned by court decisions. For example, in *Conservation Council for Hawaii* v. *Babbitt,* the United States District Court for the District of Hawaii ruled that the Service could not rely on the ''increased threat'' rationale for a ''not prudent'' determination without specific evidence of the threat to the species at issue (2 F. Supp. 2d 1280 [D. Hawaii 1998]). Additionally, in *Natural Resources Defense Council* v. *U.S. Department of the Interior,* the United States Court of Appeals for the Ninth Circuit issued a ruling that limited the application of the no benefit justification and required the Service to balance the potential threats

against any benefits to the species of designating critical habitat 113 F. 3d 1121, 1125 (9th Cir. 1997).

The courts also have ruled that, in the absence of a finding that the designation of critical habitat would increase threats to a species, the existence of another type of protection, even if it offers potentially greater protection to the species, does not justify a not prudent finding (*Conservation Council for Hawaii* v. *Babbitt* 2 F. Supp. 2d 1280).

If critical habitat is designated for *Arabis perstellata,* Federal agencies will be required to consult with us on actions they carry out, fund, or authorize, to ensure that their actions will not destroy or adversely modify critical habitat. It may also provide information to Federal agencies and the general public of the importance of *Arabis perstellata* habitat and the need for special management considerations or protection. A critical habitat designation may assist Federal agencies in planning future actions because it establishes, in advance, those habitats that will be reviewed in section 7 consultations.

Though the identification of known plant locations in this proposed rule may increase unauthorized collection, we currently have no knowledge that unauthorized collection is or has been an issue with *Arabis perstellata*. We found no records of unauthorized collection during our literature review or in discussions with researchers. We also have found no evidence that identification of *Arabis perstellata* critical habitat would increase the degree of threat to the species. Accordingly, we withdraw our previous determination that the designation of critical habitat is not prudent. We find that designation of critical habitat is prudent for *Arabis perstellata* because there is not likely to be increased threats to the species that may result from the critical habitat designation.

B. Methods

As required by section 4(b)(2) of the Act and its implementing regulations (50 CFR 424.12), this proposal is based on the best scientific information available concerning the species' current and historical range, habitat, biology, and threats. In preparing this rule, we reviewed and summarized the current information available on *Arabis perstellata*, including the physical and biological features that are essential for the conservation of the species (*see* ''Primary Constituent Elements'' section), and identified the areas containing these features. The information used includes known locations, our own site-specific species and habitat information, statewide Geographic Information System (GIS) coverages (*e.g.*, soils, geologic formations, and elevation contours), the Natural Resources Conservation Service's soil surveys, the final listing rule for *Arabis perstellata*, recent biological surveys and reports, peer-reviewed literature, our final recovery plan, and discussions and recommendations from *Arabis perstellata* experts.

C. Primary Constituent Elements

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific data available, and to focus on 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. Such requirements include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for germination or seed dispersal; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distribution of a species.

Much of what is known about the specific physical and biological requirements of *Arabis perstellata* is described in the ''Background'' section of this proposed rule. The proposed critical habitat is designed to provide sufficient habitat to maintain self-sustaining populations of *Arabis perstellata* throughout its range, and to provide those habitat components essential for the conservation of the species. These habitat components provide for the following—(1) individual and population growth, including sites for germination, pollination, reproduction, pollen and seed dispersal, and seed dormancy; (2) areas that provide basic requirements for growth, such as water, light, and minerals; and (3) areas that support populations of pollinators and seed dispersal organisms; and (4) habitats that are representative of the historic geographical and ecological distribution of the species.

We believe the conservation of *Arabis perstellata* is dependent upon a number of factors, including the conservation and management of sites where existing populations grow and the maintenance of normal ecological functions within these sites. The areas we are proposing as critical habitat provide some or all of the habitat components essential for the conservation of this species.

Based on the best available information, the primary constituent elements essential for the conservation of *Arabis perstellata* are:

(a) The slopes of calcareous mesophytic and sub-xeric forest that are relatively undisturbed, with few openings in the canopy and several large, mature trees (such as sugar maple *(Acer saccharum),* chinquapin oak *(Quercus muhlenbergii),* hackberry *(Celtus occidentalis),* or Ohio buckeye *(Aesculus glabra)*) ;

(b) An area with few introduced weedy plant species such as *Alliaria petiolata* that is able to support self-sustaining populations of 50 or more individuals;

(c) A mesic habitat with open forest floors containing rock outcrops on moderate to steep slopes with little herbaceous cover and leaf litter accumulation with natural disturbance to allow for *Arabis perstellata* germination and seedling germination;

(d) Ordovician limestone, in particular the Grier, Tanglewood, and Macedonia Bed Members of the Lexington Limestone in Kentucky, and the Lebanon, Carters, Leipers, Catheys, and Bigby-Cannon Limestones in Tennessee; and

(e) Limestone soils such as the Fairmont Rock outcrop complexes in Kentucky and the Mimosa Rock outcrop complexes in Tennessee.

D. Criteria Used To Identify Critical Habitat

We considered several factors in the selection and proposal of specific areas for critical habitat for *Arabis perstellata*. We assessed the final recovery plan objectives and criteria, which emphasize the protection of populations throughout a significant portion of the species' range in Kentucky and Tennessee. According to the recovery plan, *Arabis perstellata* will be considered for delisting when 20 geographically distinct, self-sustaining populations, consisting of 50 or more plants each, are protected in Kentucky and Tennessee, and it has been demonstrated that the populations are stable or increasing after five years of monitoring following reclassification to threatened status. Because of the proximity of occurrences of *Arabis perstellata*, protected populations must be distributed throughout the range in order to decrease the probability of a catastrophic event impacting all the protected populations.

Our approach to delineating specific critical habitat units, based on the

recovery criteria outlined above, focused first on considering all areas of suitable habitat within the geographic distribution of this species and the known locations of the extant and historic populations. We evaluated field data collected from documented occurrences, various GIS layers, soil surveys, and United States Geological Survey (USGS) quadrangle maps. These data include *Arabis perstellata* locations, soils, elevation, topography, geologic formations, streams, and current land uses. Originally, there were eight total populations in Tennessee and 47 in Kentucky. Four of the populations in Tennessee and ten in Kentucky are historic and no longer contain one or more of the primary constituent elements present (Jones 1991; TDEC 2000; Deborah White, KSNPC, pers. comm. 2003). By lacking the primary constituent elements, they are not essential to the conservation of *Arabis perstellata*.

Of the known remaining plant sites in Kentucky (37) and Tennessee (4), we identified an additional 21 sites as having fewer than 50 plants and the habitat is degraded. These sites lack the primary constituent elements and, therefore, are not essential to the conservation of *Arabis perstellata*.

The 20 units in this proposed designation include a significant portion, but not all, of the species' historic range. They all contain the primary constituent elements essential for the conservation of *Arabis perstellata* (see ''Primary Constituent Elements'' section). The omission of historically occupied sites and the rest of the currently occupied sites from this proposed critical habitat designation does not diminish their individual or cumulative importance to the species. Rather, it is our determination that the habitat contained within the 20 units included in this proposed rule constitutes our best determination of areas essential for the conservation, and eventual recovery, of *Arabis perstellata*. The 20 units we are proposing as critical habitat encompass approximately 408 ha (1,008 ac) in Kentucky and Tennessee.

To the extent feasible, we will continue, with the assistance of other State, Federal, and private researchers, to conduct surveys, research, and conservation actions on the species and its habitat in areas designated and not designated as critical habitat. If additional information becomes available on the species' biology, distribution, and threats, we will evaluate the need to designate additional critical habitat, delete or reduce critical habitat, or refine the boundaries of critical habitat. Sites that are occupied by this plant that are not being proposed for critical habitat will continue to receive protection under the Act's section 7 jeopardy standard where a Federal nexus may occur (see ''Critical Habitat'' section).

Since the drafting of this proposed critical habitat rule, we have received new information from the TDEC (D. Lincicome, pers. comm. 2003) regarding two new populations of *Arabis perstellata*. One population is located on Townsel Hill, west of the City of Murfreesboro between Newman and Coleman Hill Roads in Rutherford County, Tennessee. This site is adjacent to the proposed Sophie Hill critical habitat site (see ''Proposed Critical Habitat Designation'' section, unit 19) and belongs to the same private landowner. The other population is located on Grandfather Knob between Cainsville and Spain Hill Roads in Wilson County, Tennessee. This site is privately owned by two separate landowners. Both sites contain over 100 *Arabis perstellata* plants and in general, it appears that these two populations might meet the recovery criteria and contain the primary constituent elements. However, these new populations were located following the drafting of the proposed critical habitat rule. Because of time and budget constraints, we are unable to adequately and formally analyze them for inclusion as proposed critical habitat in this document. We will conduct the analysis on these two sites prior to making a final determination on this proposed rule. If we determine these areas to be essential, it would be our intent to include them in the final designation.

E. Mapping

Once we determined that 20 populations are essential to the conservation of *Arabis perstellata*, we used site-specific information to determine the extent of these populations. The proposed critical habitat units were then delineated by screen-digitizing polygons (map units) using ArcView, a computer GIS program. Based on the known plant distribution and allowing for downslope germination, we placed boundaries around the populations that included the plants, as well as their primary constituent elements. In defining these critical habitat boundaries, we made an effort to exclude all developed areas, such as housing developments, open areas, and other lands unlikely to contain the primary constituent elements essential for the conservation of *Arabis perstellata*. We used Kentucky State Plane North/North American Datum 1983 (NAD83) coordinates to designate the boundaries of the proposed critical habitat in Kentucky, and Tennessee State Plane/NAD83 coordinates to designate the boundaries of the proposed critical habitat in Tennessee.

Proposed Critical Habitat Designation

The areas proposed for designation as critical habitat for *Arabis perstellata* provide the primary constituent elements described above. Table 1 summarizes the location and extent of proposed critical habitat. All of the proposed areas require special management considerations to ensure their contribution to the conservation of *Arabis perstellata*. We provide general descriptions of the boundaries of proposed critical habitat units below.

TABLE 1.—APPROXIMATE AREA (HECTARES AND ACRES) OF PROPOSED CRITICAL HABITAT BY UNIT FOR *Arabis perstellata*

Critical habitat unit	County/State	Land ownership	Hectares	Acres
1. Sky View Drive	Franklin/Kentucky	Private	22	54
2. Benson Valley Woods	Franklin/Kentucky	Private	37	91
3. Red Bridge Ridge	Franklin/Kentucky	Private	6	15
4. Tributary to South Benson Creek	Franklin/Kentucky	Private	10	25
5. Davis Branch	Franklin/Kentucky	Private	3	7
6. Onans Bend	Franklin/Kentucky	Private	12	30
7. Shadrock Ferry Road	Franklin/Kentucky	Private	15	37
8. Hoover Site	Franklin/Kentucky	Private	83	205
9. Longs Ravine Site	Franklin/Kentucky	Private	30	74
10. Strohmeiers Hill	Franklin/Kentucky	Private	20	49

TABLE 1.—APPROXIMATE AREA (HECTARES AND ACRES) OF PROPOSED CRITICAL HABITAT BY UNIT FOR *Arabis perstellata*—Continued

Critical habitat unit	County/State	Land ownership	Hectares	Acres
11. U.S. 127	Franklin/Kentucky	Private	11	27
12. Camp Pleasant Branch Woods	Franklin/Kentucky	Private	14	35
13. Saufley	Franklin/Kentucky	Private	8	20
14. Clements Bluff	Owen/Kentucky	State	11	27
15. Monterey U.S. 127	Owen/Kentucky	Private	12	30
16. Craddock Bottom	Owen/Kentucky	Private	23	57
17. Backbone North	Franklin/Kentucky	Private	11	27
18. Scales Mountain	Rutherford/Tennessee	Private	36	89
19. Sophie Hill	Rutherford/Tennessee	Private	16	40
20. Indian Mountain	Rutherford/Tennessee	Private	28	69
Total			408	1,008

Critical Habitat Unit Descriptions

We are proposing a total of 20 critical habitat units for *Arabis perstellata* in Kentucky and Tennessee—14 critical habitat units in Franklin County, Kentucky; 3 in Owen County, Kentucky; and 3 in Rutherford County, Tennessee. In order to provide determinable legal descriptions of the critical habitat boundaries, we drew polygons around these units, using as criteria the plant's primary constituent elements, the known extent of the populations, and the elevation contours on the map. We made an effort to avoid developed areas that are unlikely to contribute to the conservation of *Arabis perstellata.* Areas within the boundaries of the mapped units, such as buildings, roads, clearings, transmission lines, lawns, and other urban landscaped areas do not contain one or more of the primary constituent elements. As such, Federal actions limited to these areas would not trigger consultation pursuant to section 7 of the Act, unless they affect the species or primary constituent elements in the critical habitat.

On the basis of the best available scientific information, we determined that the 20 proposed critical habitat units represent the only known *Arabis perstellata* populations that meet the recovery criteria of being geographically distinct, self-sustaining, and containing 50 or more plants. These 20 sites contain the highest-quality populations in terms of size and habitat that are presently known. The remaining known populations (21) of *Arabis perstellata* do not meet these criteria, because each has fewer than 50 plants that occur on degraded sites, making their long-term viability questionable. As such, they are not essential to the conservation of this species. Once the proposed 20 sites have adequate management and permanent protection measures in place and their populations are stable or increasing for a 5-year period, we may consider this species for delisting. Consequently, the proposed units are essential for the long-term conservation and eventual recovery of this species because they constitute the 20 geographically distinct sites that are most likely to be able to support self-sustaining populations of 50 or more individuals, as outlined in the recovery criteria.

A brief description of each of these critical habitat units is given below. The population information presented in all of the unit descriptions was taken from the KSNPC's Natural Heritage Database for the Kentucky units and the TDEC's Natural Heritage Database for the Tennessee units.

Unit 1. Sky View Drive in Franklin County, Kentucky

Unit 1 is located on the west side of the City of Frankfort. It occurs along U.S. 127 and Skyview Drive on the slopes of the first large ravine system due west of the confluence of Benson Creek and the Kentucky River. It contains approximately 22 ha (54 ac), all of which are privately owned. This site was first observed to have *Arabis perstellata* in 1979. In 2001, surveys conducted by the KSNPC found more than 150 plants, but not all habitat was surveyed. The majority of the plants occur on the west- and south-facing slopes and are associated with bare soil on trails and tree bases.

Unit 2. Benson Valley Woods in Franklin County, Kentucky

Unit 2 is located west of the City of Frankfort. The unit lies southeast of Benson Valley Road on the south side of Benson Creek. It is privately owned and contains approximately 37 ha (91 ac). The plants occur on the southeast-facing slope. They were first observed in 1979. KSNPC personnel last observed more than 200 plants in 2001. The site is threatened by trampling and competition by weeds.

Unit 3. Red Bridge Ridge in Franklin County, Kentucky

Unit 3 is located west of Kentucky (KY) Highway 1005, at the confluence of South Benson and Benson Creeks. The site is privately owned and is approximately 6 ha (15 ac) in size. Plants at this site were first observed in 1987. In 1990, 75 plants were found along the southeast- and northwest-facing slopes.

Unit 4. Tributary to South Benson Creek in Franklin County, Kentucky

This unit is located northeast of the City of Frankfort. It occurs along the southeast side of South Benson Creek and the north and south slopes of an unnamed tributary. The site is in private ownership and is 10 ha (25 ac) in size. In 1996, over 1,000 plants were found along the northwest-facing lower, mid, and upper slopes, making this one of the best sites in Kentucky for *Arabis perstellata*.

Unit 5. Davis Branch in Franklin County, Kentucky

This unit occurs along the east side of Harvieland Drive and Davis Branch. This unit contains approximately 3 ha (7 ac) and is privately owned. Plants were first observed at this site in 1990. In 2001, more than 200 plants were found along the south-facing slope throughout the ravine system.

Unit 6. Onans Bend in Franklin County, Kentucky

Unit 6 occurs north of Onans Bend Road and east of KY Highway 12. The unit lies along the banks of an unnamed stream near its mouth with the west bank of the Kentucky River. This unit is privately owned and contains approximately 12 ha (30 ac). Plants at this unit were first observed in 1979. In 1990, more than 100 plants were found on the south-facing slope. The plants were exceptionally vigorous. The site is threatened by weed competition.

Unit 7. Shadrock Ferry Road in Franklin County, Kentucky

This unit is located along the north side of Shadrock Ferry Road (KY Highway 898). Property at this location is in private ownership. This unit is approximately 15 ha (37 ac) in size. Plants were first observed at this site in 1996. In 2001, more than 100 plants were found on the south-facing slope.

Unit 8. Hoover Site in Franklin County, Kentucky

This unit lies northwest of the City of Frankfort, along the west side of the Kentucky River on slopes bordering two unnamed tributaries. Plants are widely scattered in small groups along the Kentucky River bluff from river kilometer (km) 98.6 to 101.7 (river mile 61.3 to 63.2. This unit is in private ownership and contains approximately 83 ha (205 ac). The plants were first observed in 1990. In 1996, more than 200 plants were found.

Unit 9. Longs Ravine Site in Franklin County, Kentucky

Unit 9 is located north of the City of Frankfort and Lewis Ferry Road. This unit lies east of the Kentucky River in a large ravine and along the steep slopes above the river. This unit is privately owned. There are approximately 30 ha (74 ac) in this unit. In 1990, more than 250 plants were found on the northeast, southwest, and northwest-facing slopes.

Unit 10. Strohmeiers Hill in Franklin County, Kentucky

This unit is located south of the Town of Swallowfield and adjacent to Strohmeier Road and U.S. 127. It occurs on steep slopes on the south side of Elkhorn Creek and on the east bank of the Kentucky River, south of the confluence with Elkhorn Creek. The plants at this site were first observed in 1930. The property is privately owned. The site is approximately 20 ha (49 ac) in size. In 1994, the site contained more than 200 flowering plants. The plants were exceptionally vigorous and occurred throughout a large area, making this one of the best populations of *Arabis perstellata* in Kentucky

Unit 11. U.S. 127 in Franklin County, Kentucky

Unit 11 is located along the east side of U.S. 127 in a ravine just southeast of Elkhorn Creek. This privately owned site is approximately 11 ha (27 ac) in size. The plants were first observed in 2001, at which time approximately 100 plants were found on the west-facing slope.

Unit 12. Camp Pleasant Branch Woods in Franklin County, Kentucky

Unit 12 is located along the south side of Camp Pleasant Road (KY Highway 1707). This site is privately owned and contains approximately 14 ha (35 ac). The first observance of plants at this site was in 1987. In 2001, more than 100 plants were found along the lower northwest-facing slope. Plants at this site are threatened by competition from weeds.

Unit 13. Saufley in Franklin County, Kentucky

Unit 13 occurs west of the KY Highway 1900 bridge over Elkhorn Creek on the hillside above the creek. The land ownership for this unit is private. The site is approximately 8 ha (20 ac) in size. Plants were first observed in 1988. In 1996, more than 100 plants were found along the top of the ridge on the northeast-facing slope.

Unit 14. Clements Bluff in Owen County, Kentucky

This unit is located in a ravine facing the Kentucky River along the east side of KY Highway 355. The site is owned by the State of Kentucky and is part of the Kentucky River Wildlife Management Area. This unit is approximately 11 ha (27 ac) in size. The plants were first observed at this site in 1980 on the north-facing slope. In 1996, approximately 100 plants occurred at the site.

Unit 15. Monterey U.S. 127 in Owen County, Kentucky

Unit 15 is located 1.6 km (1 mile) north of the City of Monterey, just north of the junction of U.S. 127 and KY Highway 355. The property is privately owned and is approximately 12 ha (30 ac) in size. Plants were first observed at this site in 1996. In 1997, 150 plants were found along the southwest-facing slope of an unnamed tributary to the Kentucky River. The site is being threatened by weedy competition.

Unit 16. Craddock Bottom in Owen County, Kentucky

This unit is located south of the City of Monterey. It occurs along the west side of Old Frankfort Pike on the west-facing slope just east of Craddock Bottom. Property at this site is privately owned and contains approximately 23 ha (57 ac). In 1996, over 150 plants were found. In 1996, there was evidence of logging in the surrounding area.

Unit 17. Backbone North in Franklin County, Kentucky

Unit 17 is located north of KY Highway 1900. It occurs in an old river oxbow west of the existing Elkhorn Creek and is privately owned. The unit size is approximately 11 ha (27 ac). Plants were first observed at this site in 1981. In 1990, more than 200 plants were found on the southeast facing slope.

Unit 18. Scales Mountain in Rutherford County, Tennessee

This unit is located west of the City of Murfreesboro on Scales Mountain, 1.6 km (1 mile) south of Highway 96. The site is privately owned and is 36 ha (89 ac) in size. Plants were first observed at this site in 1985. In 2000, more than 100 plants were found on the north-facing slope. The primary threat to this site is competition from weeds.

Unit 19. Sophie Hill in Rutherford County, Tennessee

Unit 19 is located west of the City of Murfreesboro on Sophie Hill, which lies between Newman and Coleman Hill Roads. The property at this site is privately owned. The unit is approximately 16 ha (40 ac) in size. The first observance of *Arabis perstellata* on this site was in 1991. In 2000, more than 200 plants were found on the northwest side of Sophie Hill.

Unit 20. Indian Mountain in Rutherford County, Tennessee

Unit 20 is located west of the City of Murfreesboro on Indian Mountain between Highway 96 and Coleman Hill Road. This site is privately owned. The unit size is approximately 28 ha (69 ac). In 2000, over 2,600 plants were found. This is the best site for *Arabis perstellata* in Tennessee. Logging appears to be the biggest threat to this exceptional site.

Effects of Critical Habitat Designation

ESA Section 7 Consultation

The regulatory effects of a critical habitat designation under the Act are triggered through the provisions of section 7, which applies only to activities conducted, authorized, or funded by a Federal agency (Federal actions). Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402. Individuals, organizations, States, local governments, and other non-Federal entities are not affected by the designation of critical habitat unless their actions occur on Federal lands, require Federal authorization, or involve Federal funding.

Section 7(a)(2) of the Act requires Federal agencies, including us, to insure that their actions are not likely to jeopardize the continued existence of a listed species or result in the

destruction or adverse modification of designated critical habitat. This requirement is met through section 7 consultation under the Act. Our regulations define ''jeopardize the continued existence'' as to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR 402.02). ''Destruction or adverse modification of designated critical habitat'' is defined as a direct or indirect alteration that appreciably diminishes the value of the critical habitat for both the survival and recovery of the species (50 CFR 402.02). Such alterations include, but are not limited to, adverse changes to the physical or biological features, *i.e.*, the primary constituent elements, that were the basis for determining the habitat to be critical. However, in a 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), the Court found our definition of destruction or adverse modification 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.

Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the action agency would ensure that the permitted actions do not destroy or adversely modify 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 would 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 Service's Regional Director believes would avoid the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

There are no known populations of *Arabis perstellata* occurring on Federal lands. However, activities on private, State, or city lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (USACE) under section 404 of the Clean Water Act, a permit under section 10(a)(1)(B) of the Act from us, or some other Federal action—including funding (*e.g.*, from the Federal Highway Administration (FHWA), Federal Aviation Administration, or Federal Emergency Management Agency); permits from the Department of Housing and Urban Development; activities funded by the U.S. Environmental Protection Agency (EPA), Department of Energy, or any other Federal agency; and construction of communication sites licensed by the Federal Communications Commission—will be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat, or that may be affected by such designation. Activities that may result in the destruction or adverse modification of critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for the conservation of *Arabis perstellata* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Ground disturbances that destroy or degrade primary constituent elements of the plant (*e.g.*, clearing, tilling, grading, logging, construction, and road building);

(2) Activities that directly or indirectly affect *Arabis perstellata* plants or underlying seed bank (*e.g.*, herbicide application that could degrade the habitat on which the species depends, incompatible introductions of non-native herbivores, incompatible grazing management, clearing, tilling, grading, construction, and road building);

(3) Activities that encourage the growth of *Arabis perstellata* competitors (*e.g.*, widespread fertilizer application, road building, clearing, logging); and

(4) Activities that significantly degrade or destroy *Arabis perstellata* pollinator populations (*e.g.*, pesticide applications).

Previous Section 7 Consultations

Several section 7 consultations for Federal actions affecting *Arabis perstellata* and its habitat have preceded this critical habitat proposal. The action agencies have included the USACE, U.S. Department of Agriculture Rural Development, FHWA, and EPA.

Since listing, we have conducted 33 informal and no formal consultations involving *Arabis perstellata*. The informal consultations, all of which concluded with a finding that the proposed Federal action would not affect or would not likely adversely

affect *Arabis perstellata*, addressed a range of actions, including highway and bridge construction, maintenance of utility lines (*e.g.*, water and sewer lines) along existing roads, and building construction.

The designation of critical habitat will have no impact on private landowner activities that do not require Federal funding or permits. Designation of critical habitat is only applicable to activities approved, funded, or carried out by Federal agencies.

If you have questions regarding whether specific activities would constitute adverse modification of critical habitat, you may contact the following Service offices:

Kentucky-Frankfort Ecological Services Office (502/695–0468)

Tennessee-Cookeville Ecological Services Office (931/528–6481)

To request copies of the regulations on listed wildlife and plants or inquire about prohibitions and permits, contact the U.S. Fish and Wildlife Service, Ecological Services, 1875 Century Boulevard, Atlanta, GA 30345 (telephone 404/679–4176; facsimile 404/679–7081).

Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific information available, and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat if the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We have completed a draft analysis of the economic impacts of designating these areas as critical habitat that is consistent with the ruling of the 10th Circuit Court of Appeals in *N.M. Cattle Growers Ass'n* v. *USFWS.* The results of our draft analysis suggest that the potential economic impacts of the proposed designation range from $65,000 to $272,000 over the next 10 years. Please refer to the draft analysis for more details concerning the methodological approach and finding of the analysis. Comments will be accepted on the draft economic analysis during the comment period on this proposed rule. Copies of the draft economic analysis of this proposed critical habitat designation are available on the Internet at *http://cookeville.fws.gov* or by contacting our Cookeville, TN field office (see **ADDRESSES**).

Relationship to Habitat Conservation Plans and Other Planning Efforts

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed wildlife species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. Although take of listed plants is not generally prohibited by the Act on private land, listed plant species may also be covered in an HCP for wildlife species. Currently, no HCPs exist that include *Arabis perstellata* as a covered species. In the event that future HCPs covering *Arabis perstellata* are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of this species. This will be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process would provide an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by *Arabis perstellata*. The process would also enable us to conduct detailed evaluations of the importance of such lands to the long-term survival and conservation of the species in the context of constructing a system of interlinked habitat blocks configured to promote the conservation of the species through application of the principles of conservation biology. We will provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify lands essential for the long-term conservation of *Arabis perstellata*, and appropriate management for those lands. Furthermore, we will complete intra-Service consultation on our issuance of section 10(a)(1)(B) permits for these HCPs to ensure permit issuance will not destroy or adversely modify critical habitat.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearing

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make proposed rules easier to understand including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (*e.g.*, grouping and order of sections, use of headings, paragraphing) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** Section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Execsec@ios.doi.gov.*

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 proposed critical habitat designation.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. We are hereby certifying that this proposed rule will not have a significant effect on a substantial number of small entities.

According to the Small Business Administration, 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 (13 CFR 121.201). 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.

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.,* 773 F.2d 327 (D.C. Cir. 1985) and *American Trucking Associations, Inc.* v. U.S. E.P.A., 175 F.3d 1027, (D.C. Cir. 1999)).

To determine if the rule would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting). We applied the ''substantial number'' test individually to each industry to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect *Arabis perstellata.*

If this critical habitat designation is finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, we believe this will result in minimal additional regulatory burden on Federal agencies or their applicants because consultation would already be required because of the presence of the listed species, and consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process and trigger only minimal additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Designation of critical habitat could result in an additional economic burden on small entities because of the requirement to reinitiate consultation for ongoing Federal activities. However, since *Arabia perstellata* was listed in 1995, we have conducted only 33 informal and no formal consultations involving this species. Most of these consultations involved Federal projects or permits to businesses that do not meet the definition of a small entity (*e.g.*, federally sponsored projects). Also, a number of USACE permit actions involved other large public entities (*e.g.*, State-sponsored activities) that do not meet the definition of a small entity. No formal consultations involved a non-Federal entity. However, about five informal consultations were on behalf of a private business. Most of these informal consultations were utility-related (*e.g.*, water lines and sewer lines), some being proposed by small entities. We do not believe that the number of utility-related small entities meets the definition of substantial described above.

All of the proposed critical habitat, with the exception of 11 ha (27 ac) of State-owned land, is under private ownership. Small entity economic activities that may require Federal authorization or permits include utility-related activities such as pipelines and powerlines. However, we are not aware of a significant number of future activities that would require Federal permitting or authorization in these areas. Historically, there have been less than two informal consultations per State per year involving both large and small private entities. There are no Federal lands included in these proposed critical habitat designations. Therefore, we conclude that the proposed rule would not affect a substantial number of small entities.

In summary, we have considered whether this proposed rule would result in a significant economic effect on a substantial number of small entities. We have concluded that it would not affect a substantial number of small entities. There would be no additional section 7 consultations resulting from this rule as all proposed critical habitat is currently occupied by *Arabia perstellata*, so the consultation requirement has already been triggered. These consultations are not likely to affect a substantial number of small entities. This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected to occur frequently enough to affect a substantial number of small entities. Therefore, we are certifying that

the proposed designation of critical habitat for *Arabia perstellata* will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required. This determination will be revisited after review of our economic analysis and revised, if necessary, in the final rule.

This discussion is based upon the information regarding potential economic impact that is available to us at this time. This assessment of economic effect may be modified prior to final rulemaking based upon review of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and Executive Order 12866. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect our position on the type of economic analysis required by *New Mexico Cattle Growers Assn.* v. *U.S. Fish and Wildlife Service* 248 F.3d 1277 (10th Cir. 2001).

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2))

In the draft economic analysis, we determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more; (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the draft 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. The primary land uses within designated critical habitat for *Arabis perstellata* include recreation, grazing, and logging. No significant energy production, supply, and distribution facilities are included within designated critical habitat. Therefore, this action is not a significant action affecting energy production, supply, and distribution facilities, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

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

(a) This proposed rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits, or other authorization. Any such activity will require that the involved 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, local, or tribal governments or the private sector of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no new 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 proposing to designate approximately 408 ha (1,008 ac) of lands in Franklin and Owen counties in Kentucky, and Rutherford county in Tennessee, as critical habitat for *Arabis perstellata* in a takings implication assessment. This preliminary assessment concludes that this proposed rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated the development of this critical habitat proposal with, appropriate State natural resource agencies in Kentucky and Tennessee. The impact of the proposed designation on State and local governments and their activities is not believed to be significant, and we are examining this more fully in the economic analysis of the proposal, on which we are seeking public comment. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning, rather than forcing/necessitating them to wait for case-by-case section 7 consultations to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system, and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Act, as amended. This rule uses standard property descriptions and identifies the primary constituent elements within the proposed areas to assist the public in understanding the habitat needs that are essential for the conservation of *Arabis perstellata*.

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

This proposed rule does not contain new or revised information collection for which OMB approval is required 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 currently valid OMB control number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We are not aware of any Tribal lands essential for the conservation of *Arabis perstellata*. Therefore, the proposed critical habitat for *Arabis perstellata* does not contain any Tribal lands or

lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Cookeville Field Office (*see* **ADDRESSES** section).

Author

The primary author of this document is Timothy Merritt (*see* **ADDRESSES** section), 931/528–6481, extension 211.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

For the reasons outlined in the preamble, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

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

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

2. In section 17.12(h), revise the entry for the ''*Arabis perstellata*'' 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							
*	*	*	*	*	*		*
Arabis perstellata	Rock-cress, Braun's	U.S.A. (KY, TN)	Brassicaceae	E	570	17.96(a)	NA
*	*	*	*	*	*		*

3. In § 17.96, amend paragraph (a) by adding an entry for ''Family Brassicaceae'' *Arabis perstellata* in alphabetical order to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family Brassicaceae: *Arabis perstellata* (Braun's rock-cress).

(1) Critical habitat units are depicted for Franklin and Owen Counties, Kentucky, and Rutherford County, Tennessee, on the maps below.

(2) Based on the best available information, primary constituent elements essential for the conservation of *Arabis perstellata* are:

(i) The slopes of calcareous mesophytic and sub-xeric forest that are relatively undisturbed, with few openings in the canopy and several large, mature trees (such as sugar maple (*Acer saccharum*), chinquapin oak (*Quercus muhlenbergii*), hackberry (*Celtus occidentalis*), or Ohio buckeye (*Aesculus glabra*);

(ii) An area with few introduced weedy plant species such as *Alliaria petiolata* that is able to support self-sustaining populations of 50 or more individuals;

(iii) A mesic habitat with open forest floors containing rock outcrops on moderate to steep slopes with little herbaceous cover and leaf litter accumulation with natural disturbance to allow for *Arabis perstellata* germination and seedling germination;

(iv) Ordovician limestone, in particular the Grier, Tanglewood, and Macedonia Bed Members of the Lexington Limestone in Kentucky, and the Lebanon, Carters, Leipers, Catheys, and Bigby-Cannon Limestones in Tennessee; and

(v) Limestone soils such as the Fairmont Rock outcrop complexes in Kentucky and the Mimosa Rock outcrop complexes in Tennessee.

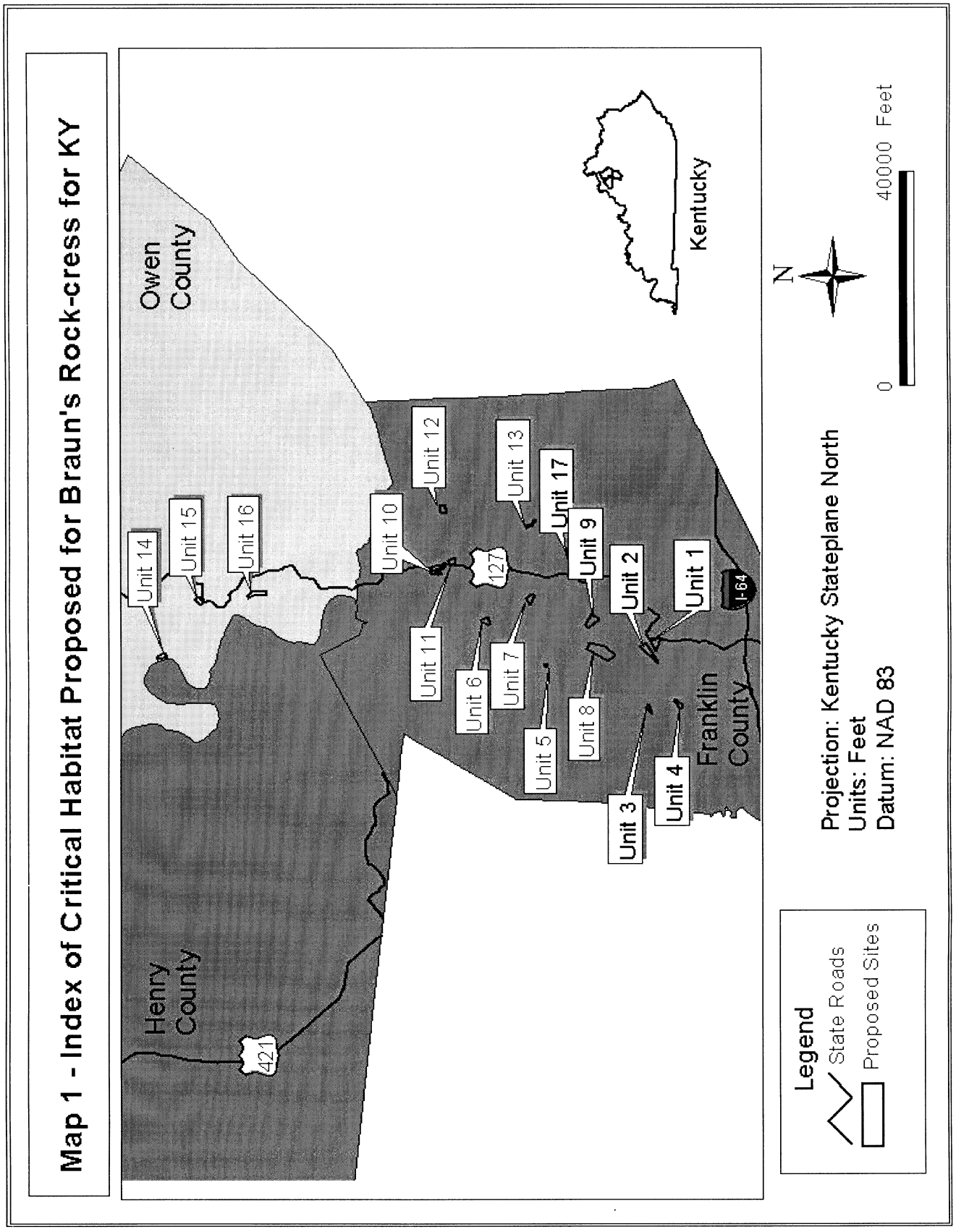
(3) Existing features and structures made by people, such as buildings, roads, railroads, airports, other paved areas, lawns, and other urban landscaped areas, do not contain one or more of the primary constituent elements and are not critical habitat. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species and/or primary constituent elements in adjacent critical habitat.

(4) Critical Habitat Map Units.

(i) Data layers defining map units were created on a base of USGS 7.5′ quadrangles, and proposed critical habitat units were then mapped in feet using Kentucky State Plane North, NAD 83, and Tennessee State Plane, NAD 83, coordinates.

(ii) Map 1, Index of Critical Habitat Proposed for Braun's Rock-cress, Kentucky, follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(5) Unit 1: Sky View Drive, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle map Frankfort West, Kentucky; land

bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1453158.08, 257013.95; 1455318.02, 258193.89; 1455537.40, 256159.34.

(6) Unit 2: Benson Valley Woods, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle map Frankfort East, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1472992.79, 265095.85; 1473291.28, 265164.80; 1473577.90, 265164.80; 1474816.35, 265479.91; 1475173.07, 265669.44; 1475272.97, 265517.23; 1474329.11, 265036.38; 1473438.80, 264939.25; 1472992.42, 264858.64.

(7) Unit 3: Red Bridge Ridge, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle Frankfort West, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1442614.00, 258863.10; 1443144.60, 258502.62; 1441670.26, 257801.90; 1441581.15, 258012.52.

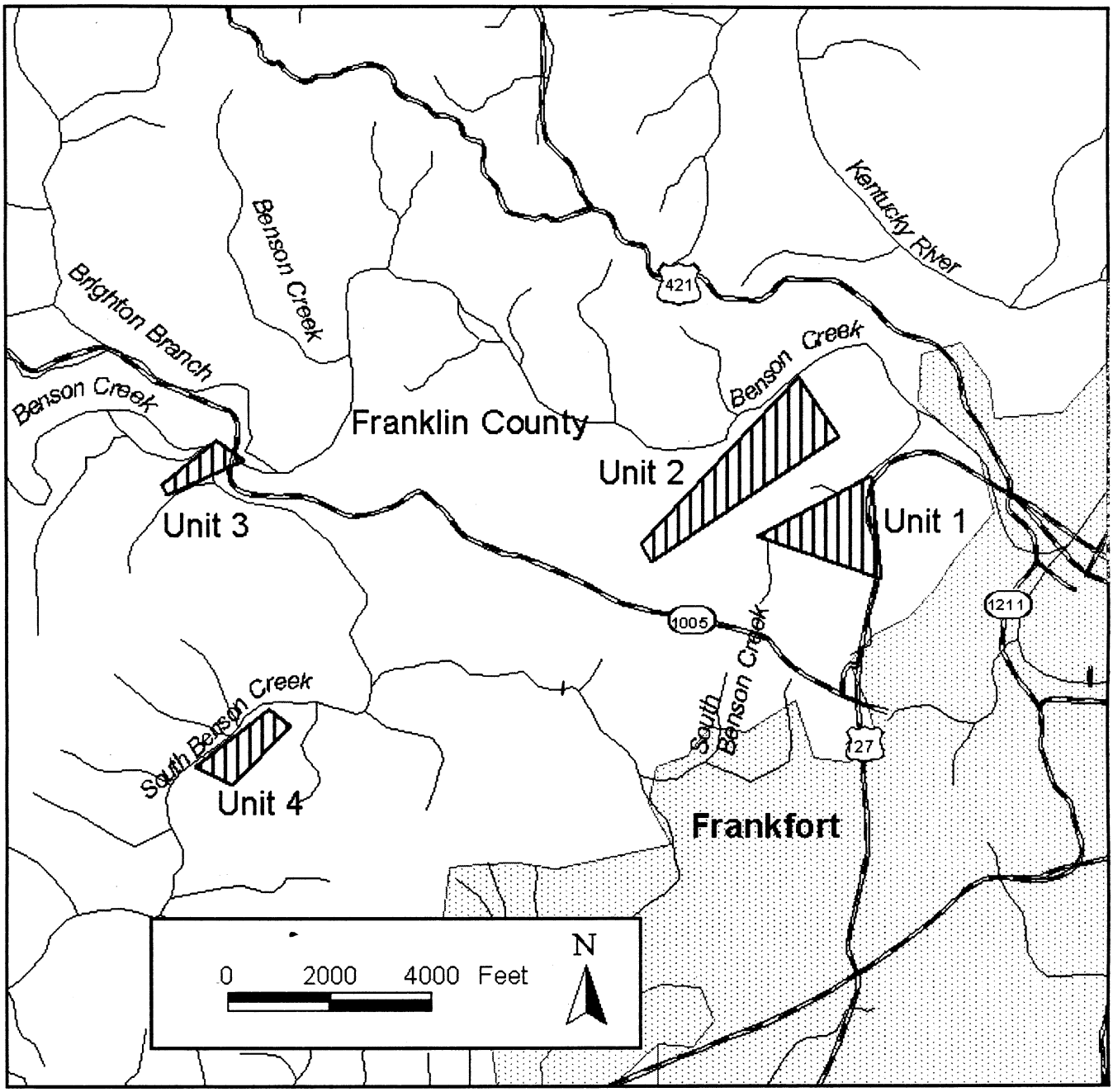
(8) Unit 4: Tributary to South Benson Creek, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle map Frankfort West, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1443620.37, 253609.15; 1444037.01, 253294.00; 1442925.97, 252129.54; 1442210.20, 252471.40.

(ii) Map 2, Units 1, 2, 3, and 4, Critical Habitat Proposed for Braun's Rock-cress, Kentucky, follows:

BILLING CODE 4310–55–P

Map 2 - Units 1, 2, 3 and 4: critical habitat for Braun's rock-cress in Kentucky.



This map is provided only for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(9) Unit 5: Davis Branch, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle map Polsgrove, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates:

1450167.05, 277739.69; 1450767.00, 277750.87; 1450761.41, 277314.88; 1450202.46, 277180.73.

(10) Unit 6: Onans Bend, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle map Polsgrove, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1458610.26, 289401.40; 1459066.14, 289401.50; 1459484.82, 288182.67; 1458210.30, 287759.68; 1458191.76, 288155.34.

(11) Unit 7: Shadrock Ferry Road, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle Switzer, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1461695.27, 280422.79; 1462823.09, 280986.70; 1463880.43, 280256.18; 1463463.90, 279506.43.

(12) Unit 8: Hoover Site, Franklin County, Kentucky.

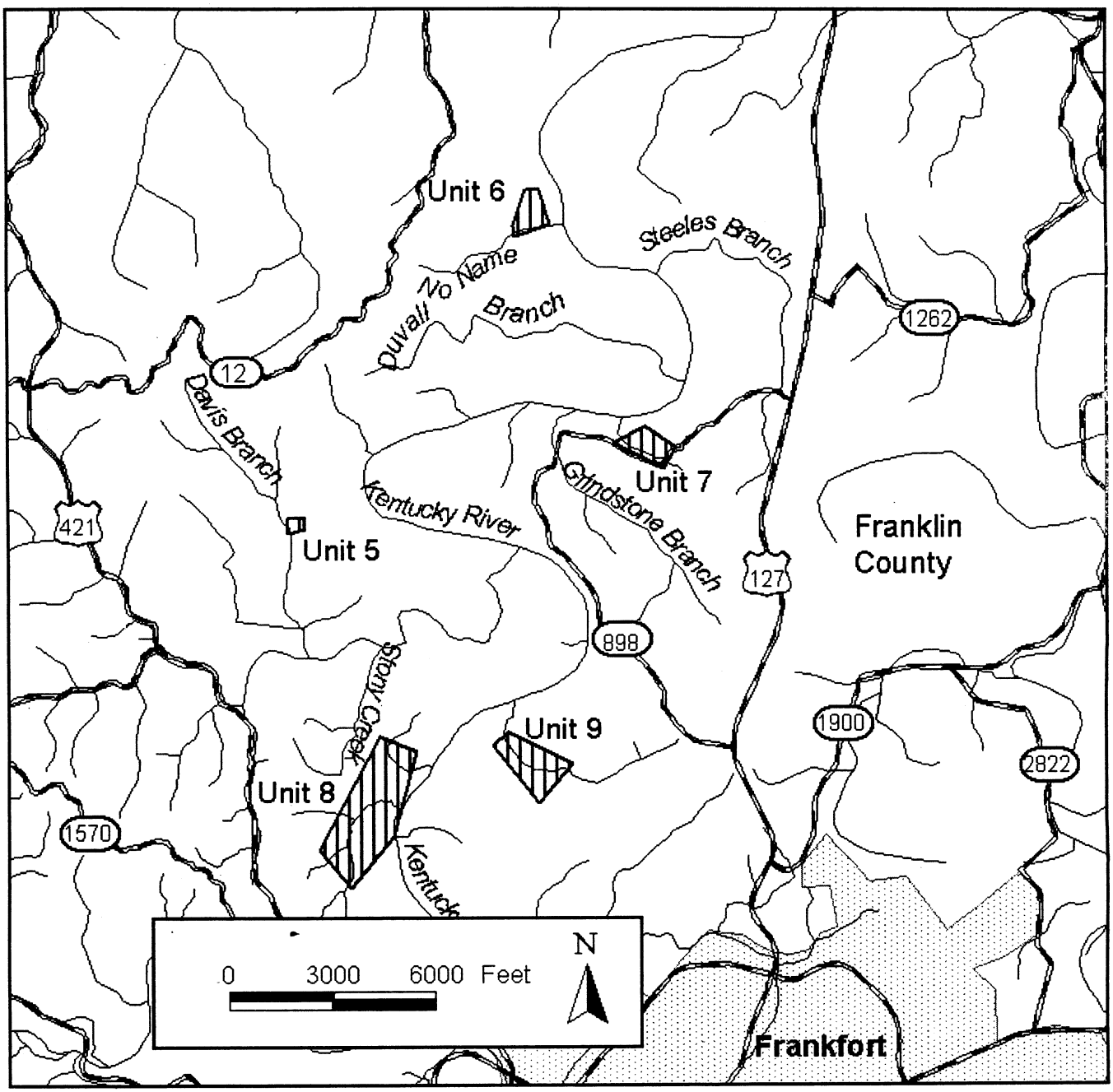
(i) From USGS 1:24,000 quadrangle Frankfort West, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1453446.71, 269919.75; 1454641.35, 269410.27; 1453921.05, 266476.39; 1452392.62, 264561.46; 1451250.69, 265879.07.

(13) Unit 9: Longs Ravine Site, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle Frankfort West, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1457404.81, 269596.23; 1457959.89, 270126.46; 1460205.09, 268958.30; 1459003.79, 267607.86.

(ii) Map 3, Units 5, 6, 7, 8, and 9, Critical Habitat Proposed for Braun's Rock-cress, Kentucky, follows:

Map 3 - Units 5, 6, 7, 8 and 9: critical habitat for Braun's rock-cress in Kentucky.



This map is provided only for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(14) Unit 10: Strohmeiers Hills, Franklin County, Kentucky.

(i) From USGS 1:24,0000 quadrangle Switzer, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1467733.92,

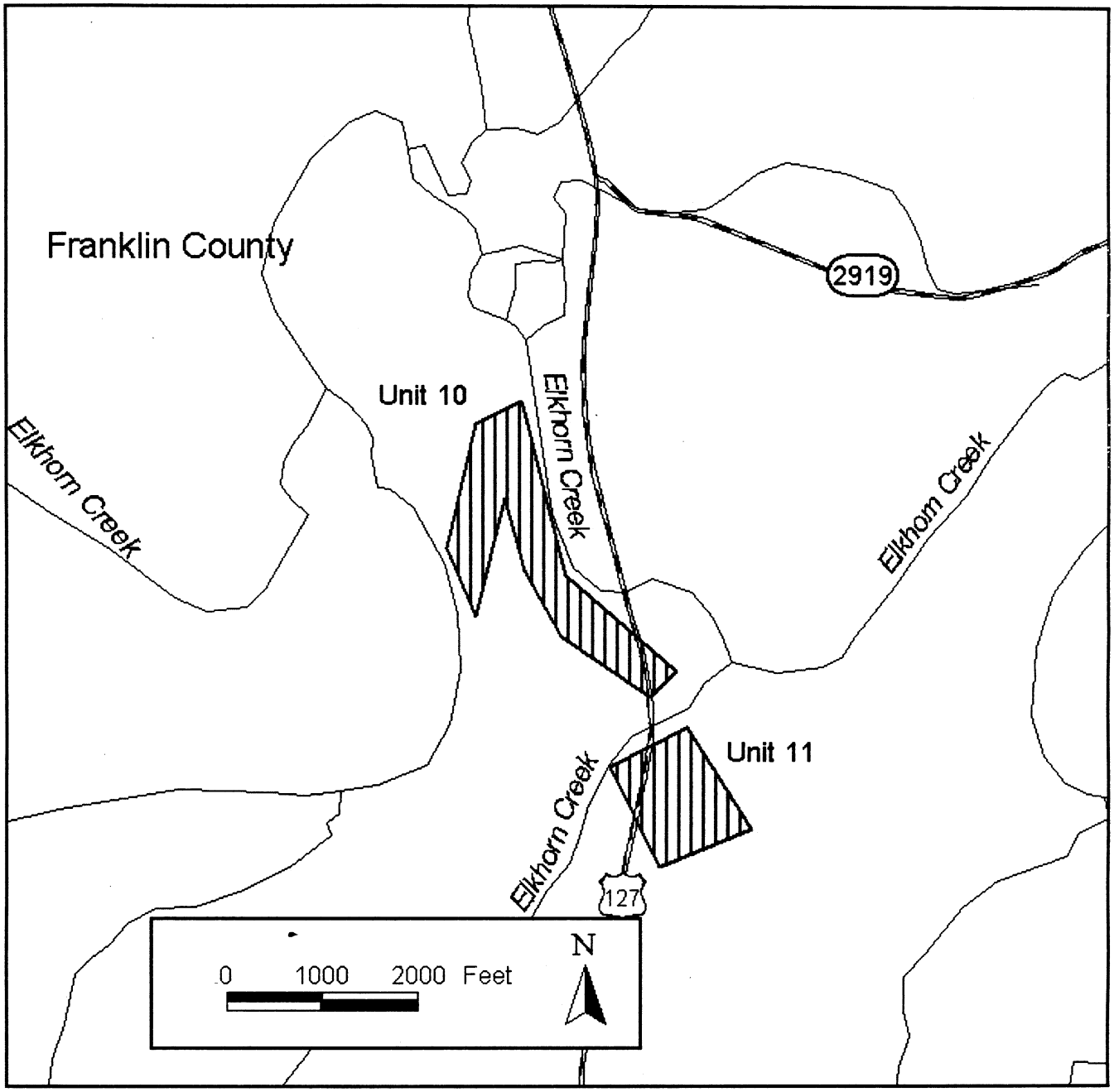
298729.06; 1468218.13, 298978.50; 1468695.00, 297144.38; 1469854.17, 296131.94; 1469568.53, 295848.76; 1468658.32, 296498.77; 1468247.47, 297181.06; 1468056.72, 297936.72; 1467763.26, 296704.19; 1467440.46, 297415.83.

(15) Unit 11: U.S. 127, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle Switzer, Kentucky. Lands bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1469164.24, 295115.19; 1469939.07, 295511.62; 1470629.82, 294466.49; 1469662.78, 294058.06.

(ii) Map 4, Units 10 and 11, Critical Habitat Proposed for Braun's Rock-cress, Kentucky, follows:

Map 4 - Units 10 and 11: critical habitat for Braun's rock-cress in Kentucky.



This map is provided only for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(16) Unit 12: Camp Pleasant Branch, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle Switzer, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1453446.71,

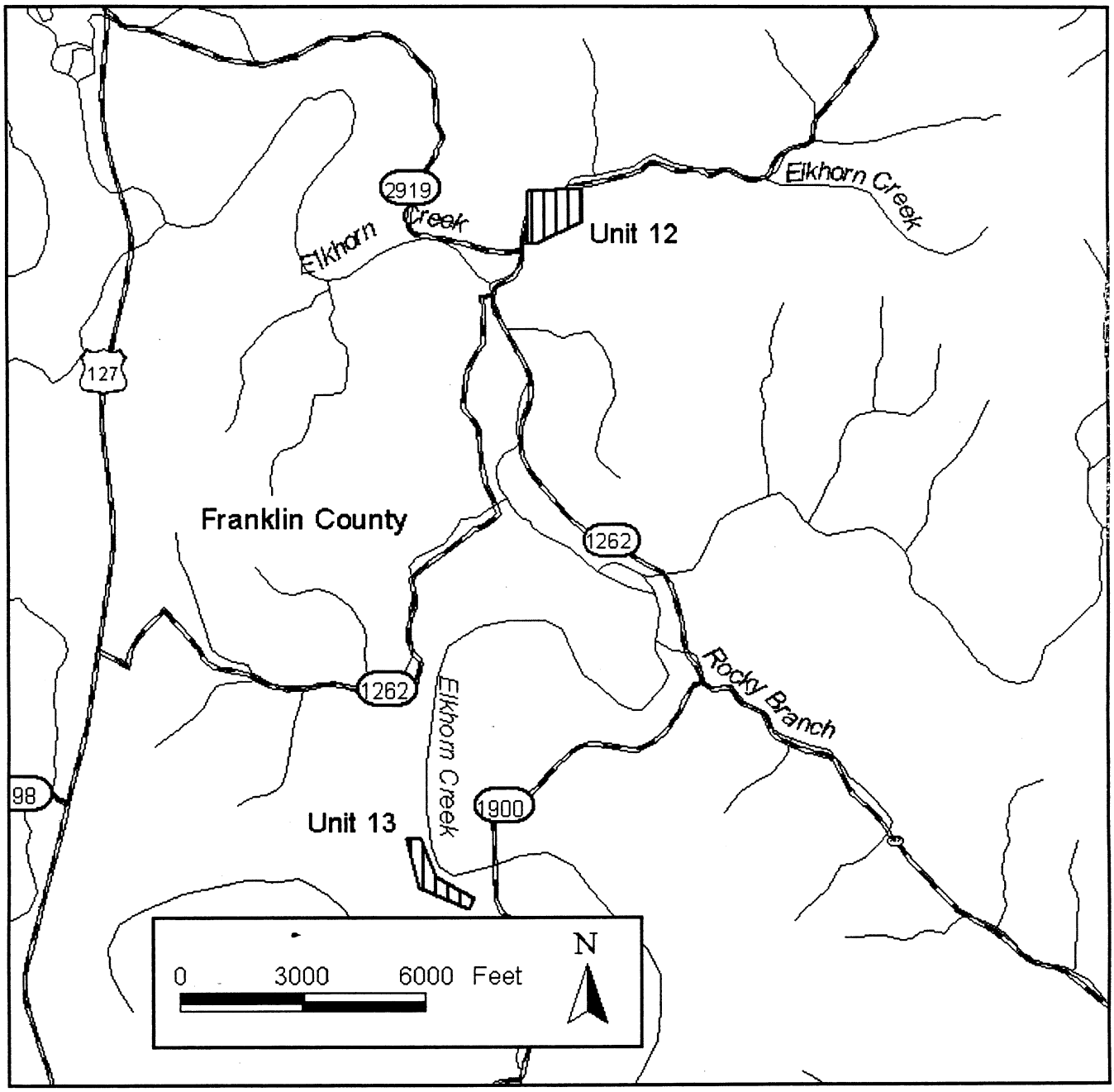
269919.75; 1454641.35, 269410.27; 1453921.05, 266476.39; 1452392.62, 264561.46; 1451250.69, 265879.07.

(17) Unit 13: Saufley, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle Switzer, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1476234.26, 281055.05; 1476538.92, 281115.98; 1476924.83, 280171.52; 1477848.97, 279612.98; 1476538.92, 279887.17.

(ii) Map 5, Units 12 and 13, Critical Habitat Proposed for Braun's Rock-cress, Kentucky, follows:

Map 5 - Units 12 and 13: critical habitat for Braun's rock-cress in Kentucky.



This map is provided only for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(18) Unit 14: Clements Bluff, Owen County, Kentucky.

(i) From USGS 1:24,000 quadrangle Gratz, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1451615.01,

349295.36; 1452022.39, 349505.61; 1452910.30, 347908.24; 1452180.35, 347473.85.

(19) Unit 15: Monterey U.S. 127, Owen County, Kentucky.

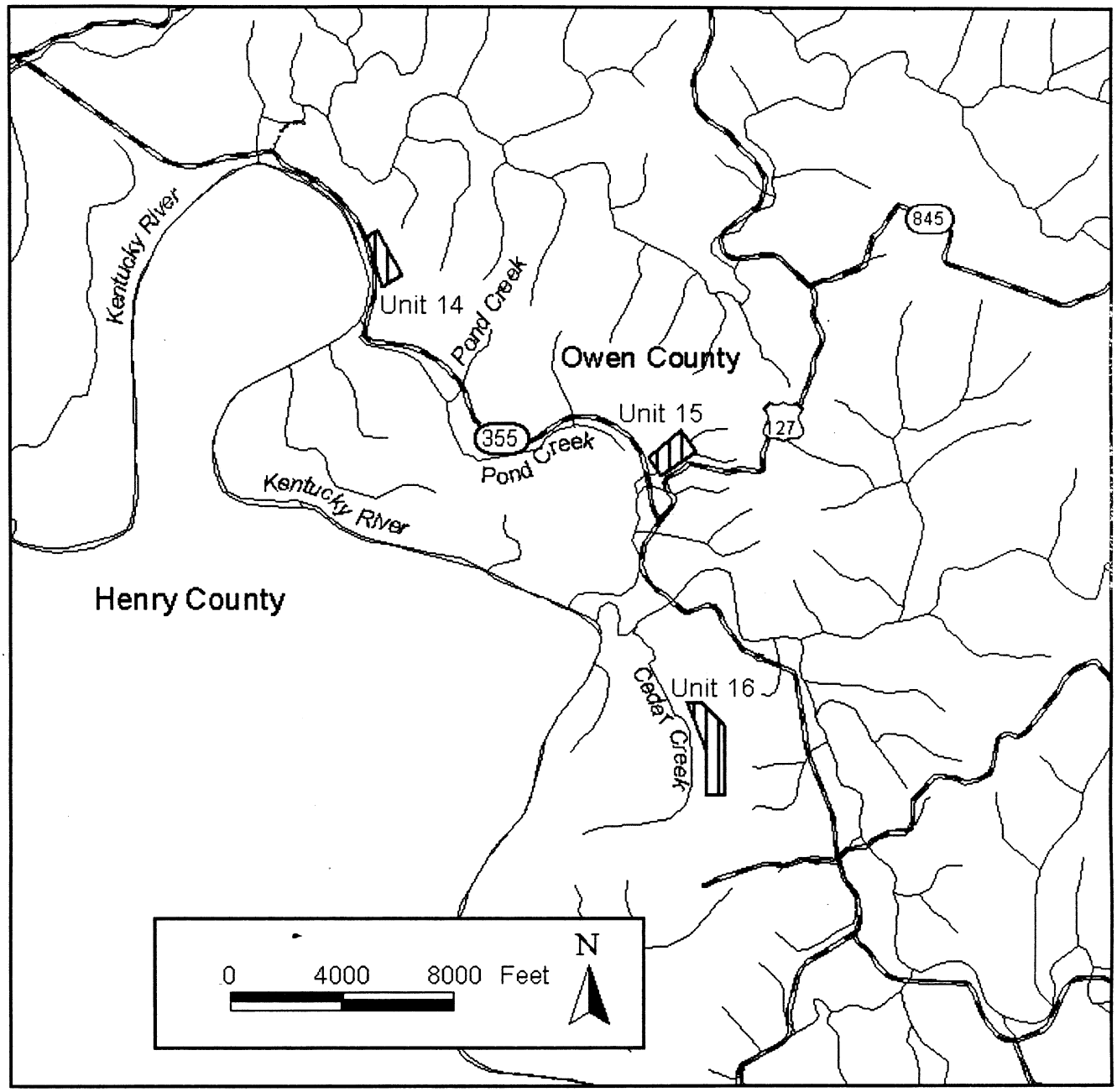
(i) From USGS 1:24,000 quadrangle Monterey, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1462791.17, 342357.03; 1463347.35, 341639.38; 1462109.41, 340778.21; 1461660.88, 341370.27.

(20) Unit 16: Craddock Bottom, Owen County, Kentucky.

(i) From USGS 1:24,000 quadrangles Frankfort East and West, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1463039.86, 332602.65; 1463575.00, 332555.43; 1464377.71, 331784.20; 1464377.71, 329218.68; 1463748.13, 329202.94; 1463716.65, 330918.53.

(ii) Map 6, Units 14, 15, and 16, Critical Habitat Proposed for Braun's Rock-cress, Kentucky, follows:

Map 6 - Units 14, 15 and 16: critical habitat for Braun's rock-cress in Kentucky.



This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

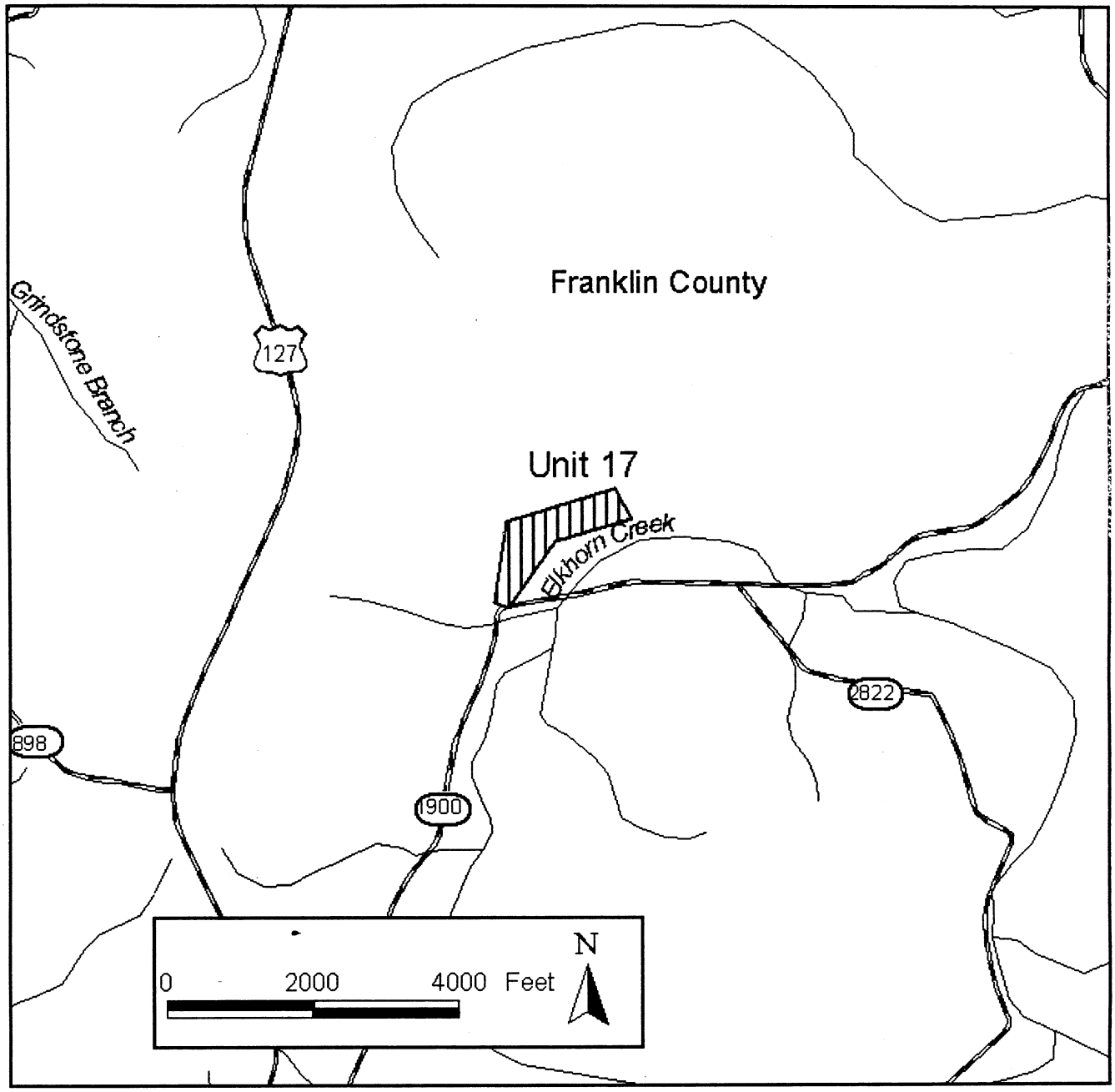
(21) Unit 17: Backbone North, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle Frankfort East, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates:

1470487.13, 273240.06; 1471988.00, 273697.42; 1472199.59, 273279.29; 1471168.97, 272953.00; 1470516.94, 272031.81; 1470339.01, 272116.74.

(ii) Map 7, Unit 17, Critical Habitat Proposed for Braun's Rock-cress, Kentucky, follows:

Map 7 - Unit 17: critical habitat for Braun's rock-cress in Kentucky.



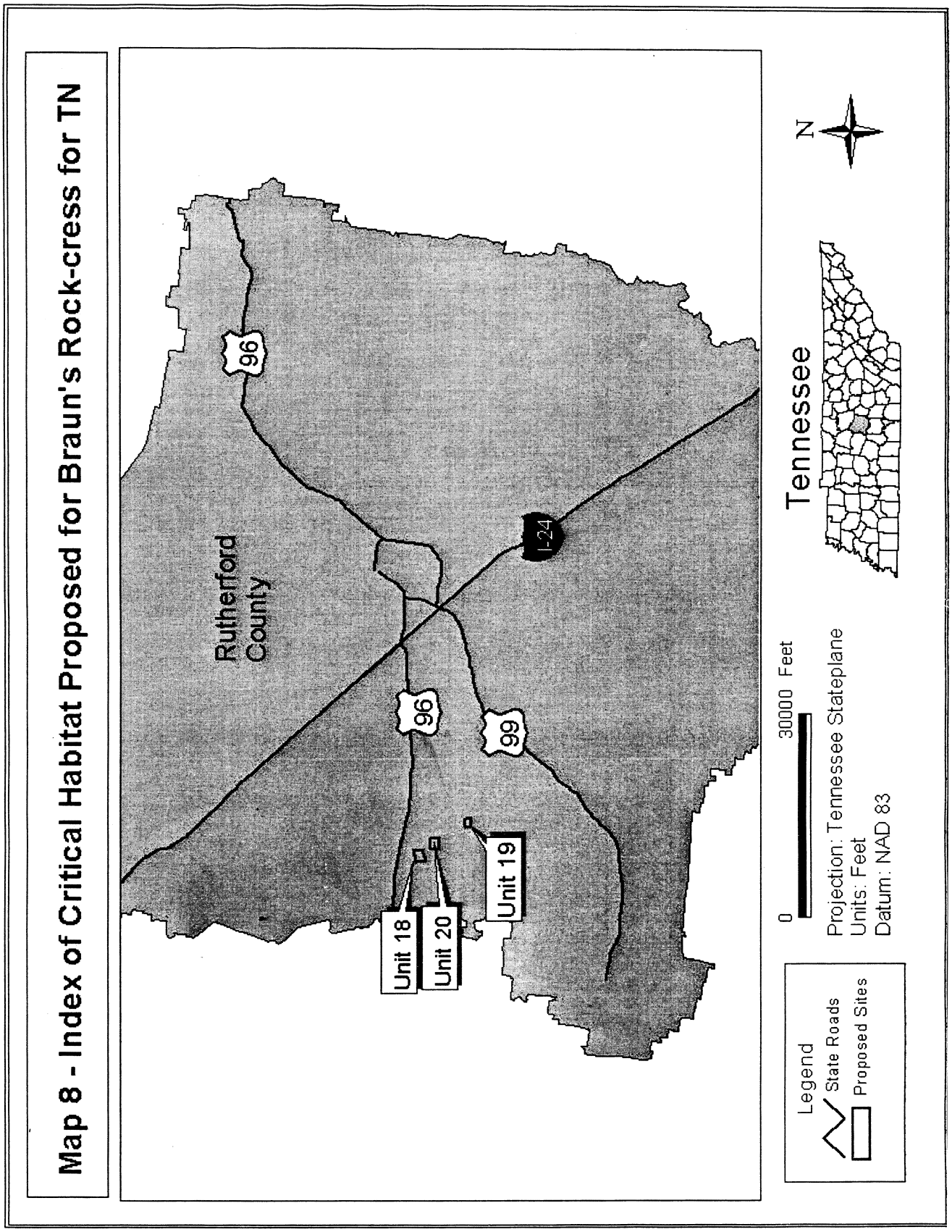
This map is provided only for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(21) Index map for Tennessee.

(i) Data layers defining map unit were created on a base of USGS 7.5″ quadrangles and proposed critical habitat units were then mapped in feet

using Tennessee State Plane, NAD 83, coordinates.

(ii) Map 8, Index of Critical Habitat Proposed for Braun's Rock-cress, Tennessee, follows:



(22) Unit 18: Scales Mountain, Rutherford County, Tennessee.

(i) From USGS 1:24,000 quadrangle Rockvale, Tennessee; land bounded by the following Tennessee State Plane/NAD83 (feet) coordinates (E,N):

1797871.97, 548892.57; 1800101.59, 549457.83; 1800070.19, 547856.27; 1797934.77, 547071.19.

(23) Unit 19: Sophie Hill, Rutherford County, Tennessee.

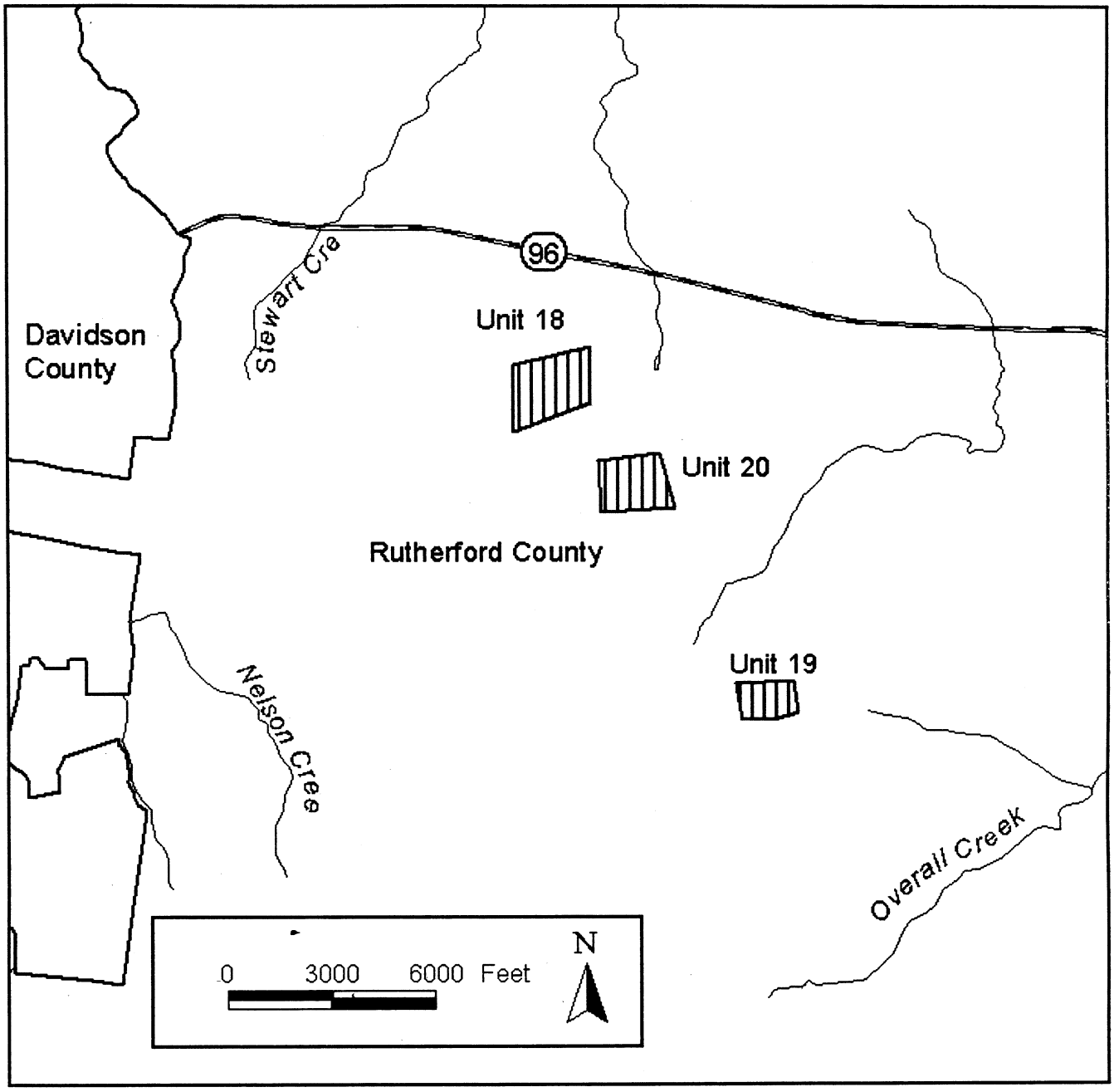
(i) From USGS 1:24,000 quadrangle Rockvale, Tennessee; land bounded by the following Tennessee State Plane/NAD83 (feet) coordinates (E,N): 1804270.37, 539691.44; 1805958.29, 539809.20; 1806076.05, 538867.10; 1804427.38, 538631.58.

(24) Unit 20: Indian Mountain, Rutherford County, Tennessee.

(i) From USGS 1:24,000 quadrangle Rockvale, Tennessee; land bounded by the following Tennessee State Plane/NAD83 (feet) coordinates (E,N): 1800305.71, 546168.35; 1802111.40, 546443.12; 1802543.19, 544794.46; 1800423.48, 544676.69.

(ii) Map 9, Units 18, 19, and 20, Critical Habitat for the Braun's Rockcress, Tennessee, follows:

Map 9 - Units 18, 19 and 20: critical habitat for Braun's rock-cress in Tennessee.



This map is provided only for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

Dated: May 23, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–13509 Filed 6–2–03; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 68, No. 106

Tuesday, June 3, 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

Farm Service Agency

Information Collection; Record of Pooled Farm Allotment or Quota and Application for Transfer of Allotment or Quota From Pool

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and entities on the reinstatement with revision of a previously approved information collection associated with two forms that are used in administering the tobacco marketing quota program.

DATES: To be assured of consideration, comments about this notice must be received in writing on or before August 4, 2003. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Director, Tobacco Division, FSA, USDA, 1400 Independence Avenue, SW., Room 5750-S, STOP 0514, Washington, DC 20250–0514 and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Comments may be submitted via facsimile to (202) 720–0549 or by e-mail to *tob_comments@wdc.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Ann Wortham, Tobacco Division, (202) 720–2715 or *ann_wortham@wdc.usda.gov.* The public may inspect comments received and copies of the forms at the Tobacco Division at the address shown above during normal business hours. Visitors are encouraged to call ahead at (202) 720–7413 to facilitate entry into the building. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., eastern standard time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Description of Information Collections

Title: Record of Pooled Farm Allotment of Quota.

OMB Control Number: 0560–0033.

Form Number: MQ–177.

Type of Request: Reinstatement With Revision of a Previously Approved Information Collection.

Abstract: The 'Record of Pooled Farm Allotment or Quota' form is used to record tobacco allotments or quotas that are to be held in a reserve 'pool' for landowners who have been displaced because their farms have been taken by power of 'eminent domain' by a Federal, State, or other agency either by court proceedings to condemn the land or by negotiation between the agency and the owner of the land. When an owner is displaced from a farm in such a way, she/he shall notify the FSA County Committee at the FSA County office that serves that farm so that the farm allotment or quota may be placed in an eminent domain pool. The allotment or quota thus placed in a pool is held for the displaced owners to transfer to other farms they own or may purchase. An owner must request transfer of the allotment or quota from the pool within 3 years from the date of displacement from the farm to which the allotment or quota originally belonged. Pooled allotments or quotas shall be considered fully planted and, for each year in the pool, shall be established in accordance with tobacco marketing quota regulations. (An owner is a person, or persons in a joint ownership, having title to the land for a period of at least 12 months immediately prior to the date of eminent domain acquisition.)

Estimate of Annual Burden: 50 minutes.

Type of Respondents: Tobacco allotment or quota holders who are displaced from their land when such land is taken by eminent domain acquisition.

Estimated Annual Number of Respondents: 12.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 10 hours.

Title: Application for Transfer of Allotment or Quota From Pool.

OMB Control Number: 0560–0033.

Form Number: MQ–178.

Type of Request: Reinstatement with Revision of a Previously Approved Information Collection.

Abstract: A person who has been displaced from her/his farm by eminent domain and who placed that farm's tobacco allotment or quota in a pool, will use the 'Application for Transfer of Allotment or Quota From Pool' to transfer the pooled tobacco to another farm which she/he owns or has purchased. The request for transfer must be made within 3 years from the date of displacement and submitted for approval to the FSA County office that serves that farm.

Estimate of Annual Burden: 50 minutes.

Type of Respondents: Tobacco allotment or quota holders who are displaced from their land when such land is taken by eminent domain acquisition.

Estimated Annual Number of Respondents: 12.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 10 hours.

Comment is invited on: (1) Whether these collections of information are necessary for the above stated purposes and the proper performance of FSA, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public records. Comments will be summarized and included in the submission for Office of Management and Budget Approval.

Signed in Washington, DC, on May 23, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–13768 Filed 6–2–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Aviation Forms

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of the currently approved collection of four aviation forms that assist in the documentation of pilot and aircraft qualifications, approval, and data records. These OMB approved forms include: (1) Airplane Pilot Qualifications and Approval Record (FS–5700–20); (2) Helicopter Pilot Qualifications and Approval Record (FS–5700–20a); (3) Airplane Data Record (FS–5700–21); (4) and Helicopter Data Record (FS–5700–21a).

DATES: Comments must be received in writing on or before August 4, 2003 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Jim Barnett, Fire and Aviation Staff, Mail Stop 1107, 1400 Independence Avenue, Washington DC 20250–1107.

Comments also may be submitted via facsimile to (202) 205–1401 or by e-mail to: *jbarnett02@fs.fed.us.*

The public may inspect comments received at the Yates Building, 1400 Independence Avenue, Washington DC during normal business hours. Visitors are encouraged to call ahead to (202) 205–0985 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Jim Barnett, Fire and Aviation Staff, (202) 205–0985. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Airplane Pilot Qualifications and Approval Record (FS–5700–20), Helicopter Pilot Qualifications and Approval Record (FS–5700–20a), Airplane Data Record (FS–5700–21), and Helicopter Data Record (FS–5700–21a).

OMB Number: 0596–0015.

Expiration Date of Approval: May 31, 2003.

Type of Request: Extension with revision.

Abstract: The Forest Service contracts with approximately 400 vendors for aviation services that are utilized in resource protection and project management. Total annual use of contract aircraft and pilots in recent years has exceeded 100,000 hours. Hence, in order to maintain an acceptable level of safety, mission preparedness, and cost effectiveness in aviation operations, Forest Service contracts call for rigorous qualifications for pilots and specific condition; equipment and performance requirements for aircraft. Aviation operations are conducted under extremely adverse conditions of weather, terrain, turbulence, smoke reduced visibility, minimally improved landing areas, and congested airspace around wildfires.

To ensure agency contracting officers that the pilots and aircraft meet the specific Forest Service qualifications and other requirements for aviation operations, prospective contract pilots must provide the information on the FS–5700–20 and FS–5700–20a forms. Contract Officers' Technical Representatives use the FS–5700–21 and FS–5700–21a forms as worksheets when checking the aircraft for contract compliance. A portion of the completed form is furnished to the contractor as proof of compliance.

The following changes were incorporated into the forms: (1) Below the title of each of the existing forms is a Reference to FSH 5709.12. This handbook no longer exists. The replacement reference should read FSH 5709.16. (2) Forms FS–5700–21 (Airplane Data Card) and FS–5700–21a (Helicopter Data Card) reflect the many changes that have occurred in the contracting and aircraft approval process since the forms were last updated. The basic changes consist of removing some unnecessary information from the ''cards,'' and adding information to the ''Authorized Uses'' blocks. In the other sections of the form the changes reflect the deletion of unneeded information and the addition of blocks to meet new requirements such as updated Avionics and Synthetic Long-Line requirements.

Without the information supplied on these forms, Forest Service contracting officers and pilot and aircraft inspectors cannot determine if pilots and aircraft meet the detailed qualification, equipment, and condition requirements essential to safe, effective accomplishment of Forest Service specified flying missions. Without reasonable basis to determine pilot qualifications and aircraft capability, Forest Service employees using these resources would be unnecessarily exposed to flying hazards.

The completed forms are maintained in Forest Service Regional headquarters under the care of the Regional aviation pilot and aircraft inspectors. Copies of the forms may be shared with the Office of Aircraft Services, Department of Interior, since each organization accepts contract inspections conducted by the other as meeting their own requirements.

The data collected from these forms will be used to document the basis for approval of contract pilots and aircraft for specific Forest Service aviation missions. Based upon the approvals documented on these forms, approval cards are issued to each contractor pilot and for each contractor aircraft. Forest Service personnel verify possession of properly approved cards before using contractor pilots and aircraft.

The information will be collected and revised by contracting officers or their representatives including the aircraft inspectors, and will represent data that determines whether the aircraft and/or pilots meet all contract specifications in accordance with Forest Service Handbook 5709.16, chapter 10, section 16. If the information is not collected by the Forest Service, the burden of collection, inspection and approval will be placed on another agency, most likely the Federal Aviation Administration. However, a joint study, conducted with the Department of Transportation, concluded that the Forest Service can complete their contract inspections more economically than by transferring this additional responsibility to the Federal Aviation Administration.

Estimate of Annual Burden: One hour.

Type of Respondents: Aircraft vendors that wish to contract with the Federal government for aircraft services and pilots.

Estimated Annual Number of Respondents: Hundreds of vendors will respond each year. Each of these vendors may have multiple aircraft and pilots.

Estimated Annual Number of Responses per Respondent: Contract vendors will be required to provide one response per year for each aircraft and pilot that will be involved with a Federal contract.

Estimated Total Annual Burden on Respondents: One and a half (1.5) hours per respondent per year.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: May 28, 2003.

Robin L. Thompson,

Acting Deputy Chief, State and Private Forestry.

[FR Doc. 03–13784 Filed 6–2–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Supplement to the Final Environmental Impact Statement for Deadman Creek Ecosystem Management Projects, Colville National Forest, Ferry County, WA

AGENCY: Forest Service.

ACTION: Notice of intent to prepare a supplement to a final environmental impact statement.

SUMMARY: The USDA Forest Service will prepare a supplement to the final environmental impact statement (EIS) for the Deadman Creek Ecosystem Management Projects on the Three Rivers Range District of the Colville National Forest. The draft supplemental EIS will display the original alternatives as described in the final EIS. Specific actions include silviculture treatments that include timber harvest, pre-commercial thinning post and pole removal, post harvest fuels treatments, natural fuels under-burning, site preparation and reforestation, establishment of marten and pileated woodpecker management requirement areas, new road construction, road reconstruction, and road maintenance. The draft supplemental EIS will add to and update the analysis described in the final EIS. The supplemental information includes updated data in all specialist reporting areas. Emphasis areas where considerable changes were made in text and/or data include recreation/visuals, soils, fishery biology, hydrology, transportation, and roadless area analysis. There will be no additional scoping period on this project. There will be a 45 day public review and comment period on the draft supplemental EIS.

ADDRESSES: Send written comments regarding the scope of this supplemental analysis to Rolando Ortegon, Acting Forest Supervisor, Colville National Forest, 765 South Main, Colville, Washington 99114.

FOR FURTHER INFORMATION CONTACT: Tom Pawley, Deadman Creek Ecosystem Management Projects Leader, Three Rivers Ranger District, 255 West 11th, Kettle Falls, Washington 99141, phone (509) 738–7700.

SUPPLEMENTARY INFORMATION: The Notice of Intent to prepare an environmental impact statement (EIS) for this proposed action was originally published in the **Federal Register** on November 12, 1996. The draft EIS was released February 11, 2000 with the comment period ending April 28, 2000. On March 20, 2001 the Record of decision (ROD) to implement Alternative D (modified) of the Deadman Creek Ecosystem Management Projects was signed. On September 7, 2001, the Colville National Forest Supervisor withdrew the ROD. New supplemental information will be analyzed in this draft supplemental EIS to address issues raised by public and appellants in the appeal of the ROD.

The original key issues will guide the analysis. These issues are the effects of new road construction, and the effects of entry into inventoried roadless areas and other areas with similar characteristics. The supplemental information to be analyzed includes: a better defined purpose and need section; indicators or units of measure for key issues; changes in regulations and requirements regarding threatened, endangered, and sensitive wildlife and fish species, and sensitive plant species, and how that affects the proposed project; the results of additional field work conducted in soils and hydrology; supplemental information on recreation within the project areas; changes in direction regarding Inventories Roadless Areas and other areas lacking classified roads; inclusion of a required Roads Analysis report; and additional cumulative effects in most of the resource areas.

The public is invited to offer suggestions and comments in writing following the release of the draft supplemental EIS. Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available to public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal for subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 127(d); and any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information (FOIA) permits such confidentiality may be granted in only limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The draft supplemental EIS is expected to be filed with the Environmental Protection Agency (EPA) and released for public review June 2003. The comment period on the draft supplemental will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice of this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft supplemental EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC*, 435 U.S. 509, 553 (1978). Also, environmental objections that could be raised at the draft supplemental EIS stage but that are not raised until after completion of the final supplemental EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 400 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day

comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and responded to them in the final supplemental EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft supplemental EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft supplemental EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final supplemental EIS will be completed in September 2003. In the final supplemental EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft supplemental EIS and applicable laws, regulations, and policies considered in making the decision regarding the Deadman Creek Ecosystem Management Projects. The Responsible Official is the Forest Supervisor of the Colville National Forest. The Responsible Official will determine which alternative best meets the purpose and need of the project and addresses the key issues raised about this project. The decision and rationale will be documented in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: May 22, 2003.

Rolando Ortegon,

Acting Forest Supervisor.

[FR Doc. 03–13787 Filed 6–2–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Reno, Nevada, June 26–28, 2003. The purpose of the meeting is to discuss emerging issues in urban and community forestry and the 2004 Challenge Cost-Share grant program.

DATES: The meeting will be held June 26–28, 2003. A tour of local projects will be held June 26 from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Circus Circus Hotel, 500 North Sierra Street, Reno, Nevada. Individuals who wish to speak at the meeting or to propose agenda items must send their names and proposals to Suzanne M. del Villar, Executive Assistant, National Urban and Community Forestry Advisory Council, 2000 Ascot Parkway, Unit 3816, Vallejo, California 94591. Individuals may fax their names and proposed agenda items to (707) 642–9201.

FOR FURTHER INFORMATION CONTACT: Suzanne M. del Villar, Urban and Community Forestry Staff, (707) 642–9201.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to Forest Service staff and Council members; however, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided.

Dated: May 27, 2003.

Robin L. Thompson,

Acting Deputy Chief, State and Private Forestry.

[FR Doc. 03–13785 Filed 6–2–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Flathead County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Flathead County Resource Advisory Committee will meet in Kalispell, Montana June 16th and June 24th. The purpose of the meetings is to discuss potential Title II projects for fiscal year 2004 funded by the Secure Rural Schools and Community Self Determination Act.

DATES: June 16th and June 24th. The meetings will be held from 4 p.m. to 6 p.m.

ADDRESSES: The meeting will be held at the Flathead County Commissioner's Office, Commissioner's Conference Room, 800 South Main, Kalispell, Montana 59901.

FOR FURTHER INFORMATION CONTACT: Kaaren Arnoux, Flathead National Forest, Administrative Assistant, (406) 758–5251.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Time will be available for public input on potential projects the committee may be discussing.

Allen Rowley,

Acting Public Affairs Specialist.

[FR Doc. 03–13795 Filed 6–2–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Southwest Idaho Resource Advisory Committee Meeting

AGENCY: USDA, Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will meet for a business meeting.

DATES: Wednesday, June 18, 2003, beginning at 10:30 a.m.

ADDRESSES: The meeting will be held at the Cascade American Legion Hall, Cascade, Idaho.

FOR FURTHER INFORMATION CONTACT: Randy Swick, Designated Federal Officer, at (208) 634–0401 or electronically at *rswick@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda topics include review and approval of project proposals, and an open public forum. The meeting is open to the public.

Dated: May 28, 2003.

Mark J. Madrid,

Forest Supervisor, Payette National Forest.

[FR Doc. 03–13962 Filed 5–30–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Willamette Province Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Willamette Province Advisory Committee (PAC) will meet in Salem, Oregon. The purpose of the

meeting is to discuss issues pertinent to the implementation of the Northwest Forest Plan (NFP) and to provide advice to federal land managers in the Province. The specific topics to be covered at the meeting include background information of the NFP for new members and updates on the on-going revisions to the NFP.

DATES: The meeting will be held June 20, 2003.

ADDRESSES: The meeting will be held at the Salem District Office of the Bureau of Land Management, 1717 Fabry Road, Salem, Oregon. Send written comments to Neal Forrester, Willamette Province Advisory Committee, c/o Willamette National Forest, PO Box 10607, Eugene, Oregon 97440, (541) 225–6436 or electronically to *nforrester@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Neal Forrester, Willamette National Forest, (541) 225–6436.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to PAC members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the PAC staff before or after the meeting. A public forum will be provided and individuals will have the opportunity to address the PAC. Oral comments will be limited to three minutes.

Dated: May 28, 2003.

Y. Robert Iwamoto,

Deputy Forest Supervisor, Willamette National Forest.

[FR Doc. 03–13788 Filed 6–2–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 030527134–3134–01]

Proposed Data Sharing Activity

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice and request for public comment.

SUMMARY: The Bureau of the Census (Census Bureau) conducts the Survey of Industrial Research and Development (R&D). The National Science Foundation (NSF) provides the funding for this data collection. The Census Bureau proposes to provide data collected from the 1997 and 1999 R&D surveys to the Bureau of Economic Analysis (BEA) for statistical purposes exclusively. In accordance with the requirement of Section 524(d) of the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA), we are providing the opportunity for public comment on this data-sharing action. Through the use of these shared data, the BEA will augment its existing R&D-related data, identify data quality issues arising from reporting differences in the BEA and Census Bureau surveys, and improve its survey sample frames. The NSF will be provided non-confidential aggregate data (public use) and reports that have cleared Census Bureau disclosure review. Disclosure review is a process conducted to verify that the data to be released do not reveal any confidential information.

DATES: Written comments must be submitted on or before August 4, 2003.

ADDRESSES: Please direct all written comments on this proposed program to the Director, U.S. Census Bureau, 4700 Silver Hill Road, Washington, DC 20233–0100.

FOR FURTHER INFORMATION CONTACT: Requests for additional information on this proposed program should be directed to Kimberly Moore, Assistant Division Chief for Special Studies and M3 Programs, Manufacturing and Construction Division, U.S. Census Bureau, 4700 Silver Hill Road, Washington, DC 20233–6900, by phone on (301) 763–7643 or by fax (301) 457–4583.

SUPPLEMENTARY INFORMATION:

Background

CIPSEA (Pub. L. 107–347, Subtitle V) allows the Census Bureau and the BEA to share certain business data for exclusively statistical purposes. Section 524(d) of the Act requires a **Federal Register** notice announcing the intent to share data (allowing 60 days for public comment).

Section 524(d) also requires us to provide information about the terms of the agreement for data sharing. For purposes of this notice, the Census Bureau has decided to group these terms by three categories. The categories are:

- Shared data
- Statistical purposes for the shared data
- Data access and confidentiality

Shared Data

The Census Bureau proposes to provide the BEA with data collected from the 1997 and 1999 Surveys of Industrial Research and Development (R&D). The agreement also calls for the BEA to share data from its 1997 Foreign Direct Investment in the United States and 1999 U.S. Direct Investment Abroad surveys with the Census Bureau. In the future, the BEA will issue a separate notice addressing this issue.

The BEA will use these data for statistical purposes exclusively. Through record linkage, the BEA will augment its existing R&D-related data, identify data quality issues arising from reporting differences in the BEA and Census Bureau surveys, and improve its survey sample frames.

Statistical Purposes for the Shared Data

The data collected from the Survey of Industrial Research and Development (R&D) estimate the expenditures of research and development performed by United States-based industrial firms. The survey is conducted annually; however, the proposed data to be shared are from the 1997 and 1999 surveys only. Statistics from the annual surveys are published in the NSF's annual publication series ''Research and Development in Industry.'' Data collected by this survey include company characteristics and R&D spending information. Characteristics data include net sales, total employment, and employment of scientists and engineers. R&D spending data include the following: total spending; federally funded (total and by agency) spending for basic and applied R&D, for basic research by field, and for applied R&D by product group and energy and pollution abatement activities; R&D spending by state; and R&D financed by domestic firms but performed abroad. All data are collected under Sections 131, 182, 224, and 225 of Title 13, United States Code (U.S.C.).

Data Access and Confidentiality

Title 13, U.S.C., protects the confidentiality of these data. The data may be seen only by persons sworn to uphold the confidentiality of the information. Access to the shared data will be restricted to specifically authorized personnel and will be provided for statistical purposes only. All BEA employees with access to these data will attain Census Bureau Special Sworn Status—meaning that they, under penalty of law, must uphold the data's confidentiality. Selected NSF employees will provide the BEA with expertise on the aspects of R&D performance in the United States and by U.S. companies abroad; these NSF consultants assisting with the work at the BEA also will attain Census Bureau Special Sworn Status. No confidential data will be provided to the NSF. To further safeguard the confidentiality of the data, the Census Bureau will conduct an Information Technology security review of the BEA prior to sharing any data files. Any results of this research are

subject to Census Bureau disclosure protection.

Dated: May 28, 2003.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 03–13853 Filed 6–2–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–846]

Brake Rotors From the People's Republic of China: Preliminary Results of the Eighth New Shipper Review

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

ACTION: Notice of preliminary results of the eighth new shipper review.

SUMMARY: The Department of Commerce is currently conducting the eighth new shipper review of the antidumping duty order on brake rotors from the People's Republic of China covering the period April 1, 2002, through September 30, 2002. This review covers two exporters. We have preliminarily determined that sales have not been made at less than normal value with respect to the exporters subject to this review. If these preliminary results are adopted in our final results of this review, we will instruct the U.S. Bureau of Customs and Border Protection[1] (''BCBP'') to assess antidumping duties on entries of subject merchandise during the period of review (''POR''), for which the importer-specific assessment rates are above *de minimis*.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 90 days from the date of issuance of these preliminary results.

EFFECTIVE DATE: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Smith, Terre Keaton or Margarita Panayi, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1766, (202) 482–1280 or (202) 482–0049, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 2002, the Department received timely requests from Xiangfen Hengtai Brake System Co., Ltd (''Hengtai'') and Xianghe Xumingyuan Auto Parts Co., Ltd. (''Xumingyuan'') for a new shipper review of this antidumping duty order in accordance with 19 CFR 351.214(c). In their requests for a new shipper review and in accordance with 19 CFR 351.214(b)(2)(i) and (iii)(A), Hengtai and Xumingyuan each certified that it did not export the subject merchandise to the United States during the period covered by the original less-than-fair-value (''LTFV'') investigation and that it is not affiliated with any company which exported the subject merchandise to the United States during the period of investigation (''POI''). Hengtai and Xumingyuan also certified that their export activities are not controlled by the central government of the People's Republic of China (''PRC''). Pursuant to 19 CFR 351.214(b)(2)(iv), Hengtai and Xumingyuan submitted documentation establishing the date on which the merchandise was first shipped for export to the United States, the volume of that first shipment, and the date of the first sale to an unaffiliated customer in the United States.

On December 3, 2002, the Department published a notice of initiation of a new shipper review of Hengtai and Xumingyuan (*see Brake Rotors from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review*, 67 FR 71934 (December 3, 2002)). On December 4, 2002, the Department issued a questionnaire to each company.

On December 19, 2002, the Department provided the parties an opportunity to submit publicly available information for consideration in the preliminary results. In January and February 2003, we received responses to the Department's questionnaires, and granted an extension until March 10, 2003, for all interested parties to submit publicly available information for consideration in the preliminary results.

On February 27, 2003, we notified the respondents of our intent to conduct verification of their responses to the antidumping duty questionnaire and provided each respondent with a verification outline for purposes of familiarizing each company with the verification process. On March 10, 2003, the respondents submitted publicly available information, and on March 14, 2003, the petitioner[2] submitted rebuttal comments to the publicly available information provided by the respondents. From March 10 through March 21, 2003, we conducted verification of the information submitted by each respondent, in accordance with 19 CFR 351.307. On April 16, 2003, we issued verification reports.

Scope of the Order

The products covered by this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under ''one ton and a half,'' and light trucks designated as ''one ton and a half.''

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and have undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer (''OEM'') which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in this order are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria. Excluded from the scope of this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are currently classifiable under subheading 8708.39.5010 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheading is provided for convenience and Customs purposes, the written description of the scope of this order is dispositive.

Period of Review

The POR covers April 1, 2002, through September 30, 2002.

Verification

As provided in section 782(i) of the Act, we verified information provided by each respondent. We used standard

[1] As of March 1, 2003, the U.S. Customs Service has been renamed the U.S. Bureau of Customs and Border Protection.

[2] The petitioner is the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers.

verification procedures, including on-site inspection of the manufacturer's facilities and examination of relevant sales and financial records. Our verification results are outlined in the verification report for each company (*see* April 16, 2003, verification reports for Hengtai and Xumingyuan for further discussion).

Separate Rates

In proceedings involving non-market-economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate (*i.e.*, a PRC-wide rate).

Hengtai claims that it is a limited liability company in the PRC, and Xumingyuan claims that it is a joint venture between a PRC and a foreign company. Thus, for these respondents, a separate rates analysis is necessary to determine whether the exporters are independent from government control (*see Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China* (''*Bicycles*'') 61 FR 56570 (April 30, 1996)).

To establish whether a firm is sufficiently independent in its export activities from government control to be entitled to a separate rate, the Department utilizes a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*''), and amplified in the Final *Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). Under the separate-rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. *De Jure* Control

Hengtai and Xumingyuan have placed on the administrative record documents to demonstrate absence of *de jure* control, including the PRC's Enterprise Legal Person Registration Administrative Regulations promulgated on June 13, 1988, and the 1994 ''Foreign Trade Law of the People's Republic of China.''

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control of joint ventures between PRC and foreign companies and limited liability companies in the PRC. *See, e.g., Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China* (''*Furfuryl Alcohol*'') 60 FR 22544 (May 8, 1995), and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 29571 (June 5, 1995). We have no new information in this proceeding which would cause us to reconsider this determination with regard to Hengtai and Xumingyuan.

2. *De Facto* Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* and *Furfuryl Alcohol*. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses (*see Silicon Carbide* and *Furfuryl Alcohol*).

Hengtai and Xumingyuan each asserted the following: (1) it establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, each of these companies' questionnaire responses indicates that its pricing during the POR does not suggest coordination among exporters.

For Hengtai and Xumingyuan, the Department found no evidence at verification of government involvement in their business operations. Specifically, Department officials examined sales documents that showed that each of these respondents negotiated its contracts and set its own sales prices with its customers. In addition, the Department reviewed sales documentation, bank statements and accounting documentation that demonstrated that each of these respondents received payment from its U.S. customers via bank wire transfer, which was deposited into its own bank account without government intervention. Finally, the Department examined internal company memoranda such as appointment notices, which demonstrated that each of these companies selected its own management. *See* pages four through eight of the Department's verification report for Hengtai, and pages five through seven of the Department's verification report for Xumingyuan. This information, taken in its entirety, supports a finding that there is a *de facto* absence of governmental control of each of these companies' export functions.

Consequently, we have determined that Hengtai and Xumingyuan have each met the criteria for the application of separate rates based on our verification findings.

Fair Value Comparisons

To determine whether sales of the subject merchandise by Hengtai and Xumingyuan to the United States were made at prices below normal value (''NV''), we compared each company's export prices to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below.

Export Price

For both respondents, we used export price methodology in accordance with section 772(a) of the Tariff Act of 1930, as amended (''the Act'') because the subject merchandise was first sold prior to importation by the exporter outside the United States directly to an unaffiliated purchaser in the United States, and constructed export price was not otherwise indicated.

For both respondents, we calculated export price based on packed, FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling charges in the PRC, in accordance with section 772(c) of the Act. Because foreign inland freight and foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate rates from India (*see* ''Surrogate Country'' section below for

further discussion of our surrogate-country selection). To value foreign inland trucking charges, we used truck freight rates published in Indian *Chemical Weekly* and distance information obtained from the following websites: *http://www.infreight.com, http://www.sitaindia.com/Packages/CityDistance.php, and http://www.abcindia.com*. Based on our verification findings, we revised the reported distance from Xumingyuan to the port of exportation (see page 10 of Xumingyuan's verification report). To value foreign brokerage and handling expenses, we relied on public information reported in the 1998 - 1999 new shipper and administrative reviews of the antidumping order on stainless steel bar from India (*See Stainless Steel Bar from India: Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review*, 65 FR 48965 (August 10, 2000)).

Normal Value

A. Non-Market-Economy Status

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority (*see Notice of Preliminary Results of Antidumping Duty Administrative Review and Preliminary Partial Rescission of Antidumping Duty Administrative Review: Freshwater Crawfish Tail Meat From the People's Republic of China*, 66 FR 52100, 52103 (October 12, 2001)). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value in accordance with section 773(c) of the Act, which applies to NME countries.

B. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value a NME producer's factors of production, to the extent possible, in one or more market-economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. India was among the countries comparable to the PRC in terms of overall economic development (*see* December 11, 2002, Memorandum from the Office of Policy to Irene Darzenta Tzafolias). In addition, based on publicly available information placed on the record (*e.g.*, Indian producer financial statements), India is a significant producer of the subject merchandise. Accordingly, we considered India the surrogate country for purposes of valuing the factors of production because it meets the Department's criteria for surrogate-country selection.

C. Factors of Production

In accordance with section 773(c) of the Act, we calculated normal value based on the factors of production which included, but were not limited to: (A) hours of labor required; (B) quantities of raw materials employed; (C) amounts of energy and other utilities consumed; and (D) representative capital costs, including depreciation. We used the factors reported by each of the respondents which produced the brake rotors it exported to the United States during the POR. To calculate normal value, we multiplied the reported unit factor quantities by publicly available Indian values.

Based on our verification findings at Hengtai, we revised the per-unit weight reported for adhesive tape (*see* page 14 of the Hengtai's verification report). Based on our verification findings at Xumingyuan, we revised the reported per-unit weight for three of its packing materials (*i.e.*, corrugated paper cartons, wood pallet and steel pallet), and the distance reported from Xumingyuan to its plywood supplier. (*See* pages 13 and 15 of Xumingyuan's verification report).

The Department's selection of the surrogate values applied in this determination was based on the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We added to Indian surrogate values surrogate freight costs using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corporation v. United States*, 117 F. 3d 1401, 1407–08 (Fed. Cir. 1997). For those values not contemporaneous with the POR and quoted in a foreign currency, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics*. (*See* Preliminary Results Valuation Memorandum dated May 27, 2003, for a detailed explanation of the methodology used to calculate surrogate values.)

To value pig iron, steel scrap, ferrosilicon, ferromanganese, limestone, lubrication oil, coking coal, and firewood, we used April 2002-August 2002 average import values from *Monthly Statistics of the Foreign Trade of India* (''*Monthly Statistics*''). We relied on the factor specification data submitted by the respondents for the above-mentioned inputs in their questionnaire and supplemental questionnaire responses, as verified by the Department, for purposes of selecting surrogate values from *Monthly Statistics*.

We also added an amount for loading and additional transportation charges associated with delivering coal to the factory based on June 1999 Indian price data contained in the periodical *Business Line*.

We based our surrogate value for electricity on 2000–2001 data from the Government of India's Planning Commission report entitled *The Working of State Electricity Boards & Electricity Departments Annual Report* (2001–2002).

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

To value selling, general, and administrative (''SG&A'') expenses, factory overhead and profit, we used the 2000–2001 financial data of Kalyani Brakes Limited (''Kalyani''), Mando Brake Systems India Limited (''Mando''), and Rico Auto Industries Limited (''Rico'').

Where appropriate, we removed from the surrogate overhead and SG&A calculations the excise duty amount listed in the financial reports. We made certain adjustments to the ratios calculated as a result of reclassifying certain expenses contained in the financial reports. For further discussion of the adjustments made, *see* the Preliminary Results Valuation Memorandum, dated May 27, 2003.

To value corrugated paper cartons, nails, plastic bags and sheets/covers, steel strip and straps/buckles, tape, pallet wood, plywood, and hot-rolled carbon steel for pallet construction, we used April 2002-August 2002 average import values from *Monthly Statistics*. Both respondents included the weight of the straps/buckles in their reported steel strip weights. Because the material of the straps/buckles and steel strip was the same for both inputs, we valued these factors using the combined weight reported by the respondents.

All inputs were shipped by truck. Therefore, to value PRC inland freight, we used a freight rates published in *Indian Chemical Weekly* and distance information obtained from the following websites: *http://www.infreight.com, http://www.sitaindia.com/Packages/CityDistance.php,and http://www.abcindia.com.*

Preliminary Results of the Review

We preliminarily determine that the following margins exist for Hengtai and Xumingyuan during the period April 1, 2002, through September 30, 2002:

Manufacturer/producer/exporter	Margin Percent
Xiangfen Hengtai Brake System Co., Ltd.	0.00
Xianghe Xumingyuan Auto Parts Co., Ltd.	0.00

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held on July 14, 2003.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B-099, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in case briefs and rebuttal briefs. Case briefs from interested parties may be submitted not later than June 30, 2003. Rebuttal briefs, limited to issues raised in the case briefs, will be due not later than July 7, 2003. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this new shipper review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 90 days after the date of issuance of these preliminary results.

Assessment Rates

The Department shall determine, and the BCBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions for the companies subject to this review directly to the BCBP within 15 days of publication of the final results of this review. For assessment purposes, we do not have the actual entered value for either respondent for which we calculated a margin because it is not the importer of record for the subject merchandise. Therefore, we calculated individual importer- or customer-specific assessment rates by aggregating the dumping margins calculated for all of the U.S. sales examined and dividing that amount by the total quantity of the sales examined. To determine whether the duty assessment rates are *de minimis* (*i.e.*, at or above 0.50 percent), in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated importer- or customer-specific *ad valorem* ratios based on export prices. We will instruct the BCBP to assess antidumping duties on all appropriate entries covered by this review if any importer or customer-specific assessment rate calculated in the final results of this review is above *de minimis*.

Cash Deposit Requirements

Bonding will no longer be permitted to fulfill security requirements for shipments from Hengtai or Xumingyuan of brake rotors from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of the new shipper review. Furthermore, the following cash deposit requirements will be effective upon publication of the final results of the new shipper review for all shipments of subject merchandise from Hengtai or Xumingyuan entered, or withdrawn from warehouse, for consumption on or after the publication date: (1) for subject merchandise manufactured and exported by Hengtai or Xumingyuan, no cash deposit will be required if the cash deposit rates calculated in the final results are zero or *de minimis*; and (2) for subject merchandise exported by Hengtai or Xumingyuan but not manufactured by them, the cash deposit will continue to be the PRC countrywide rate (*i.e.*, 43.32 percent) made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper administrative review and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214.

Dated: May 27, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–13878 Filed 6–2–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Extension of Time Limit for Preliminary Results of Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the preliminary results of the administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC) until no later than September 30, 2003. The period of review is September 1, 2001 through August 31, 2002. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Doug Campau or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1395 and (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Act, and section 351.213(h)(1) of the Department's regulations, require the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the preliminary results within the prescribed time period, section 751(a)(3)(A) of the Act, and section 351.213(h)(2) of the Department's regulations, allow the Department to extend the deadline to a maximum of 365 days after the last day of the anniversary month of an order for which a review is requested.

Background

Based on timely requests from petitioner and three respondent companies, the Department initiated an administrative review of the antidumping duty order on freshwater crawfish tail meat from the PRC, for the period of September 1, 2001 through August 31, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 67 FR 65336 (October 24, 2002).

Extension of Time Limits for Final Results

The Department finds that it is not practicable to complete the preliminary results within the time limits mandated by section 751(a)(3)(A) of the Act and section 351.213(h)(1) of the Department's regulations, as this review encompasses a large number of companies, and several complex issues, including factor valuation. Consequently, in accordance with sections 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department is extending the time limit for the completion of the preliminary results to 365 days from the last day of the anniversary month of the order. The preliminary results will now be due no later than September 30, 2003.

This notice is published pursuant to sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 28, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–13879 Filed 6–2–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–863]

Notice of Preliminary Results of Antidumping Duty New Shipper Review: Honey from the People's Republic of China

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

ACTION: Notice of Preliminary Results of Antidumping Duty New Shipper Review.

SUMMARY: In response to a request from Wuhan Bee Healthy Co., Ltd. (Wuhan), the Department of Commerce (the Department) is conducting a new shipper review of the antidumping duty order on honey from the People's Republic of China. The period of review covers the period December 1, 2001, through May 31, 2002. The preliminarily results are listed below in the section titled ''Preliminary Results of Review.'' Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza at (202) 482–3019 or Donna Kinsella at (202) 482–0194; Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** an antidumping duty order on honey from the PRC on December 10, 2001. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey from the People's Republic of China*, 66 FR 63670 (December 10, 2001). On June 25, 2002, the Department received from Wuhan Bee Healthy Co., Ltd. (Wuhan), a producer and exporter of the subject merchandise, a properly filed request for a new shipper review under the antidumping duty order on honey from the PRC, in accordance with section 751(a)(2)(B) of the Act and section 351.214(c) of the Department's regulations. Under these provisions, an exporter that is also a producer of the subject merchandise, in requesting a new shipper review, must certify to the following: (i) it did not export the merchandise to the United States during the period of investigation (POI); and (ii) it is not affiliated with any exporter or producer who exported the subject merchandise during that period. Moreover, in an antidumping proceeding involving imports from a non-market economy country, the new shipper must also certify that its export activities are not controlled by the central government. If these provisions are met, the Department will conduct a new shipper review to establish an individual weighted-average dumping margin for such new shipper, if the Department has not previously established such a margin for the exporter or producer. (*See* generally section 351.214(b)(2) of the Department's regulations.)

The regulations further require that the exporter or producer include in its request documentation establishing: (i) the date on which the merchandise was first entered, or withdrawn from warehouse, for consumption, or, if it cannot establish the date of first entry, the date on which it first shipped the merchandise for export to the United States, or, if the merchandise has not yet been shipped or entered, the date of sale; (ii) the volume of that and subsequent shipments; and (iii) the date of the first sale to an unaffiliated customer. *See* section 351.214(b)(2)(iv).

Wuhan's request was accompanied by information and certifications establishing that it did not export the subject merchandise to the United States during the POI, and that it was not affiliated with any company which exported subject merchandise to the United States during the POI. Wuhan provided information and certifications that demonstrated the date on which it first shipped and entered honey for consumption in the United States, the volume of that shipment, and the date of the first sale to the unaffiliated customer in the United States. Additionally, Wuhan certified that its export activities are not controlled by the central government.

Because the Department determined that Wuhan's request met the requirements of section 351.214 of its regulations, on August 6, 2002, the Department published its initiation of this new shipper review for the period December 1, 2001, through May 31, 2002.[1] (*See Honey from the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews* (67 FR 50862, August 6, 2002).) Accordingly, the Department is now conducting this review in accordance with section 751 of the Act and section 351.214 of its regulations.

On August 6, 2002, we issued the Department's antidumping duty questionnaire to Wuhan. On September 12, 2002, Wuhan submitted its Section A questionnaire response. On October 4, 2002, Wuhan submitted its Section C and D questionnaire responses. On October 18, 2002, petitioners submitted comments on Wuhan's section A, C, and D questionnaire responses.[2] On November 7, 2002, we issued a supplemental questionnaire covering Wuhan's questionnaire responses. On November 18, 2002, petitioners

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[1] We also initiated a new shipper review based on a request filed by Chengdu-Dujiangyan Dubao Bee Industrial Co., Ltd. (Dubao). However, on January 23, 2003, the Department rescinded the new shipper review with respect to Dubao. *See Honey from the People's Republic of China: Partial Rescission of Antidumping Duty New Shipper Review*, 68 FR 4760 (January 30, 2003).

[2] The American Honey Producers Association and the Sioux Honey Association are petitioners in this proceeding.

submitted a letter requesting that the Department conduct a verification of the responses submitted by Wuhan. On December 5, 2002, we received Wuhan's supplemental questionnaire response. On December 20, 2002, petitioners submitted comments on Wuhan's supplemental questionnaire response. On January 23, 2003, the Department extended the preliminary results of this new shipper review by 120 days until May 27, 2003. *See Honey from the People's Republic of China: Extension of Time Limits for Preliminary Results of New Shipper Antidumping Duty Review*, 68 FR 4761 (January 30, 2003). On January 31, 2003, we issued a second supplemental questionnaire to Wuhan. On February 25, 2003, we received Wuhan's second supplemental questionnaire response. On February 28, 2003, the Department provided the parties with an opportunity to submit publicly available information regarding surrogate country selection and factors of production surrogate values for consideration in the preliminary results of this review. On March 4, 2003, petitioners submitted comments for consideration in the Department's verification of Wuhan's questionnaire responses. On March 5, 2003, Wuhan submitted a revision to its February 25, 2003, second supplemental questionnaire response. On March 14, 2003, through March 18, 2003, the Department conducted verification of Wuhan's responses. *See* ''Verification'' section below. On March 31, 2003 and April 18, 2003, petitioners, and Wuhan submitted publicly available information to value the factors of production and rebuttal comments. On April 28, 2003, Wuhan submitted additional comments with regard to new factual information submitted by petitioners in their April 18, 2003, rebuttal comments. On May 1, 2003, petitioners submitted additional arguments regarding the *bona fides* of Wuhan's sale and certain factors of production surrogate value information. On May 9, 2003, Wuhan submitted rebuttal comments to petitioners' *bona fides* arguments and certain factors of production surrogate value information. On May 15, 2003, petitioners submitted declarations executed by researchers that gathered information regarding the Indian honey industry. On May 19, 2003, petitioners responded to comments made by Wuhan in its May 9, 2003, submission.

Scope of the Antidumping Duty Order

The products covered by this review are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form. The merchandise subject to this review is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (as of March 1, 2003, renamed the U.S. Bureau of Customs and Border Protection) (Customs) purposes, the Department's written description of the merchandise under order is dispositive.

Verification

As provided in section 782(i)(2) of the Act and section 351.307 of the Department's regulations, we conducted verification of the questionnaire responses of Wuhan. We used standard verification procedures, including on-site inspection of Wuhan's production facilities, its sales offices in Shanghai, and the examination of relevant sales and financial records. Our verification results are outlined in the New Shipper Review of Honey from the People's Republic of China (PRC) (A-570–863): Sales and Factors of Production Verification Report for Wuhan Bee Healthy Co., Ltd., dated April 22, 2003 (Wuhan Verification Report). A public version of this report is on file in the Central Records Unit (CRU) located in room B-099 of the Main Commerce Building.

New Shipper Status

Based on questionnaire responses submitted by Wuhan, and our verification thereof, we preliminarily determine that Wuhan has met the requirements to qualify as a new shipper during the POR. We have determined that Wuhan made its first sale and/or shipment of subject merchandise to the United States during the POR, and that Wuhan was not affiliated with any exporter or producer that previously shipped to the United States.

In submissions dated December 20, 2002 and March 4, 2003, petitioners allege that Wuhan's sale to the United States during the POR does not reflect a *bona fide* commercial transaction. Petitioners argue that the quantity of Wuhan's sale appears to be unusual because bulk honey is traded internationally in ocean-going full container load lots. In its February 25, 2003, second supplemental questionnaire response, Wuhan explains that its first sale to the United States was less than a full container load because of commercial factors unique to the U.S. market at the time the sale was made (*i.e.*, thorough testing of PRC honey for antibiotics and the application of an antidumping duty margin of 183 percent). Nonetheless, Wuhan argues that the amount shipped is still significant and represents a viable commercial quantity for a sale of honey.

In a submission dated May 1, 2003, petitioners submitted additional arguments regarding the *bona fides* of Wuhan's transaction. In particular, petitioners argue that the unreasonably high price paid for Wuhan's sale of subject merchandise to the United States demonstrates that the reported sale is not *bona fide*. Petitioners contend that the sale price is significantly higher than prevailing prices at which other PRC producers and exporters sold honey to U.S. customers during the POR. Thus, petitioners argue that Wuhan's U.S. customer could have obtained the same quality product from other PRC exporters for a substantially lower price. On May 9, 2003, Wuhan submitted rebuttal comments to petitioners' *bona fides* allegations. Specifically, Wuhan argues that petitioners' claims that its sale under review was not *bona fide* require the Department to (1) ignore verified evidence of subsequent sales by Wuhan at even higher prices, and (2) reject Wuhan's rational explanation of the reasons why its first sale consisted of a less-than-full container-load and a proper reading of the law regarding the deposit requirement prior to initiation of a new shipper review.

As an initial matter, the Department examined the average unit values (AUVs) of imports into the United States of comparable merchandise from the PRC during the POR. We note that in comparison to shipments from other PRC honey exporters/producers, the quantity of Wuhan's shipment is among the lowest and its price is among the highest.

Due to the time constraints in issuing these preliminary results, the Department was unable to complete its analysis with respect to Wuhan's pricing and terms of sale to the United States nor fully analyze submissions from petitioners and respondent dated May 1, 2003 and after. We intend to fully examine all issues pertaining to the *bona fides* of Wuhan's transaction, including the relationship between Wuhan's sale and imports into the United States of other PRC honey producers/exporters, for purposes of the final results of this review.

In summary, for purposes of these preliminary results of review, we are treating Wuhan's sale of honey to the United States as a *bona fide* transaction. However, as noted above, the Department intends to continue to carefully examine this issue for the final results of this review.

Separate Rates

In proceedings involving NME countries, the Department begins with a presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. In this review, Wuhan requested a separate company-specific rate.

To establish whether a company is sufficiently independent in its export activities from government control to be entitled to a separate, company-specific rate, the Department analyzes the exporting entity in an NME country under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*), and amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–22587 (May 2, 1994) (*Silicon Carbide*).

The Department's separate-rate test is unconcerned, in general, with macroeconomic/ border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See, e.g., Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less Than Fair Value*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 60 FR 14725, 14726 (March 20, 1995).

Wuhan provided separate-rate information in its responses to our original and supplemental questionnaires. Accordingly, we performed a separate-rates analysis to determine whether this producer/ exporter is independent from government control (*see Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 56570 (April 30, 1996)).

De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR 20588, 20589.

Wuhan has placed on the record a number of documents to demonstrate absence of *de jure control*, including the ''Foreign Trade Law of the People's Republic of China'' (May 12, 1994) and the ''Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations'' (June 3, 1998). The Department has analyzed such PRC laws and found that they establish an absence of de jure control. *See, e.g., Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695, 30696 (June 7, 2001). At verification, we found that Wuhan's business license and ''Certificate of Approval-For Enterprises with Foreign Trade Rights in the People's Republic of China'' were granted in accordance with these laws. Moreover, the results of verification support the information provided regarding these PRC laws. *See* Wuhan Verification Report. Therefore, we preliminarily determine that there is an absence of *de jure* control over Wuhan's export activities.

De Facto Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide* at 22587.

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* at 22586–22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

Wuhan has asserted the following: (1) it is a privately-owned company; (2) there is no government participation in its setting of export prices; (3) its chief executive officer and authorized employees have the authority to bind sales contracts; (4) it does not have to notify any government authorities of its management selection; (5) there are no restrictions on the use of its export revenue; and (6) it is responsible for financing its own losses. Wuhan's questionnaire responses do not suggest that pricing is coordinated among exporters. Furthermore, our analysis of the responses during verification reveals no other information indicating the existence of government control. *See* Wuhan Verification Report, at 7–9. Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over the company's export activities, we preliminarily determine that Wuhan has met the criteria for the application of a separate rate. For further discussion of the Department's preliminary determination regarding the issuance of separate rates, *see* Separate Rates Decision Memorandum to Richard Weible, Office Director, AD/CVD Enforcement Group III, dated May 27, 2003, on file in the CRU located in room B-099 of the Main Commerce Building.

Normal Value Comparisons

To determine whether the respondent's sale of the subject merchandise to the United States was made at a price below normal value, we compared its United States price to normal value, as described in the ''United States Price'' and ''Normal Value'' sections of this notice.

United States Price

For Wuhan, we based the United States price on export price (EP) in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price (CEP) was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States. We deducted foreign inland freight and U.S.

Customs duty expenses from the starting price (gross unit price), in accordance with section 772(c) of the Act.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value (NV) using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Wuhan did not contest such treatment in this review. Accordingly, we have applied surrogate values to the factors of production to determine NV. *See* Factor Valuation Memorandum for the Preliminary Results of the Antidumping Duty New Shipper Review of Honey from the People's Republic of China, dated May 27, 2003 (Factor Valuation Memo). A public version of this memorandum is on file in the CRU located in room B-099 of the Main Commerce Building.

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. Consistent with the original investigation of this order, we determine that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise. Accordingly, we valued the factors of production using publicly available information from India.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data, in accordance with our practice. Where appropriate, we adjusted Indian import prices by adding foreign inland freight expenses to make them delivered prices. When we used Indian import values to value inputs sourced domestically by PRC suppliers, we added to Indian surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest port of export to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997). When we used non-import surrogate values for factors sourced domestically by PRC suppliers, we based freight for inputs on the actual distance from the input supplier to the site at which the input was used. When we relied on Indian import values to value inputs, in accordance with the Department's practice, we excluded imports from both NMEs and countries deemed to have generally available export subsidies (*i.e.*, Indonesia, Korea, and Thailand) from our surrogate value calculations. For those surrogate values not contemporaneous with the POR, we adjusted for inflation using the wholesale price indices for India, as published in the International Monetary Fund's publication, *International Financial Statistics*.

We valued the factors of production as follows:

To value raw honey, we used an average of the highest and lowest price for raw honey, as adjusted for inflation, stated in an article published in *The Tribune of India* on March 1, 2000, entitled, ''Apiculture, a major foreign exchange earner'' (later republished in *The Agricultural Tribune* on May 1, 2000). As noted above, petitioners and respondent submitted additional information on the record regarding the proper surrogate value for raw honey. Due to the time constraints in issuing these preliminary results, the Department was unable to fully analyze these additional submissions. However, the Department intends to continue to carefully examine this issue for the final results of this review.

To value beeswax, a raw honey by-product, we used the average per kilogram import value of beeswax into India for the POR.

To value coal, we relied upon Indian import values of ''steam coal'' for the period April 2001, through January 2002 as reported in the *Monthly Statistics of the Foreign Trade of India, Volume II: Imports (Monthly Statistics)*, as adjusted for inflation for the period prior to the POR (April 2001 - November 2001). We also adjusted the surrogate value for coal to include freight costs incurred between the supplier and the factory. To value electricity, we used the 2000 total average price per kilowatt hour (KWH), adjusted for inflation, for ''Electricity for Industry'' as reported in the International Energy Agency's publication,*Energy Prices and Taxes, Second Quarter*, 2002. To value water, we used the average water tariff rate, adjusted for inflation, as reported in the Asian Development Bank's publication, *Second Water Utilities Data Book: Asian and Pacific Region*, 1997.

To value packing materials (*i.e.*, paint and steel drums), we relied upon Indian import data under the Indian Customs' heading ''3209,'' and a price quote from an Indian steel drum manufacturer, respectively. We adjusted the surrogate value for steel drums to reflect inflation. We also adjusted the surrogate values of packing materials to include freight costs incurred between the supplier and the factory.

To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we relied upon publicly available information in the 2001–2002 annual report of the Mahabaleshwar Honey Producers Cooperative Society, Ltd. (MHPC), a producer of the subject merchandise in India. We applied these rates to the calculated cost of manufacture and cost of production.

For labor, we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2002, and corrected in February 2003. Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. The source of these wage rate data on the Import Administration's web site is the Year *Book of Labour Statistics 2001*, International Labour Office (Geneva: 2001), Chapter 5B: Wages in Manufacturing.

To value truck freight, we used an average truck freight cost based on Indian market truck freight rates on a per MT basis published in the *Iron and Steel Newsletter*, April 2002. To value rail freight, we used an average rail freight cost based on rail freight costs of transporting molasses to various cities within India as stated on the Indian Railways' website (Indian Government Agency).

For details on factor of production valuation calcuations, *see* Factor Valuation Memo.

Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following antidumping duty margin exists:

Manufacturer and Exporter	POR	Margin (percent)
Wuhan Bee Healthy Co., Ltd.	12/01/01 - 05/31/02	9.66

For details on the calculation of the antidumping duty margin, *see* the Analysis Memorandum for the Preliminary Results of the Antidumping Duty New Shipper Review of Honey from the People's Republic of China, dated May 27, 2003. A public version of this memorandum is on file in the CRU.

Assessment Rates

Pursuant to section 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this new shipper review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to Customs to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping duties due for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. If these preliminary results are adopted in our final results of review, we will direct Customs to assess the resulting rate against the entered customs value for the subject merchandise on each of Wuhan's importer's/customer's entries during the POR.

Cash-Deposit Requirements

Wuhan may continue to post a bond or other security in lieu of cash deposits for each entry of subject merchandise produced and exported by Wuhan. Bonding will no longer be permitted to fulfill security requirements for Wuhan's shipments after publication of the final results of this new shipper review. The following cash-deposit rate will be effective upon publication of the final results of this new shipper review for all shipments of honey from the PRC entered, or withdrawn from warehouse, for consumption on or after publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for subject merchandise produced and exported by Wuhan, the cash-deposit rate will be that established in the final results of this review; (2) for all other subject merchandise exported by Wuhan, the cash-deposit rate will be the PRC country-wide rate, which is 183.80 percent; (3) for all other PRC exporters which have not been found to be entitled to a separate rate, the cash-deposit rate will be the PRC country-wide rate; and (4) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Schedule for Final Results of Review

The Department will disclose calculations performed in connection with the preliminary results of this review within five days of the date of publication of this notice in accordance with section 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with section 351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with section 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing within 48 hours before the scheduled time. The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in the briefs, within 90 days from the date of the preliminary results, unless the time limit is extended.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and this notice are published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: May 27, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–13881 Filed 6–2–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–502]

Iron Construction Castings from the People's Republic of China: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: In response to a timely request from an interested party, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on iron construction castings (castings) from the People's Republic of China (PRC). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in*

Part, 67 FR 42573 (June 25, 2002). This review covers the period May 1, 2001 through April 30, 2002. Because the company for which the review was requested and initiated was not an exporter of the subject merchandise to the United States, the Department is rescinding this review in accordance with 19 CFR 351.213(d).

EFFECTIVE DATE: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Maureen Flannery, AD/CVD Enforcement Group III, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–5255 or (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** an antidumping duty order on castings from the PRC on May 9, 1986. *See Antidumping Duty Order: Iron Construction Castings from the People's Republic of China*, 51 FR 17222 (May 9, 1986). On May 30, 2002, the Department received a timely request from Powin Corporation (Powin), an importer of subject merchandise, for an administrative review of Mucun Foundry of Fangzi District (Mucun Foundry). The Department published its initiation of the administrative review for Mucun Foundry on June 25, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 67 FR 42573 (June 25, 2002) (*Initiation Notice*).

On August 26, 2002, the Department issued its antidumping duty questionnaire, and on October 11, 2002, pursuant to Powin's request, the Department extended the deadlines for the questionnaire responses to October 18, 2002, for Section A, and October 25, 2002, for Sections C and D. We received, in proper form, Section A responses on October 18, 2002, and Section C and D responses on October 25, 2002.

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department may extend the deadline for completion of the preliminary results of an administrative review if it determines that it is not practicable to complete the preliminary results of a review within the statutory time limit of 245 days. On December 3, 2002, in accordance with the Act, the Department extended the time limit for completion of the preliminary results of this antidumping duty administrative review until no later than May 30, 2003. *See Notice of Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review: Certain Iron Construction Castings From the People's Republic of China*, 67 FR 75845 (December 10, 2002).

Rescission of Antidumping Duty Administrative Review of Castings

Based on our review of questionnaire responses as well as information from the U.S. Bureau of Customs and Border Protection, the Department found that the subject merchandise had not been exported to the United States by Mucun Foundry, the only company for which the review was requested and initiated. On January 30, 2003, we issued a letter and memorandum to all interested parties in this review stating our intention to rescind this administrative review because the company for which the review was requested did not export to the United States during the period of review (POR). *See Memorandum from Javier Barrientos and Julio A. Fernandez through Sally C. Gannon to Barbara E. Tillman: Iron Construction Castings from the People's Republic of China: Intent to Rescind Antidumping Duty Administrative Review* (January 30, 2003). We invited all interested parties to comment on our stated intent to rescind the review.

On February 13, 2003, Powin submitted comments objecting to a rescission, and on February 25, 2003 the petitioners[1] submitted comments supporting a rescission. We have considered Powin's and petitioners' comments and have reached a final determination to rescind this administrative review. *See Memorandum from Matthew Renkey, Case Analyst, through Maureen Flannery, Program Manager, Office of AD/CVD Enforcement VII, to Barbara Tillman, Director, Office of AD/CVD Enforcement VII: Iron Construction Castings from the People's Republic of China: Rescission of the 2001–2002 Administrative Review*, dated May 27, 2003 (*Rescission Memo*), which discusses in full the comments received.

Pursuant to our regulations, the Department will rescind an administrative review if the Department determines that ''during the period covered by the review, there were no entries, exports, or sales of the subject merchandise, as the case may be.'' *See* 19 CFR 351.213(d)(3). Given that Mucun Foundry was not the exporter, but only a producer, the Department has determined that this administrative review should be rescinded as Mucun Foundry did not have any entries, exports or sales of subject merchandise during the current POR. *See Certain Cased Pencils From the People's Republic of China: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 66 FR 1638 (January 9, 2001). *See also Laizhou City Guangming Pencil-Making Co. Ltd., Et Al., v. United States*, No. 02–151 (Ct. Int'l Trade Dec. 18, 2002). Therefore, the Department has determined that it is reasonable to rescind this administrative review of castings for the period May 1, 2001 through April 30, 2002. The Department will issue appropriate assessment instructions to the U.S. Bureau of Customs and Border Protection.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with 19 CFR§ 351.213(d)(4) and sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 27, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–13880 Filed 6–2–03; 8:45 am]

BILLING CODE 3510–DS–S

[1] Allegheny Foundry Co.; Deeter Foundry Inc.; East Jordan Iron Works, Inc.; LeBaron Foundry, Inc.; Municipal Castings, Inc.; Neenah Foundry Co.; Tyler Pipe Company; and U.S. Foundry Manufacturing Co.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580–844]

Steel Concrete Reinforcing Bars from the Republic of Korea: Notice of Postponement of Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Postponement of Preliminary Results of Administrative Review.

EFFECTIVE DATE: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Johns at (202) 482–2305 or Mark Manning at (202) 482–5253, AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

SUMMARY: The Department of Commerce (the Department) is postponing the preliminary results of the administrative review of steel concrete reinforcing bar (rebar) from the Republic of Korea (Korea). This review covers the period from January 30, 2001 through August 31, 2002.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested, and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days from the date of publication of the preliminary determination.

Background

On October 24, 2002, the Department published a notice of initiation of administrative review of the antidumping duty order on rebar from Korea (67 FR 65336). The preliminary results are currently due no later than June 2, 2003.

Extension of Time Limit for Preliminary Results of Review

The Department has determined that it is not practicable to complete the preliminary results of this review within the original time limit. **See** Decision Memorandum from Tom Futtner, Acting Director, Office IV, to Holly A. Kuga, Acting Deputy Assistant Secretary, dated concurrently with this notice, which is on file in the Central Records Unit, Room B-099 of the main Commerce building. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than September 30, 2003. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This notice is issued and published pursuant to section 751(a)(3)(A) of the Act.

Dated: May 27, 2003.

Holly A. Kuga,

Acting Deputy Assistant SecretaryImport Administration, Group II.

[FR Doc. 03–13877 Filed 6–2–03; 8:45 am]

BILLING CODE 3510–DS–S

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 03–C0001]

TGH International Trading, Inc., A Corporation Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Federal Hazardous Substances Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20. Published below is a provisionally-accepted Settlement Agreement with TGH International Trading, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by June 18, 2003.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 03–C0001, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7587.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: May 28, 2003.

Todd A. Stevenson,

Secretary.

Consent Order Agreement

1. TGH International Trading, Inc. (''TGH'' or ''Respondent'') enter into this Consent Order Agreement (hereinafter referred to as ''Agreement'') with the staff of the Consumer Product Safety Commission (''the staff'') pursuant to the Commission's Procedures for Consent Order Agreements, 16 CFR 1118.20. The purpose of this Agreement is to settle the staff's allegations that Respondent violated sections 4(a) and (c) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1263(a) and (c).

I. The Parties

2. TGH is a corporation organized and existing under the laws of the State of California. TGH's principal place of business is 421 South Wall Street, Los Angeles, CA 90013. TGH is an importer and distributor of toys.

3. The ''staff'' is the ''staff'' of the Consumer Product Safety Commission, an independent regulatory agency established by Congress under section 4 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2053.

II. Allegations of the Staff

A. Violations of the Small Parts Regulation

4. On 12 occasions between May 28, 1994, and April 24, 2002, Respondent introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, 30 types of toys (49,529 retail units) intended for use by children under three years old. These toys are identified and described as follows:

Sample No.	Toy	Entry/Collec* Date	Exporter	Quantity	LOA
S–867–8292	Cathy Dolls	05/28/94	Alltrend	30	08/03/94

Sample No.	Toy	Entry/Collec* Date	Exporter	Quantity	LOA
T–867–8024	Rainbow Loco	10/05/94	Camke	600	10/19/94
T–867–8211	Savings Bank Phone	03/22/95	Development	1,440	07/19/95
T–867–8212	Telephone Plano	03/22/95	Development	720	07/19/95
96–860–5862	Pull & Push	04/15/96	Kapo	288	05/14/96
97–860–5520	Rainbow Loco	10/18/96	Kapo	240	11/20/96
97–860–5521	Animal Funny	10/18/96	Kapo	720	11/20/96
97–860–5572	Port-A-Phone	11/20/96	Kapo	7,200	01/29/97
98–860–5608	Cartoon Car	10/09/97	Sun Ta	816	11/28/97
99–860–5683	Xylophone/Panda	07/15/99	Goldoll	1,440	08/04/99
99–860–5684	Xylophone/Dog	07/15/99	Goldoll	1,440	08/04/99
99–860–5685	Xylophone/Elephant	07/15/99	Goldoll	1,440	08/04/99
99–860–5686	Ice Cream Cart/Panda	07/15/99	Goldell	2,160	08/04/99
99–860–5687	Ice Cream Cart/Dog	07/15/99	Goldoll	2,160	08/04/99
99–860–5688	Ice Cream Cart/	07/15/99	Goldell	2,160	08/04/99
00–860–6546	Rabbit Pull toy	03/14/00	Jia Mei	5,568	04/03/00
00–860–6547	Elephant Pull Toy	03/14/00	Jia Mei	5,568	04/03/00
00–860–6548	Lion Pull Toy	03/14/00	Jia Mai	5,568	04/03/00
00–860–6549	Dog Pull Toy	03/14/00	Jia Mai	5,568	04/03/00
00–860–6550	Locomotive Pull Toy	03/14/00	Jia Mai	5,568	04/03/00
00–860–6561	Funny Train Pull Toy	03/14/00	Jia Mai	192	04/10/00
00–860–6562	Dog Pull Toy	03/14/00	Jia Mai	192	04/10/00
00–860–6563	Rabbit Pull Toy	03/14/00	Jia Mei	192	04/10/00
00–860–6564	Dog Pull Toy	03/14/00	Jia Mei	192	04/10/00
00–860–6565	Lion Pull Toy	03/14/00	Jia Mai	192	04/10/00
01–840–6017	Musical Mobile	02/05/01	CSCL	8,352	03/22/01
01–840–6048	African Giraffe	03/28/01	Goldoll	1,440	04/20/01
02–840–7010	TV Man Toy	*04/24/02	Superegent	72	07/02/02
02–840–7011	Mushroom House Toy	*04/24/02	Jia Mei	48	07/02/02
02–840–7012	Guards of Crazing Land	*04/24/02	Goldoll	17	07/02/02

5. The toys identified in paragraph 4 above are intended for children under three years old and are subject to the Commission's Small Parts Regulation, 16 CFR part 1501.

6. The toys identified in paragraph 4 above failed to comply with the Commission's Small Parts Regulation, 16 CFR part 1501, in that when tested under the ''use and abuse'' test methods specified in 16 CFR 1500.51 and .52, (a) one or more parts of each tested toy separated and (b) one or more of the separated parts from each of the toys fit completely within the small parts test cylinder, as set forth in 16 CFR 1501.4.

7. Because the separated parts fit completely within the test cylinder as described in paragraph 6 above, each of the toys identified in paragraph 4 above presents a ''mechanical hazard'' within the meaning of section 2(s) of the FHSA, 15 U.S.C. 1261(s) (choking, aspiration, and/or ingestion of small parts).

8. Each of the toys identified in paragraph 4 above is a ''hazardous substance'' pursuant to section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D).

9. Each of the toys identified in paragraph 4 above is a ''banned hazardous substance'' pursuant to section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A) and 16 CFR 1500.18(a)(9) because it is intended for use by children under three years of age and bears or contains a hazardous substance as described in paragraph 10 above; and because it presents a mechanical hazard as described in paragraph 9 above.

10. Respondent introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, the banned hazardous toys, identified in paragraph 4 above, in violation of sections 4(a) and (c) of the FHSA, 15 U.S.C. 1263(a) and (c).

B. Violations of the Rattle Regulation

11. On one occasion in 2001, Respondent introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise a rattle set (58,800 retail units) intended for use by children. The rattle set is identified and described as follows:

Sample No.	Rattle	Entry/Collec* Date	Exporter	Quantity	LOA
01–840–6011	Musical Baby Rattle Set	01/31/01	Goldoll	8,400	03/08/01
01–840–6012	Musical Baby Rattle Set	01/31/01	Goldoll	8,400	03/08/01
01–840–6013	Musical Baby Rattle Set	01/31/01	Goldell	8,400	03/08/01
01–840–6014	Musical Baby Rattle Set	01/31/01	Goldell	8,400	03/08/01
01–840–6014	Musical Baby Rattle Set	01/31/01	Goldell	8,400	03/08/01
01–840–6015	Musical Baby Rattle Set	01/31/01	Goldell	8,400	03/08/01
01–840–6016	Musical Baby Rattle Set	01/31/01	Goldell	8,400	03/08/01

12. The rattle set identified in paragraph 11 above is subject to, but failed to comply with the Commission's Rattle Regulations, 16 CFR part 1510, in that when tested under the procedures set forth in 16 CFR 1510.4, each rattle in the set penetrated the full depth of the test fixture.

13. Because each rattle in the set identified in paragraph 11 above penetrated the full depth of the cavity of the test fixture as specified in 16 CFR

1510.4, it presents a ''mechanical hazard'' within the meaning of section 2(s) of the FHSA, 15 U.S.C. 1261(s) (choking) and is, therefore, a ''hazardous substance'' pursuant to section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D).

14. The rattle set identified in paragraph 11 above is a ''banned hazardous substance'' pursuant to section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A) and 16 CFR 1500.18(a)(15) because it is intended for use by children and bears or contains a hazardous substance; and because it presents a mechanical hazard as defined in paragraph 13 above.

15. Respondent introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, the aforesaid banned hazardous rattle set identified in paragraph 11 above, in violation of sections 4(a) and (c) of the FHSA, 15 U.S.C. 1263(a) and (c).

C. Violations of the Labeling Requirements for Certain Toys and Games

16. On two occasions between March 28, 2001, and April 24, 2002, Respondent introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, two types of toys (2,890 retail units) intended to use by children who are at least three years old but not older than six years old. These toys are identified and described as follows:

Sample No.	Toy	Entry/Collec* Date	Exporter	Quality	LOA
01–840–6049	Snooker Set	03/28/01	Goldell	2,880	04/20/01
02–840–7013	Golf Play Toy Set	04/24/02	?	10	05/21/02

17. The toys identified in paragraph 16 above are subject to, but failed to comply with the Labeling Requirements for Certain Toys and Games under sections 24(b)(2)(B) and (b)(2)(C) of the FSHA, 15 U.S.C. 1278(b)(20)(B) and (b)(3)(B) and 16 CFR 1500.19(b)(3)(i) and (b)(4)(i) in that the toys did not bear the required cautionary label.

18. Because they lacked the required labeling, the toys identified in paragraph 16 above are ''misbranded hazardous substances'' pursuant to sections 2(p)(1)(D) and 24(d) of the FSHA, 15 U.S.C. 1261(p)(1)(D) and 24(d) and 16 CFR 1500.19(b)(3)(i) and 4(i).

19. Respondent introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, the misbranded hazardous toys identified in paragraph 16 above, in violation of sections 4(a) and (c) of the FHSA, 15 U.S.C. 1263(a) and (c)

III. TGH's Response

20. TGH denies the allegations of the staff set forth in paragraphs 4–19 above.

IV. Agreement of the Parties

21. The Consumer Product Safety Commission has jurisdiction over Respondent under the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051 *et seq.* and the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261 *et seq.*

22. This Settlement Agreement is entered into for settlement purposes only and does not constitute findings by the Commission or an admission by Respondent that Respondent violated the FHSA.

23. Upon final acceptance of this Agreement by the Commission and issuance of the Final Order, Respondent knowingly, voluntarily, and completely waives any rights it may have in the above captioned case (1) to an administrative or judicial hearing with respect to the staff's allegations cited herein, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Respondent failed to comply with the FHSA and the underlying regulations, (4) to a statement of findings of facts and conclusions of law, and (5) to any claims under the Equal Access of Justice Act.

24. Upon provisions acceptance of this Agreement by the Commission, this Agreement shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within 15 days, the Agreement will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**.

25. In settlement of the staff's allegations, Respondent agrees to comply with the attached Order incorporated herein by reference.

26. Upon violation of the attached Order by Respondent, the Commission reserves the right to take appropriate legal action against Respondent for all violations listed in section II of this Agreement and for all violations occurring after the effective date of this Agreement and Respondent waives the statute of limitations.

27. If the Commission finds that Respondent has introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise any banned or misbranded hazardous substances, Respondent will pay to the Commission upon demand a penalty in the amount of five (5) times the retail value of the product in question. This provision does not preclude the Commission from taking additional legal action including, but not limited to civil and/or criminal actions under sections 5 and 8 of the FHSA, 15 U.S.C. 1264 and 1267 and sections 20, 21, and 22 of the CPSA, 15 U.S.C. 2069, 2070, and 2071.

28. Respondent reserves its right to challenge the Commission's findings under paragraph 27 of this Agreement before the Commission and to have the court review whether the Commission acted arbitrary and capricious.

29. The Commission may publicize the terms of this Agreement.

30. Agreements, understandings, representations, or interpretations made outside of this Agreement may not be used to vary or to contradict its terms.

31. This Agreement shall become effective upon issuance of the Final Order by the Commission.

32. The provisions of this Agreement shall apply to Respondent and each of its successors and assigns.

Dated: April 11, 2003.

TGH International Trading, Inc.

Teresa Chan,

President, TGH International, Inc., 421 South Wall Street, Los Angeles, CA 90013.

Dated: April 11, 2003.

Consumer Product Safety Commission

Alan H. Schoem,

Assistant Executive Director, Office of Compliance, U.S. Consumer Product Safety Commission, Washington, DC 20207–0001.

Eric L. Stone,

Director, Legal Division, Office of Compliance, U.S. Consumer Product Safety Commission.

Dennis C. Kacoyanis,

Trial Attorney, Legal Division, Office of Compliance, Washington, DC.

Order

Upon consideration of the Consent Order Agreement entered into between Respondent TGH International Trading, Inc., and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Respondent; and it appearing that the Consent Order Agreement is in the public interest, *it is ordered,* that the Consent Agreement be and hereby is accepted and it is *further ordered,* that Respondent is prohibited from introducing or causing the introduction into interstate commerce; and receiving in interstate commerce and delivering or proffering delivery thereof for pay or otherwise

(a) Any toy or other article intended for use by children under three years of age that presents a choking, aspiration, or ingestion hazard because of small parts as defined in 16 CFR part 1501 when tested in accordance with the standards published in 16 CFR 1501.4, 1500.51, and 1500.52;

(b) Any rattle that presents a choking hazard because the rattle penetrates the full depth of the cavity of the test fixture as published in 16 CFR 1510.4;

(c) Any toy or other article intended for use by children who are at least three years old but less than six years old that fails to comply with the Labeling Requirements for Certain Toys and Games under section 24 of the FHSA, 15 U.S.C. 1278 and 16 CFR 1500.19; and

(d) Any other products that do not comply with the requirements of the FHSA and the underlying regulations and it is

Further ordered that a violation of this Order shall subject Respondent to legal action for all violations listed in section II of this Agreement and for all violations occurring after the effective date of this Agreement and it is

Further ordered that a violation of this Order shall subject Respondent to a penalty in the amount of five (5) times the retail value of the banned or misbranded hazardous substance and to additional legal action under the Federal Hazardous Substances Act and the Consumer Product Safety Act.

Provisionally accepted and Provisional Order issued on the 28th day of May, 2003.

By order of the Commission.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–13747 Filed 6–2–03; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent No. 6,496,301 entitled ''Helica Fiber Amplifier,'' Navy Case No. 79,001.

ADDRESSES: Requests for copies of the patent cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, e-Mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

E.F.McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–13790 Filed 6–2–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Ocean Research Advisory Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice of open meeting.

SUMMARY: The Ocean Research Advisory Panel (ORAP) will meet to discuss National Oceanographic Partnership Program (NOPP) activities. All sessions of the meeting will remain open to the public.

DATES: The meetings will be held on Monday, June 2, 2003, from 1 p.m. to 5 p.m. and Tuesday, June 3, 2003, from 8:30 a.m. to 1 p.m. In order to maintain the meeting time schedule, members of the public will be limited in their time to speak to the Panel. Members of the public should submit their comments one week in advance of the meeting to the meeting point of contact.

ADDRESSES: The meeting will be held at The New Orleans Marriott, 55 Canal St, New Orleans, LA.

FOR FURTHER INFORMATION CONTACT: Dr. Melbourne G. Briscoe, Office of Naval Research, 800 North Quincy St., Arlington, VA 22217–5660, telephone number (703) 696–4120.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The purpose of this meeting is to discuss NOPP activities. The meeting will include discussions on ocean observations, current and future NOPP activities, and other current issues in the ocean sciences community.

Dated: May 29, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–13961 Filed 5–30–03; 10:32 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.255A]

Office of Safe and Drug Free Schools—Life Skills for State and Local Prisoners Program; Notice Inviting Applications for New Awards Using Fiscal Year (FY) 2002 Funds

Purpose of Program: The Life Skills for State and Local Prisoners Program provides financial assistance for establishing and operating programs designed to reduce recidivism through the development and improvement of life skills necessary for reintegration of adult prisoners into society.

Eligible Applicants: State or local correctional agencies and State or local correctional education agencies.

Applications Available: June 3, 2003.

Deadline for Transmittal of Applications: July 14, 2003.

Deadline for Intergovernmental Review: August 13, 2003.

Estimated Available Funds: $4,750,000.

Estimated Range of Awards: $315,000–$475,000

Estimated Average Size of Awards: $395,000.

Estimated Number of Awards: 12.

Note: Estimates are based on FY 2002 appropriated funds only, for the first budget

period of each grant. The Department plans to use FY 2003 funds appropriated for this program to make continuation awards for the second budget period of these projects to grantees that demonstrate they are making substantial progress toward achieving the goals and objectives for their projects. The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, 85, 97, 98, and 99.

Definitions: For purposes of this competition, terms used in this notice have the following meanings as found in 34 CFR 490.4:

Life skills includes self-development, communication skills, job and financial skills development, education, interpersonal and family relationship development, and stress and anger management.

Local correctional agency means any agency of local government that provides corrections services to incarcerated adults.

Local correctional education agency means any agency of local government, other than a local correctional agency, that provides educational services to incarcerated adults.

State correctional agency means any agency of State government that provides corrections services to incarcerated adults.

State correctional education agency means any agency of State government, other than a State correctional agency, that provides educational services to incarcerated adults.

Additional Awards: Contingent upon the availability of FY 2003 and FY 2004 funds, we may make additional awards under these appropriations from the rank-ordered list of unfunded applications from this competition.

Absolute Priority: Under 34 CFR 75.105(c)(3), we will consider only applications that meet the following absolute priority: Grants for projects that assist State or local correctional agencies and State or local correctional education agencies in establishing and operating programs designed to reduce recidivism through the development and improvement of life skills necessary for reintegration of adult prisoners into society.

Invitational Priorities: Within the absolute priority, we are particularly interested in applications that meet one or more of the following invitational priorities.

Invitational Priority 1. Projects that integrate life skills instruction and services under a comprehensive reentry plan with the State Serious and Violent Offender Reentry Initiative project funded by the U.S. Department of Justice.

Invitational Priority 2. Projects that emphasize cognitive and interpersonal skills such as goal setting, developing strong family relationships, strengthening values, and enhancing social skills.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the invitational priorities a competitive or absolute preference over other applications.

Performance Measures: The Secretary has established the following key performance measure for assessing the effectiveness of the Life Skills for State and Local Prisoners Program: the number of prisoners who attain measurable gains in one or more of the life skill domains (*e.g.*, self-development, communication skills, job and financial skills development, education, interpersonal and family relationship development, stress and anger management or others) taught under these Life Skills projects. The Secretary has set an overall performance target that calls for the number of prisoners acquiring enhanced life skills from the cohort of Life Skills grant program projects initiated under this competition to increase by five percent annually.

In applying the selection criteria that follow for ''Quality of project services'' and ''Quality of the project evaluation'', the Secretary will take into consideration the extent to which the applicant demonstrates a strong capacity (1) to help achieve this target, and (2) to provide reliable data to the Department on the project's impact as measured by number of prisoners participating in Life Skills grants acquiring enhanced life skills.

Selection Criteria: We use the following selection criteria from 34 CFR 75.210 to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion or factor under that criterion is indicated in parentheses.

(1) *Significance.* (20 points)—In determining the significance of the proposed project, the following factors are considered:

(a) The likelihood that the proposed project will result in system change or improvement.

(b) The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study.

(c) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(d) The extent to which the proposed project is likely to yield findings that may be utilized by other appropriate agencies and organizations.

(2) *Quality of the project design.* (25 points)—In determining the quality of the design of the proposed project, the following factors are considered:

(a) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(b) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(c) The extent to which the proposed project represents an exceptional approach for meeting statutory purposes and requirements.

(d) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(e) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population.

(3) *Quality of project services.* (25 points)—In determining the quality of the services to be provided by the proposed project, the following factors are considered:

(a) The quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(b) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(c) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(d) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

(4) *Quality of the management plan.* (10 points)—In determining the quality of the management plan for the

proposed project, the following factor is considered:

(a) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(5) *Quality of the project evaluation.* (20 points)—In determining the quality of the evaluation, the following factors are considered:

(a) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(b) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(c) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(d) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf, you may call 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs/html*. Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.255A.

Note: Some of the procedures in these instructions for transmitting applications differ from those in EDGAR (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs, as well as discretionary grant competitions. The Life Skills for State and Local Prisoners Program is one of the programs included in the pilot project. If you are an applicant under this grant competition, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We invite your participation in this pilot project. We will continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED Form 424), Budget Information—Non-Construction Programs, (ED Form 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED Form 424) to the Application Control Center following these steps:

1. Print ED Form 424 from the e-Application system.
2. Make sure that the applicant's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-Application system. You will receive an automatic acknowledgement, which will include a PR/Award number an identifying number unique to your application).
4. Place the PR/Award number in the upper right corner of ED Form 424.
5. Fax ED Form 424 to the Application Control Center within three business days of submitting your electronic application at (202) 260–1349.
6. We may request that you give us original signatures on all other forms at a later date.
7. *Closing Date Extension in the Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Life Skills for State and Local Prisoners Program and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application via e-Application, by mail, or by hand delivery. For us to grant this extension:

(1) You must be a registered user of e-Applications, and have initiated an e-Application for this competition; and

(2) (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m. (ET), on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m. Eastern time on the deadline date.

The Department must acknowledge and confirm the period of unavailability before you will be granted an extension. To request this extension you must contact Carlette Huntley by e-mail at *Carlette.Huntley@ed.gov* or by telephone at (202) 260–7274 or the e-Grants help desk at (888) 336–8930.

You may access the electronic grant application for the Life Skills for State and Local Prisoners Program at: *http://e-grants.ed.gov*.

We have included additional information on the e-Application pilot project (see Parity Guidelines between paper and Electronic Applications) in the application package.

If you want to apply for a grant and be considered for funding, you must meet the deadline requirements included in this notice.

FOR FURTHER INFORMATION CONTACT: Carlette Huntley, U. S. Department of Education, 330 C Street, SW., Washington, DC 20202–7274. Telephone: (202) 260–7272 or via Internet: *Carlette.Huntley@ed.gov*.

Individuals with disabilities may obtain this document, or an application package, in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed at the beginning of this section. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access To This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

Program Authority: 20 U.S.C. 1211–2 (1991).

Dated: May 27, 2003.

Judge Eric Andell,

Deputy Under Secretary for Safe and Drug-Free Schools.

[FR Doc. 03–13836 Filed 6–2–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement for the Western Greenbrier Co-Production Demonstration Project, Rainelle, WV and Notice of Floodplain/Wetlands Involvement

AGENCY: Department of Energy.

ACTION: Notice of Intent to prepare an Environmental Impact Statement and Notice of Floodplain/Wetlands Involvement.

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR Parts 1500–1508), and the DOE NEPA regulations (10 CFR Part 1021), to assess the potential environmental impacts of a proposed project by Western Greenbrier Co-Gen LLC (WGC) to design, construct, and operate, in Rainelle, Greenbrier County, West Virginia, a demonstration facility that would use an innovative atmospheric-pressure circulating fluidized-bed (ACFB) boiler as the source of heat for the co-production of electricity, steam and structural brick. The proposed project, selected under the Clean Coal Power Initiative competitive solicitation, would be the first demonstration in the United States of a compact inverted cyclone configuration for the boiler design. This design has a 40 percent smaller footprint than a conventional boiler system of similar capacity.

The proposed power station would produce 85 MW (megawatts) of net electrical power plus 10,000–30,000 pounds per hour of steam and hot water. Steam and hot water from the proposed facility would serve an industrial park, which the host municipality has planned for land adjoining the power plant. Fuel for the power plant would be coal wastes from waste piles within the surrounding area. When necessary to raise the BTU content of the fuel, quality coal would be blended with the waste coal. The proposed project would also be a first demonstration of the utilization of coal combustion ash and wood wastes for the manufacture of molded building blocks, known as Woodbrik™, to supply the regional construction materials market. All ash that is not used in by-product manufacture would be returned to the coal waste source sites to be used in the mitigation of acid leachate.

The EIS will evaluate the proposed project and reasonable alternatives. Because the proposed project would affect a floodplain and may affect wetlands, the EIS will include a floodplain assessment and wetlands assessment and DOE will prepare a floodplain statement of findings in accordance with DOE regulations for compliance with floodplain/wetlands environmental review requirements (10 CFR part 1022).

The EIS will help DOE decide whether to provide 50 percent (approximately $107.5 million) of the total estimated funding of $215 million for the proposed project. The purpose of this Notice of Intent is to inform the public about the proposed project; announce plans for a public scoping meeting; invite public participation in the EIS process; and solicit public comments for consideration in establishing the proposed scope and content of the EIS.

DATES: To ensure that all of the issues related to this proposal are addressed, DOE invites comments on the proposed scope and content of the EIS from all interested parties. Comments must be received by July 3, 2003, to ensure consideration. Late comments will be considered to the extent practicable. In addition to receiving comments in writing and by telephone [*See* **ADDRESSES** below], DOE will conduct a public scoping meeting in which agencies, organizations, and the general public are invited to present oral comments or suggestions with regard to the range of actions, alternatives, and impacts to be considered in the EIS. The scoping meeting will be held at Greenbrier West High School in Charmco, West Virginia on June 19, 2003, beginning at 7 p.m. (*See* Public Scoping Process). Greenbrier West High School is located on U.S. Route 60 approximately 10.3 miles west of I–64 Exit 156 at Sam Black Church. The public is invited to an informal session at this location beginning at 4 p.m. to learn more about the proposed action. Displays and other forms of information about the proposed agency action and the demonstration plant will be available, and DOE personnel will be present at the informal session to discuss the proposed project and the EIS process.

ADDRESSES: Written comments on the proposed EIS scope and requests to participate in the public scoping meeting should be addressed to the NEPA Document Manager for the Western Greenbrier Co-Production Demonstration Project: Mr. Mark L. McKoy, National Energy Technology Laboratory, U.S. Department of Energy, P.O. Box 880, Morgantown, WV 26507–0880.

People who want to participate in the public scoping process also may contact Mr. Mark L. McKoy directly at telephone 304–285–4426; toll free number 1–800–432–8330 (extension 4426); fax 304–285–4403; or e-mail *mmckoy@netl.doe.gov.*

FOR FURTHER INFORMATION CONTACT: To obtain additional information about this project or to receive a copy of the draft EIS for review when it is issued, contact Mr. Mark L. McKoy at the address provided above. For general information on the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW.,Washington, DC 20585–0119, Telephone: 202–586–4600, facsimile: 202–586–7031, or leave a toll-free message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background and Need for Proposed Agency Action

Since the early 1970s, DOE and its predecessor agencies have pursued research and development programs that contain long-term, high-risk activities that support the development of innovative concepts for a wide variety of coal technologies through the proof-of-concept stage. However, the availability of a technology at the proof-of-concept stage is not sufficient to ensure its continued development and subsequent commercialization. Before any technology can be considered seriously for commercialization, it must be demonstrated. The financial risk associated with technology demonstration is, in general, too high for the private sector to assume in the absence of strong incentives. The Clean Coal Power Initiative (CCPI) was established in 2002 as a government/industry partnership to implement the President's National Energy Policy recommendation to increase investment in clean coal technology. This recommendation addresses a national challenge of ensuring the reliability of electricity supply while simultaneously protecting the environment. The goal of the CCPI program is to accelerate commercial deployment of advanced

coal technologies that provide the United States with clean, reliable, and affordable energy. Through cooperative agreements established pursuant to the CCPI program, DOE would accelerate deployment of innovative technologies to meet near-term energy and environmental goals, reduce technological risks to the business community to an acceptable level, and provide private sector incentives required for continued activity in innovative research and development.

Proposed Action

The proposed action is for DOE to provide, through a 5-year cooperative agreement with Western Greenbrier Co-Gen LLC (WGC), financial assistance for a proposed demonstration project to co-produce heat and electric power in a new generating station at Rainelle, Greenbrier County, West Virginia. The new generating station would be designed for long-term commercial operation (at least 20 years) following completion of the cooperative agreement with DOE and would cost approximately $215 million. DOE's share would be approximately $107.5 million (50 percent).

WGC is proposing to design, construct, and operate an 85 MW (megawatt) atmospheric-pressure, circulating fluidized-bed boiler (ACFB) facility that would generate electricity and steam by burning approximately 1,800 tons per day of waste coal as the primary fuel. A coal-fired rotary kiln would be coupled with the power plant and would calcine coal ash and limestone into a cementitious material for use with wood wastes in the on-site manufacture of structural bricks and blocks (Woodbrik™).

The proposed facility would be the first commercial application within the United States of a fluidized bed combustor that would have a compact inverted cyclone design. This design would give the boiler system a 40 percent smaller footprint than a conventional boiler system of similar capacity, and would reduce structural steel requirements and construction costs by up to 60 percent. Additionally, the proposed brick making facility would be the first commercial demonstration of the Woodbrik™ process in the United States.

In addition to electricity and Woodbrik™ products, the proposed plant would co-produce steam and hot water and serve as the anchor tenant for a new environmentally balanced industrial park. This ''Eco-Park'' would use hot water produced from the plant's turbine exhaust to provide heating for buildings, agricultural activities and aquacultural activities. Steam would be used for various heating and industrial processes, which might include hardwood drying.

The source for the waste coal fuel for the plant would be a 4 million ton coal refuse site in Anjean, WV. If the Anjean site is not available, other nearby sites would supply the coal wastes. Any additional heating value requirements for the waste coal as a fuel would be supplied by blending with quality coal. Coal combustion ash that is not used in by-product manufacture at the proposed facility would be used to remediate acid drainage from the source coal waste piles. If successfully demonstrated, this technology could be applied to many regions of the country for reclaiming contaminated land where waste coal is currently stockpiled.

The proposed project site comprises approximately 26 acres located within or adjoining a 30-acre industrial park that is currently under development by the city of Rainelle. The site is approximately 160 kilometers (100 miles) southeast of the city of Charleston, West Virginia. The area can be reached by State Highway 60 and is less than 14 miles from I–64. Construction of the proposed plant would be expected to require approximately 27 months, following eight months of project definition and nine months of detailed design.

Alternatives

NEPA requires that agencies discuss the reasonable alternatives to the proposed action in an EIS. The purpose of the agency action determines the range of reasonable alternatives. In this case, the Clean Coal Power Initiative was established to help implement the President's National Energy Policy (NEP) recommendation to increase investment in clean coal technology by addressing national challenges of ensuring the reliability of domestic energy supplies while simultaneously protecting the environment. The CCPI program was structured to achieve NEP goals by promoting private sector initiatives to invest in demonstrations of advanced commerce-ready technologies through the use of Federal, cost-sharing, financial assistance awards. This approach puts DOE in a much more limited role than if the Federal government were the owner and operator of the project. In the latter situation, DOE would be responsible for a comprehensive analysis of reasonable alternative locations for the project. However, when dealing with applicants for financial assistance awards under the CCPI program, the scope of alternatives is necessarily more restricted because DOE must focus on alternative ways to accomplish its purpose that reflect both the applications before it and the functions that DOE plays in the decision process. As a grantor of financial assistance awards under a competitive open solicitation, DOE must give substantial deference to each applicant's needs in establishing a project's reasonable alternatives.

The range of reasonable options to be considered in the EIS for the WGC Demonstration Project is determined in accordance with the overall NEPA strategy. Because of DOE's limited role of providing financial assistance for the proposed Western Greenbrier Co-Production Demonstration Project, DOE currently plans to give primary emphasis to the proposed action and the no-action alternative. Under the no-action alternative, DOE would not provide partial funding for the design, construction, and operation of the proposed project. In the absence of DOE funding, the Western Greenbrier Co-Production Demonstration Project probably would not occur. If the proposed Western Greenbrier Co-Production Demonstration Project is not built, Western Greenbrier would need to consider other approaches to meet its goals, which could include the use of conventional technologies to produce electricity or using some other currently developing technology. DOE will consider other alternatives that may be suggested during the public scoping period.

Under the proposed action, project activities would include engineering and design, permitting, fabrication and construction, and testing of facilities that would demonstrate the proposed technologies. Upon completion of the demonstration phase, the facility would continue commercial operation.

Preliminary Identification of Environmental Issues

The following environmental issues have been tentatively identified for analysis in the EIS. This list was developed from analyses of the proposed technology, the scope of the proposed project, and similar projects. It is presented to facilitate public comment on the planned scope of the EIS and is neither intended to be all-inclusive nor a predetermined set of potential impacts. Additions to or deletions from this list may occur as a result of the public scoping process. Environmental issues include:

(1) Air quality impacts: potential impacts resulting from air emissions during operation of the power plant and kiln, impacts on local sensitive

receptors, increases in local smog and haze, water vapor plumes, dust from construction and transportation, impacts on special-use areas;

(2) Noise and light impacts: potential impacts resulting from construction, transportation of materials, and plant operation;

(3) Traffic Issues: potential impacts resulting from the construction and operation of the proposed facility including changes in local traffic patterns, deterioration of roads, traffic hazards, traffic controls;

(4) Floodplains and wetlands: potential impacts on flood flow resulting from earthen fills, access roads and dikes constructed within the floodplain; impacts to wetlands;

(5) Visual impacts associated with plant structures: views from neighborhoods, impacts on scenic views, impacts from water vapor plumes and haze; internal and external perception of the local community;

(6) Reclamation impacts: potential impacts resulting from recovery of coal waste and from the reclamation of the waste coal source sites; mitigation of acid drainage from coal waste piles, and other environmental improvements;

(7) Water quality: potential impacts resulting from wastewater utilization and discharge, water usage, and reclamation of waste coal sites;

(8) Infrastructure and land use, including potential environmental and socioeconomic effects of plant construction, delivery of feed materials, recovery of waste coal, steam and heat distribution, electric power generation and transmission, WoodbrikTM production and distribution, and site restoration;

(9) Water usage: water consumption, potential effects on surface and groundwater resources and withdrawal of water from the municipal sewage treatment plant;

(10) Solid Waste: pollution prevention and waste management, including ash, slag, and wastewater treatment facility sludge;

(11) Cumulative effects that result from the incremental impacts of the proposed project when added to the other past, present, and reasonably foreseeable future projects;

(12) Ecological: Potential on-site and off-site impacts to vegetation, terrestrial wildlife, aquatic wildlife, threatened and endangered species, and ecologically sensitive habitats;

(13) Connected actions: Use of heat and energy from the plant for the adjoining Eco-Park;

(14) Compliance with regulatory requirements and environmental permitting; and

(15) Environmental monitoring.

Parts or all of the proposed power plant and brick manufacturing facility would occupy a floodplain along Sewell Creek, in Rainelle, West Virginia. Parts of the proposed facilities may occupy jurisdictional wetland areas on the floodplain. Therefore, in accordance with DOE regulations (10 CFR Part 1022), the final EIS will include a floodplain and wetlands assessment and a floodplain statement of findings.

Public Scoping Process

To ensure that all issues related to this proposal are addressed, DOE seeks public input to define the scope of the EIS. The public scoping period will end on July 3, 2003. Interested agencies, organizations and the general public are encouraged to submit comments or suggestions concerning the content of the EIS, issues and impacts to be addressed in the EIS, and alternatives that should be considered. Scoping comments should clearly describe specific issues or topics that the EIS should address to assist DOE in identifying significant issues. Written, e-mailed, faxed, or telephoned comments should be communicated by July 3, 2003 (*see* **ADDRESSES**).

DOE will conduct a public scoping meeting at Greenbrier West High School in Charmco, West Virginia on June 19, 2003 beginning at 7 p.m. Greenbrier West High School is located on U.S. Route 60 approximately 10.3 miles west of I–64 Exit 156 at Sam Black Church. In addition, the public is invited to an informational session at this location beginning at 4 p.m. to learn more about the proposed action. Displays and other information about the proposed agency action and location will be available, and DOE personnel will be present to discuss the proposed action and the NEPA process.

The formal scoping meeting will begin at 7 p.m. on June 19, 2003. Members of the public who wish to speak at this public scoping meeting should contact Mr. Mark L. McKoy, either by phone, fax, computer, or in writing (*see* **ADDRESSES** in this Notice). Those who do not arrange in advance to speak may register at the meeting (preferably at the beginning of the meeting) and may speak after previously scheduled speakers. Speakers who want more than five minutes should indicate the length of time desired in their request. Depending on the number of speakers, DOE may need to limit speakers to five minutes initially and provide additional opportunities as time permits. Speakers may also provide written materials to supplement their presentations. Oral and written comments will be given equal consideration.

DOE will begin the meeting with an overview of the proposed Western Greenbrier Co-Production Demonstration Project. The meeting will not be conducted as an evidentiary hearing, and speakers will not be cross-examined. However, speakers may be asked questions to help ensure that DOE fully understands the comments or suggestions. A presiding officer will establish the order of speakers and provide any additional procedures necessary to conduct the meeting.

Issued in Washington, DC, this 28th day of May, 2003.

Beverly A. Cook,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 03–13857 Filed 6–2–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Submission for OMB Review; Comment Request.

SUMMARY: The EIA has submitted the energy information collection listed at the end of this notice to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 et seq).

DATES: Comments must be filed by July 3, 2003. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to Bryon Allen, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail (*BAllen@omb.eop.gov*) is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–3087. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (grace.sutherland@eia.doe.gov) is recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 287–1712.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.,* the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.,* new, revision, extension, or reinstatement); (5) response obligation (*i.e.,* mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.,* the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Appendix C—Delivery Commitment Schedule, NWPA–830G Appendix G—Standard Remittance and Advice for Payment for Fees, and Annex A to Appendix G—Standard Remittance Advice for Payment of Fees
2. Office of Civilian Radioactive Waste Management (OCRWM)
3. OMB Number 1901–0260
4. Three-year approval requested
5. Mandatory
6. NWPA–830C ''Delivery Commitment Schedule,'' is designed for contract holders to designate the facility where DOE will accept their fuel, the number of assemblies to be accepted, and the mode of transportation to ship the assemblies. The information collected will be used to determine the Federal waste management system configuration. NWPA–830G (and Annex A of schedule G) ''Standard Remittance Advice for Payment of Fees,'' is designed to serve as the source document for entries into DOE accounting records to transmit data from Purchasers to the DOE concerning payment into the Nuclear Waste Fund of their fees for spent nuclear fuel and high-level waste disposal.
7. Business or other for-profit
8. 2,658 hours (5.21 hours per response × 4.36 responses per year × 117 respondents).

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13)(44 U.S.C. 3501 et seq).

Issued in Washington, DC, April 29, 2003.

Jay H. Casselberry, Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 03–13854 Filed 6–2–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–850–000, et al.]

Ohio Power Company, et al.; Electric Rate and Corporate Filings

May 23, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Ohio Power Company

[Docket No. ER03–805–000]

Take notice that on May 1, 2003, Ohio Power Company and Columbus Southern Power Company tendered for filing a Notice of Cancellation on FERC Electric Rate Schedule No. 70 and No. 17, consisting of a Power Delivery Agreement among Buckeye Power, Inc., the Cincinnati Gas & Electric Company, Columbus Southern Power Company, the Dayton Power and Light Company, Monongahela Power Company, Ohio Power Company and the Toledo Edison Company dated as of January 1, 1968.

Ohio Power Company and Columbus Southern Power Company state that the Notice of Cancellation has been served upon Buckeye Power, Inc., the Cincinnati Gas and Electric Company, the Dayton Power & Light Company, Monongahela Power Company and the Toledo Edison Company, and upon the Public Utilities Commission of Ohio.

Comment Date: June 3, 2003.

2. Southern California Edison Company

[Docket No. ER03–858–000]

Take notice that on May 21, 2003, Southern California Edison Company (SCE) tendered for filing a Letter Agreement between SCE and WM Energy Solutions, Inc. (WMES).

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and WMES.

Comment Date: June 11, 2003.

3. The Connecticut Light and Power Company

[Docket No. ER03–859–000]

Take notice that on May 21, 2003, Northeast Utilities Service Company (NUSCO), on behalf of its affiliate The Connecticut Light and Power Company (CL&P), filed the executed Engineering, Licensing, Construction, Interconnection and Equipment Removal Agreement—Waterside Power Temporary Emergency Generation by and between CL&P and Waterside Power, LLC (Waterside) designated as Original Service Agreement No. 99 (Service Agreement) under Northeast Utilities System Companies' Open Access Transmission Tariff No. 9. NUSCO states that the Service Agreement is a new agreement establishing the terms and conditions under which Waterside's gas turbine electrical generating facility in Stamford, Connecticut will be temporarily interconnected to CL&P's transmission system for the summer of 2003.

NUSCO states that a copy of this filing has been sent to Waterside and that Waterside fully consents to and supports this filing. NUSCO and Waterside request an effective date for the Service Agreement of May 20, 2003, and request any waivers of the Commission's regulations that may be necessary to permit such an effective date.

Comment Date: June 3, 2003.

4. Sierra Pacific Industries

[Docket No. ER03–860–000]

Take notice that on May 21, 2003, Sierra Pacific Industries (SPI), filed with the Federal Energy Regulatory Commission an application for approval of its initial tariff (FERC Electric Tariff Original Volume No. 1), and for blanket approval for market-based rates pursuant to part 35 of the Commission's regulations.

SPI seeks blanket market-based rate authority as well as the waiver of those Commission rules generally granted to power marketers. SPI is a California corporation.

Comment Date: June 11, 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. 03–13740 Filed 6–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Orion Power New York GP II, Inc., Notice of Availability of Environmental Assessment

May 27, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47,897), the Office of Energy Projects has reviewed the application for license for the Newton Falls Hydroelectric Project, located on Oswegatchie River in St. Lawrence County, New York, and prepared an environmental assessment (EA). The EA contains staff's analysis of the environmental effects of the proposal and concludes that approval, with additional staff-recommended measures, would not constitute a major federal action significantly affecting the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room, or it 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. 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Please file any comments (an original and 8 copies) within 45 days from the date of this letter. The comments should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix the Project No. 7000–015 to all comments. Comments may be filed electronically via the Internet in lieu of paper (*see* 18 CFR 385.2001(a)(1)(iii)) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-filing'' link. The Commission strongly encourages electronic filings.

Please contact Janet Hutzel at (202) 502–8675, or by e-mail at *janet.hutzel@ferc.gov* if you have any questions or if you require further information.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13741 Filed 6–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–80–000]

Eastern Shore Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed 2003–2005 System Expansion Project and Request for Comments on Environmental Issues

May 27, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the 2003–2005 System Expansion Project involving construction and operation of natural gas pipeline facilities by Eastern Shore Natural Gas Company (Eastern Shore) in Chester County, Pennsylvania and New Castle County, Delaware.[1] These facilities consist of about 5.7 miles of 16-inch-diameter loop,[2] modification to an existing meter station, and construction of a new pressure regulator. Construction would be done in three phases from the fall of 2003 through 2005. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Eastern Shore provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Eastern Shore proposes to increase the capacity of its facilities in Southeastern Pennsylvania and Delaware to supply increased quantities of natural gas to existing local distribution customers. This project would allow Eastern Shore to deliver an additional 15,100 Dekatherms per day (Dt/d) of gas to these customers.

Eastern Shore proposes to construct the project in three phases. Phase I would upgrade the Parkesburg Meter Station and increase capacity 3,800 Dt/d. Phase II, constructed in 2004, would consist of 2.7 miles of 16-inch-diameter loop in Chester County, Pennsylvania and would supply an additional 4,700 Dt/d. Phase III, constructed in 2005, would consist of 3.0 miles of 16-inch-diameter loop and a pressure regulator supplying an additional 6,600 Dt/d.

[1] Eastern Shores's application was filed with the Commission on April 1, 2003, under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] A loop is a segment of pipeline that is installed adjacent to an existing pipeline and connected to it on both ends. The loop allows more gas to be moved through the pipeline system.

The general location of Eastern Shore's proposed facilities is shown on the maps attached as appendix 1.[3]

Land Requirements for Construction

Construction of Eastern Shore's proposed facilities would require about 51.3 acres of land, including construction right-of-way for the loops, the meter station, and extra work areas needed for pipe storage yards, staging areas, and warehouse sites. The majority of the loops would be constructed directly adjacent to Eastern Shore's existing rights-of-way. For the construction of the loops, Eastern Shore proposes to use a 75-foot-wide construction right-of-way, which includes a 35-foot overlap of the existing right-of-way for workspace and temporary spoil storage. About 22.2 acres would be maintained as permanent right-of-way. Construction access to Eastern Shore's project generally would use the construction right-of-way and existing road network.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[4] to discover and address concerns the public may have about proposals. We call this ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources and wetlands
- Vegetation and wildlife
- Threatened and endangered species
- Cultural resources
- Land use
- Reliability and safety

We will evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 8.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Eastern Shore. This preliminary list of issues may be changed based on your comments and our analysis.

- Resources and Wetlands
  —Crossing 8 perennial waterbodies.
  —Crossing 15 wetlands, including 0.6 acres of forested wetlands.
- Vegetation
  —Clearing 3.8 acres of upland forest.
- Threatened and Endangered Species
  —One Federally-listed amphibian specie.
- Land Use
  —33 residences located within 50 feet of the construction work area.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations or routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426; Label one copy of the comments for the attention of Gas Branch 1; Reference Docket No. CP03–80–000; and Mail your comments so that they will be received in Washington, DC on or before June 27, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Login to File'' and then ''New User Account.''

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2).[5] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Web site at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[4] ''We'', ''us'', and ''our'', refer to the environmental staff of the Office of Energy Projects (OEP).

[5] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208-FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you too keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. 03–13738 Filed 6–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for A New License

May 27, 2003.

a. *Type of Filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 906.

c. *Date Filed:* May 19, 2003.

d. *Submitted By:* Virginia Electric and Power Company, d.b.a. Virginia Dominion Power—current licensee.

e. *Name of Project:* Cushaw Hydroelectric Project.

f. *Location:* On the James River in Amherst County, Virginia. The project occupies federal land within the Jefferson National Forest.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act

h. *Licensee Contact:* James Thornton, Dominion Virginia Power, (Manager for Licensee), Innsbrook Technical Center, 1 NE., 5000 Dominion Boulevard, Glen Allen, VA 23060, (804) 273–3257.

i. *FERC Contact:* Janet Hutzel, *janet.hutzel@ferc.com,* (202) 502–8675.

j. *Effective date of current license:* September 1, 1980.

k. *Expiration date of current license:* June 15, 2008.

l. *Description of the Project:* The project consists of the following existing facilities: (1) A 1,550-foot-long, 27-foot-high concrete dam; (2) a 138-acre reservoir; (3) a powerhouse containing five turbine generating units with a total installed capacity of 7,500 kW; and (4) other appurtenances.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 15, 2006.

n. A copy of 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, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or TTY (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

o. 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 as shown in the paragraph above.

Magalie R. Salas,

Secretary.

Project No. 906–000

Mail List for P–906; Virginia Electric and Power Company

Dr. William E. Trout, III, American Canal Society, 35 Towana Rd, Richmond, VA 23226–3124.

Director, Bureau of Land Management, Eastern States Office, 7450 Boston Blvd, Springfield, VA 22153–3121.

Regional Engineer, Federal Energy Regulatory Commission, Atlanta Regional Office, 3125 Presidential Pkwy Ste 300, Atlanta, GA 30340–3700.

Executive Director, Historic Landmarks Commission, 2801 Kensington Ave, Richmond, VA 23221–2470.

Regional Director, National Marine Fisheries Service, Northeast Regional Office—DOC/NOAA, 1 Blackburn Dr, Gloucester, MA 01930–2237.

Administrator, National Marine Fisheries Service, 904 S Morris St, Oxford, MD 21654–1323.

Chief, National Park Service, Northeast Region—U.S. Custom House, 200 Chestnut St, Philadelphia, PA 19106–2912.

Director, Northern Virginia Regional Park Auth., 5400 Ox Rd, Fairfax Station, VA 22039–1022.

Chairman, South Carolina Dept of Natural Resources, 1201 Main St Ste 1100, Columbia, SC 29201–3265.

Regional Director, U.S. Fish & Wildlife Service, 300 Westgate Center Dr, Hadley, MA 01035–9587.

Director, U.S. Fish & Wildlife Service, Chesapeake Bay Field Office, 177 Admiral Cochrane Dr, Annapolis, MD 21401–7307.

Gloucester Point_Office Director, U.S. Fish & Wildlife Service, 6669 Short Ln, Gloucester, VA 23061–4410.

Commander, U.S. Army Corps of Engineers, PO Box 1159, Cincinnati, OH 45201–1159.

U.S. Army Engineer Div., U.S. Army Corps of Engineers, North Atlantic Division—CENAD–ET–P, 405 Gen. Lee Ave., Fort Hamilton Mil. Com., Brooklyn, NY 11252–6700.

Chief, U.S. Army Corps of Engineers, District Office, 803 Front St, Norfolk, VA 23510–1011.

Fred Allgaier, U.S. Bureau of Indian Affairs, 3000 Youngfield St Ste 230, Lakewood, CO 80215–6551.

Solicitors Office, U.S. Bureau of Indian Affairs, 1849 C St NW., Rm 6454, Washington, DC 20240–0001.

Malka Pattison, U.S. Bureau of Indian Affairs, Office of Trust Responsibilities, 1849 C Street, NW., MS 4513 MIB, Washington, DC 20240–0001.

Dr. James Kardatzke, Ecologist, U.S. Bureau of Indian Affairs, Eastern Regional Office 711 Stewarts Ferry Pike, Nashville, TN 37214–2751.

Commanding Officer, U.S. Coast Guard, MSO Hampton Roads, 200 Granby St, Norfolk, VA 23510–1811.

Director, U.S. Department of Energy, Suite 501, 1880 John F Kennedy Blvd., Philadelphia, PA 19103–7422.

Director, U.S. Department of the Interior, Bureau of Land Management Region 1–V, 7450 Boston Blvd, Springfield, VA 22153–3121.
Regional Environmental Officer, U.S. Department of the Interior, 244 Custom House, 200 Chestnut St., Philadelphia, PA 19106–2912.
Regional Administrator, U.S. Environmental Protection Agency, Region III, 1650 Arch St, Philadelphia, PA 19103–2029.
Naomi Johnson, Lands Program Manager, U.S. Forest Service, George Washington & Jefferson Nat. Forests, 5162 Valleypointe Pkwy, Roanoke, VA 24019–3050.
George Allen, Honorable, U.S. Senate, Washington, DC 20510.
John W. Warner, Honorable, U.S. Senate, Washington, DC 20510.
Malcolm G Deacon Jr., Vice President, VEPCO d/b/a Dominion Generation, 5000 Dominion Blvd, IN 1 NE., Glen Allen, VA 23060–3308.
A. Michael Wood, Director-Productions, VEPCO d/b/a Dominion Generation, PO Box 280, Warm Springs, VA 24484–0280.
C. Doug Holley, Director F&H Ops., VEPCO d/b/a Dominion Generation, Innsbrook Technical Center, IN 1 NE., 5000 Dominion Blvd., Glen Allen, VA 23060–3308.
Sara S Bell, Environmental Coord., VEPCO d/b/a Dominion Generation, PO Box 289, Warm Springs, VA 24484–0289.
Jim Thornton, Technical Advisor, VEPCO d/b/a Dominion Generation, Innsbrook Technical Center, IN 1 NE., 500 Dominion Boulevard, Glen Allen, VA 23060.
Katheryn B Curtis, VEPCO d/b/a Dominion Generation, Innsbrook Technical Center, IN 1 NE., 5000 Dominion Blvd., Glen Allen, VA 23060–3308.
Cynthia Oakey, Counsel, VEPCO d/b/a Dominion Generation, PO Box 26532, Richmond, VA 23261–6532.
Director, Virginia Dept. of Agriculture Commerce, PO Box 1163, Richmond, VA 23218–1163.
Director, Virginia Dept. of Conservation & Recreat, Division of Planning & Recreation Res. 203 Governor St Ste 326, Richmond, VA 23219–2049.
Evelyn M. Glazier, Director, Virginia Dept. of Economic Development, PO Box 798, Richmond, VA 23218–0798.
Tom Felvey, Virginia Dept of Environmental Quality, PO Box 10009, Richmond, VA 23240–0009.
Director, Virginia Dept. of Environmental Quality, PO Box 10009, Richmond, VA 23240–0009.
Manager, Virginia Dept, of Game & Inland Fisheries, 209 E Cleveland Ave., Vinton, VA 24179–2540.
Director, Virginia Dept. of Game & Inland Fishers, PO Box 11104, Richmond, VA 23230–1104.
State of Virginia, Director, Virginia Dept. of Health, PO Box 2448, Richmond, VA 23218–2448.
Coordinator, Virginia Dept. of Historic Resources, 2801 Kensington Ave., Richmond, VA 23221–2470.
Director, Virginia Dept. of Mines Minerals Energy, Division of Energy, 202 N 9th St Fl 8, Richmond, VA 23219–3402.
Director, Virginia Div. of Mined & Land Reclamation. PO Box 900, Big Stone Gap, VA 24219–0900.
Director, Virginia Div. of Mineral Resources, PO Box 3667, Charlottesville, VA 22903–0667.
Attorney General, Virginia Office of the Attorney General, 900 E Main St., Richmond, VA 23219–3513.
State of Virginia, Director, Virginia Soil & Conservation Commission, Suite 206, 203 Governor St., Richmond, VA 23219–2049.
Sherry H. Bridewell, Esquire, Virginia State Corporation Commission, PO Box 1197, Richmond, VA 23218–1197.
Environmental Engineer, Virginia State Department of Health, PO Box 2448, Richmond, VA 23218–2448.
Director, Virginia Water Control Board, PO Box 10009, Richmond, VA 23240–0009.
State of West Virginia, West Virginia Dept. of Natural Resources, Off. of Envir. & Reg. Affairs-Water Res., 1201 Greenbrier St., Charleston, WV 25311–1001.

[FR Doc. 03–13742 Filed 6–2–03; 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 27, 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 was fixed, filers who used this feature before it was fixed may have had 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.

Despite the extended due dates, several companies requested further extensions to the filing deadlines to resolve problems they experienced with compiling and formatting their data. Notice is hereby given that the deadlines for filing EQR data are extended to the dates 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]	1st Q 2003	May 30, 2003.
Avista Turbine Power, Inc	4th Q 2002; 1st Q 2003	May 23, 2003.
CalPeak Power [3]	2nd, 3rd, 4th Q 2002; 1st Q 2003	June 24, 2003.
Coral Power [4]	4th Q 2002; 1st Q 2003	May 29, 2003.
Dominion Resources Services and Affiliates	1st Q 2003	May 31, 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).

Utility	Quarters requested	Date of requested extension
The Duke Companies [5]	1st Q 2003	May 22, 2003.
Horsehead Industries, Inc	2nd, 3rd, 4th Q 2002; 1st Q 2003	June 23, 2003.
Lamar Power Partners, LP	2nd, 3rd, 4th Q 2002; 1st Q 2003	June 16, 2003.
Morgan Stanley Capital Group, Inc	4th Q 2002	June 20, 2003.
PJM Interconnection, L.L.C.	1st Q 2003	May 16, 2003.
San Diego Gas & Electric Company	4th Q 2002; 1st Q 2003	June 6, 2003.
Sempra Energy Trading Corp.	4th Q 2002; 1st Q 2003	May 30, 2003.

[2] 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] Includes: CalPeak Power—Border LLC, CalPeak Power—El Cajon LLC, CalPeak Power—Enterprise LLC, CalPeak Power—Midway LLC, CalPeak Power—Mission LLC, CalPeak Power—Panoche LLC, CalPeak Power—Vaca Dixon LLC.

[4] Includes Coral Power, L.L.C., Coral Energy Management, and Coral Canada US.

[5] Includes the following companies: Duke Energy North America, LLC, Duke Energy Power Marketing, LLC, Duke Energy St. Francis, LLC, Duke Energy Southaven, LLC and Duke Energy Trading and Marketing, L.L.C.

[FR Doc. 03–13739 Filed 6–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Loveland Area Projects—Order Confirming and Approving an Extension of the Firm Electric Service Rate—Rate Order WAPA No. 103

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: This action is to extend the existing Loveland Area Projects (LAP) firm electric service rate through March 31, 2004. Without this action, the existing firm electric service rate will expire September 30, 2003, and no rate will be in effect for this service.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel T. Payton, Rates Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, PO Box 3700, Loveland, CO 80539–3003, (970) 461–7442, or e-mail *dpayton@wapa.gov*.

SUPPLEMENTARY INFORMATION: By Delegation Order No. 00–037.00 approved December 6, 2001, the Secretary delegated: (1) The authority to develop power and transmission rates on a non-exclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

The existing rate, Rate Order No. WAPA–61, was approved for a 5-year period, beginning February 1, 1994, and ending January 31, 1999. Rate Order No. WAPA–82 extended the existing rate for a 2-year period, beginning February 1, 1999, through January 31, 2001. Rate Order No. WAPA–89 extended the rate again through September 30, 2003.

Western's Rocky Mountain Customer Service Region is entering a public process to modify the firm electric service rate for Loveland Area Projects. Western seeks this extension to provide more time to evaluate cost and revenue projections and to assess the impact of the ongoing drought in the West. The evaluation period and public process will take more than 6 months to complete, including both informal and formal public forums. Therefore, time requirements make it necessary to extend the current rate pursuant to 10 CFR part 903.23. Upon its approval, Rate Order No. WAPA–61, previously extended under Rate Order No. WAPA–82 and Rate Order No. WAPA–89, will be extended under Rate Order No. WAPA–103.

I approved Rate Order No. WAPA–103 after DOE reviewed Western's proposal. My approval extends the existing LAP firm electric service rate, Rate Schedule L–F4, through March 31, 2004.

Dated: May 14, 2003.

Kyle E. McSlarrow,

Deputy Secretary.

This firm electric service rate was established following section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a). This act transferred to and vested in the Secretary of Energy (Secretary) the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts that specifically apply to the project system involved.

By Delegation Order No. 00–037.00 approved December 6, 2001, the Secretary delegated: (1) The authority to develop power and transmission rates on a non-exclusive basis to the Administrator of the Western Area Power Adminstration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). This rate extension is issued following the Delegation Order and the DOE rate extension procedures at 10 CFR part 903.23(b).

Background

The existing rate, Rate Order No. WAPA–61, was approved for 5 years, beginning February 1, 1994, and ending January 31, 1999. Rate Order No. WAPA–82 extended the existing rate for 2 years, beginning February 1, 1999, through January 31, 2001. Rate Order No. WAPA–89 extended the rate again beginning February 1, 2001, through September 30, 2003.

Discussion

Western's Rocky Mountain Customer Service Region is entering a public process to modify the firm electric service rate for Loveland Area Projects. Western seeks this extension to provide more time to evaluate cost and revenue projections and to assess the impact of the ongoing drought in the West on energy production and purchase power expenses. The evaluation period and public process will take more than 6 months to complete, including both informal and formal public forums. Therefore, time requirements make it necessary to extend the current rate pursuant to 10 CFR part 903.23. Upon its approval, Rate Order No. WAPA–61, previously extended under Rate Order No. WAPA–82 and Rate Order No.

WAPA–89 will be extended under Rate Order No. WAPA–103.

Order

In view of the above and under the authority delegated to me by the Secretary, I hereby extend the existing Rate Schedule L-F4 for firm electric service from October 1, 2003, through March 31, 2004.

Dated: May 14, 2003.

Kyle E. McSlarrow,

Deputy Secretary.

[FR Doc. 03–13856 Filed 6–2–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Pick-Sloan Missouri Basin Program—Eastern Division—Notice of Order Confirming and Approving an Extension of the Firm Power Service and Firm Peaking Power Service-Rate Order No. WAPA–102

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: This action is to extend the existing Pick-Sloan Missouri Basin Program-Eastern Division (P–SMBP–ED) firm power service and firm peaking power service rates through March 31, 2004. Without this action, the existing firm power and firm peaking power rates will expire September 30, 2003; and no rates will be in effect for these services.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Riehl, Rates Manager, Upper Great Plains Customer Service Region, Western Area Power Administration, PO Box 35800, Billings, MT 59107–5800, telephone (406) 247–7388, e-mail *riehl@wapa.gov.*

SUPPLEMENTARY INFORMATION: By Delegation Order No. 00–037.00, approved December 6, 2001, the Secretary delegated (1) the authority to develop power and transmission rates on a non-exclusive basis to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

Western submitted its firm power service and firm peaking power service rates to the FERC for confirmation and approval on January 10, 1994. On July 14, 1994, in Docket No. EF94–5031–000 at 68 FERC ¶ 62,040, the FERC issued an order confirming, approving, and placing into effect on a final basis the firm power service and the firm peaking power service rates for the P–SMBP–ED. The rates set forth in Rate Order No. WAPA–60 were approved for 5 years beginning February 1, 1994, and ending January 31, 1999. On October 16, 1998, upon signing Rate Order No. WAPA–83, the Deputy Secretary extended the existing rates for 2 years beginning February 1, 1999, and ending January 31, 2001. On July 17, 2000, upon signing Rate Order No. WAPA–90, the Deputy Secretary further extended the existing rates for 2 years and 8 months beginning February 1, 2001, and ending September 30, 2003. On September 30, 2003, the P–SMBP–ED firm power service and firm peaking power service rates will expire.

Western's P–SMBP–ED is entering a public process to modify our firm power service and firm peaking power service rates. Western is seeking this extension to provide more time for the evaluation of costs and revenue projections, and to assess the impact of the ongoing drought in the West. Therefore, time requirements make it necessary to extend the current rates pursuant to 10 CFR part 903.23. Upon its approval, Rate Order No. WAPA–60, previously extended under Rate Order No. WAPA–83 and Rate Order No. WAPA–90 will be extended under Rate Order No. WAPA–102.

I approved Rate Order No. WAPA–102 after DOE reviewed Western's proposal. My approval extends the existing Pick-Sloan firm power service and firm peaking power service Rate Schedules P–SED–F6 and P–SED–FP6 from October 1, 2003, until March 31, 2004.

Dated: May 14, 2003.

Kyle E. McSlarrow,

Deputy Secretary.

This firm power service and firm peaking power service rate was established in accordance with section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152. This act transferred to and vested in the Secretary of Energy (Secretary) the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts that specifically apply to the project system involved.

By Delegation Order No. 00–037.00, approved December 6, 2001, the Secretary delegated (1) The authority to develop power and transmission rates on a non-exclusive basis to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). This rate extension is issued following the Delegation Order and the DOE rate extension procedures at 10 CFR part 903.23(b).

Background

On July 14, 1994, in Docket No. EF94–5031–000 at 68 FERC ¶ 62,040, FERC confirmed, approved, and placed in effect on a final basis, the firm power service and firm peaking power service rates for the P–SMBP–ED. The rates were approved for 5 years beginning February 1, 1994, and ending January 31, 1999. On October 16, 1998, upon signing Rate Order No. WAPA–83, the Deputy Secretary extended the existing rates for 2 years beginning February 1, 1999, and ending January 31, 2001. On July 17, 2000, upon signing Rate Order No. WAPA–90, the Deputy Secretary further extended existing rates for a 2 year and 8 month period beginning February 1, 2001, and ending September 30, 2003.

Discussion

Western's P–SMBP–ED is entering a public process to modify our firm power service and firm peaking power service rates. Western seeks this extension to provide more time for the evaluation of costs and revenue projections, and to assess the impact of the ongoing drought in the West. Therefore, time requirements make it necessary to extend the current rates pursuant to 10 CFR part 903.23. Upon its approval, Rate Order No. WAPA–60, previously extended under Rate Order No. WAPA–83 and Rate Order No. WAPA–90 will be extended under Rate Order No. WAPA–102.

Western proposes to extend the existing P–SMBP–ED firm power service and firm peaking power service rates until March 31, 2004, to allow time to evaluate costs and complete the public process.

Order

In view of the above and under the authority delegated to me by the Secretary, I hereby extend the existing P–SMBP–ED firm power service and firm peaking power service Rate Schedules P–SED–F6 and P–SED–FP6 from October 1, 2003, until March 31, 2004.

Dated: May 14, 2003.

Kyle E. McSlarrow,

Deputy Secretary.

[FR Doc. 03–13855 Filed 6–2–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. RCRA–2003–0012; FRL–7506–9]

Announcement of a Public Stakeholder Meeting on Management of Hazardous Waste in Research and/or Academic Laboratories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a public stakeholder meeting.

SUMMARY: EPA's Office of Solid Waste is holding a public meeting on Wednesday, June 18, 2003, to discuss issues associated with hazardous waste management in research and/or academic laboratories. The purpose of this meeting is to present our progress to date on issues specific to waste management in research and academic laboratories and solicit input from individual stakeholders on approaches to addressing these issues. A tentative agenda is available upon request. The following topics are planned for discussion: when/where to make a hazardous waste determination, waste labeling requirements, personnel training requirements, satellite accumulation, and types of treatment that are performed in laboratories. Interested parties may choose to attend the meeting or submit written comment. The Agency's goal is to improve the program to better protect human health and the environment through standards that are harmonious with the way laboratories operate.

DATES: The stakeholder meeting is scheduled for Wednesday, June 18 from 12 p.m. to 5 p.m. eastern time. Submit written comments on or before July 18.

ADDRESSES: EPA will hold the meeting in Washington, DC at EPA East (Conference Room 1153), 1201 Constitution Ave., NW. Interested parties also may participate via videoconferencing at the following locations:

1. North Chelmsford—EPA Region I Laboratory (Kennebunkport Room), 11 Technology Drive, North Chelmsford, MA 01863.

2. Chicago—EPA Region V Office (Lake Erie Conference Room), 77 W. Jackson Blvd., Chicago, IL 60604.

3. San Francisco—EPA Region IX Office (Conference Room R1915), 75 Hawthorne Street, San Francisco, CA 94105.

Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Kate Davis, Office of Solid Waste (5304W), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 308–0091; fax number: (703) 308–0514; e-mail address: *davis.kate@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Meeting Apply To Me?

While the meeting is open to the public in general, the identified topics may be of particular interest to persons who work in research and/or academic laboratory settings or persons who are concerned about the implementation of the Resource Conservation and Recovery Act (RCRA) in these settings. Potentially interested parties may include but are not limited to: Government laboratories; research and development laboratories; academic laboratories; Federal, State and local regulators; academic institutions; non-governmental organizations; and trade associations representing environmental health and safety professionals at research and/or academic laboratories. If you have any questions regarding the applicability of this meeting to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Electronic Access to This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. RCRA–2003–0012. 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, (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) 566–1742, and the telephone number for the EPA Docket Center is (202) 566–0270.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The

entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or *see* 67 FR 38102, May 31, 2002.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. However, late comments may be considered if time permits.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. RCRA–2003–0012. 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 electronic mail (e-mail) to *rcra-docket@epa.gov,* Attention Docket ID No. RCRA 2003–0012. 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 1.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: OSWER Docket, EPA Docket Center, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. RCRA–2003–0012.

3. *By Hand Delivery or Courier.* Deliver your comments to: OSWER Docket, EPA Docket Center, 1301 Constitution Avenue, NW., EPA West Building, Room B–102, Washington, DC, 20004, Attention Docket ID No. RCRA–2003–0012. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.B.1.

4. *By Facsimile.* Fax your comments to: (202) 566–0224, Attention Docket ID. No. RCRA–2003–0012.

II. Background

EPA recognizes the unique aspects of research and academic laboratories compared with large manufacturing processes. For example, research and academic laboratories generate small amounts of many different wastes while large manufacturing processes tend to generate large amounts of a few wastes. EPA supports developing environmentally safe management alternatives for hazardous wastes in research and academic laboratories. The Agency has participated in several efforts to explore alternatives that may help target the unique lab practices and wastes more effectively. Recent efforts include the New England Labs XL project and the Howard Hughes Medical Institute (HHMI) Best Management Practices. NE Labs XL is testing the development and implementation of an Environmental Management Plan designed to minimize and more effectively manage hazardous laboratory wastes (*http://www.epa.gov/projectxl/nelabs/index.htm*). HHMI partnered with EPA to identify best practices for managing hazardous wastes in academic research institutions (*http://www.epa.gov/epaoswer/osw/specials/labwaste/r02008.pdf*). The June public stakeholder meeting builds on these efforts.

III. Tentative Agenda

Copies of the tentative agenda for this meeting are available via mail, fax, or e-mail. If you would like a copy, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

IV. How Can I Participate in This Meeting?

You may attend this meeting in person or submit a written comment. The meeting locations have the following capacities: Washington DC, 100 people; North Chelmsford, 50 people; Chicago, 30 people; San Francisco, 17 people. Members of the public wishing to have access to the Headquarters or Regional conference rooms on the day of the meeting should register by June 11 by contacting Kate Davis, Office of Solid Waste (5304W), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 308–0091; fax number: (703) 308–0514; e-mail address: *davis.kate@epa.gov.* A photo ID will be required to gain access to Headquarters and Regional conference rooms. Any person needing special accessibility accommodations at this meeting should contact the person identified above at least five business days before the meeting so we can make the appropriate arrangements.

Any person who wishes to file a written statement may do so before July 18. EPA has established an official public docket for this action under Docket ID No. RCRA–2003–0012. Please see Unit I.C. for instructions on how to submit written comments.

V. On What Issues Will EPA Be Soliciting Input?

Stakeholders repeatedly have identified three issues: hazardous waste determination, satellite accumulation, and treatment in satellite accumulation areas.

Hazardous Waste Determination: Currently, you must make a hazardous waste determination at the ''point of generation'' of a waste.

1. When should the hazardous waste determination be made in a laboratory setting?

2. What training is needed for lab personnel concerning hazardous waste determinations (*e.g.*, full RCRA training or training that is made specific to chemical management duties)?

3. How should waste be labeled so it can be appropriately managed as hazardous waste (*e.g.*, the words ''hazardous waste'' or a detailed chemical description)?

4. Where should the hazardous waste determination be made (*e.g.*, on the bench or in the 90 to 180 day storage area)?

Satellite Accumulation Area (SAA) Accumulation Time: If more than 55 gallons of hazardous waste or more than 1 quart of acute hazardous waste is accumulated at a SAA, the excess must be removed within three days.

1. How should these requirements be applied in a laboratory context?

2. How often do laboratories accumulate more than 55 gallons of waste in their SAA?

3. What, if any, difficulties do environmental health and safety personnel have responding to waste pick-up calls, *e.g.*, within the three day time limit?

4. How would a longer time-frame for removal impact the cost of waste management and the ability to protect human health and the environment?

Treatment in SAAs: We have heard from numerous stakeholders that they would like to perform certain types of treatment.

1. What types of treatment, other than neutralization, are laboratory personnel currently performing or would like to perform?

2. What would be the benefits of the desired types of treatment?

Other Issues: The Agency also solicits your thoughts on other issues specific to research and academic laboratories. In reviewing issues raised by hazardous waste identification and management in laboratories, we will particularly focus on the way laboratories operate, and we will also take into account factors such as regulatory burden, cost, and protection of human health and the environment.

Matt Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 03–13886 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 7507–1]

Science Advisory Board, Environmental Health Committee; Notification of an Upcoming Meeting of the Supplemental Guidance for Assessing Cancer Susceptibility From Early-Life Exposure to Carcinogens (SGACS) Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency, Science Advisory Board (SAB), announces an upcoming teleconference meeting to discuss the draft report of the Supplemental Guidance for Assessing Cancer Susceptibility from Early-life Exposure to Carcinogens (SGACS) review panel.

DATES: The teleconference meeting will take place on June 20, 2003, from 3 p.m. to 5 p.m. (eastern daylight time).

ADDRESSES: The meeting will take place at the Science Advisory Board Conference Room 6013, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

FOR FURTHER INFORMATION CONTACT: For general information about the meeting, please contact Dr. Suhair Shallal, PhD., Designated Federal Officer, by telephone/voice mail at (202) 564–4566, by fax at (202) 501–0582; or via e-mail at *shallal.suhair@epa.gov.* General information concerning the EPA Science Advisory Board can be found on the EPA SAB Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Notification of Public Meeting. Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Supplemental Guidance for Assessing Cancer Susceptibility (SGACS) panel of the U.S. EPA Science Advisory Board (SAB) will meet to discuss its draft report of the review the EPA's Office of Research and Development draft document entitled ''Supplemental Guidance for Assessing Cancer Susceptibility From Early-Life Exposure to Carcinogens.'' This document provides a possible approach for assessing cancer susceptibility from early-life exposure to carcinogens.

The purpose of this meeting is to allow contemporaneous public access to the SGACS review panel's deliberations concerning the draft report. The meeting is open to the public; however, seating is limited and available on a first come basis. The meeting will be held at the times and dates and place specified above. A copy of the draft agenda for the meeting will be posted on the SAB Web site (*www.epa.gov/sab*) (under the AGENDAS subheading) approximately 7 days before the meeting.

For more information regarding the background on this advising activity, please refer to the **Federal Register**, 68 FR 10240, published on March 4, 2003, or the SAB Web site at *http://www.epa.gov/sab/panels/sgacsrp.html.*

The panel was charged with responding to questions concerning the document mentioned above. Information regarding these questions and the review materials are available in **Federal Register** notice, 68 FR 17803 published on April 11, 2003.

Providing Oral or Written Comments at SAB Meetings: It is the policy of the EPA Science Advisory Board (SAB) to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of 10 minutes (unless otherwise indicated) and no more than one hour total for all speakers. For teleconference meetings, opportunities for oral comment will usually be limited to no more than two minutes per speaker and no more than 10 minutes total for all speakers. Interested parties should contact the DFO at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers may attend the meeting and provide comment up to the meeting time. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the review panel for their consideration. Comments should be supplied to the DFO at the address/contact information noted in the opening of this notice in the following formats: one hard copy with original signature, and one

electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution. Should comment be provided at the meeting and not in advance of the meeting, they should be in-hand to the DFO up to and immediately following the meeting. The SAB allows a grace period of 48 hours after adjournment of the public meeting to provide written comments supporting any verbal comments stated at the public meeting to be made a part of the public record.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. Sandra Friedman, *friedman.sandra@epa.gov* or by telephone/voice mail at (202) 564–2526 at least five business days prior to the meeting date so that appropriate arrangements can be made.

Dated: May 22, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board.

[FR Doc. 03–13885 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7505–8]

Notice of Proposed Prospective Purchaser Agreement Under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, *et seq.*, as Amended (CERCLA), Des Moines TCE Superfund Site, Des Moines, IA, Docket No. CERCLA–07–2003–0156

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed prospective purchaser agreement, Des Moines TCE Superfund Site, Des Moines, Iowa.

SUMMARY: Notice is hereby given that a proposed prospective purchaser agreement regarding the Des Moines TCE Superfund Site (Site) located in Des Moines, Iowa, was signed by the United States Environmental Protection Agency (EPA) on March 17, 2003, and signed by the United States Department of Justice (DOJ) on May 8, 2003.

DATES: EPA will receive until July 3, 2003, comments relating to the proposed prospective purchaser agreement.

ADDRESSES: Comments should be addressed to Daniel J. Shiel, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101 and should refer to *the Des Moines TCE Superfund Site Prospective Purchaser Agreement, Docket No. CERCLA–07–2003–0156.*

The proposed agreement may be examined or obtained in person or by mail from Daniel J. Shiel, United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, KS 66101, (913) 551–7278.

SUPPLEMENTARY INFORMATION: The Site encompasses approximately 200 acres, which is located in the south central portion of the city of Des Moines, Polk County, Iowa, adjacent to the Racoon River. The Site includes property owned by Dico, Inc. (Dico). The groundwater beneath Dico's property is heavily contaminated with trichloroethylene (TCE) and other volatile organic compounds (VOCs). Surface soil on much of Dico's property is contaminated with VOCs, pesticides, herbicides and metals. Interior building surfaces contain pesticide-laden dust, and building insulation materials include polychlorinated biphenyls (PCBs).

The City of Des Moines (the City) plans to acquire a permanent roadway easement over approximately three (3) acres of Dico's property as right-of-way for the Martin Luther King Jr. Parkway Project. The City will reserve to Dico certain specified access rights to operate and maintain existing CERCLA response actions.

As of the date the City acquires a permanent roadway easement, the United States covenants not to sue or take any other civil or administrative action against the City for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to section 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a) with respect to the existing contamination.

In consideration of the United States' Covenant Not to Sue, the City hereby covenants not to sue and not to assert any claims or causes of action against the United States with respect to the Site or this Agreement.

The City will provide EPA, as of the date it acquires a permanent roadway easement, an irrevocable right of access at all reasonable times to any property to which EPA determines access is required for the implementation of response actions at the Site, to the extent of the City's interest in the property, for the purposes of performing and overseeing response actions at the Site under federal law.

With regard to claims for contribution against the City, the City is entitled to protection from contribution actions or claims as provided by CERCLA section 113(f)(2), 42 U.S.C. 9613(f)(2) for matters addressed in this agreement.

If the City fails to comply with the terms of this agreement, it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

Dated: May 16, 2003.

James B. Guilliford,

Regional Administrator, Region VII.

[FR Doc. 03–13566 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7505–7]

Notice of Proposed *De Minimis* Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as Amended, 42 U.S.C. 9622(g), Great Lakes Container Corporation Superfund Site, City of St. Louis, St. Louis County, MO, Docket No. CERCLA–07–2003–0087

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed *De minimis* Settlement, Great Lakes Container Corporation Superfund Site, St. Louis, Missouri.

SUMMARY: Notice is hereby given that a proposed *de minimis* administrative settlement regarding Saveway Petroleum (Saveway) and the United States Environmental Protection Agency (EPA) was signed by the EPA on April 3, 2003. The facility that is the subject of this *de minimis* settlement is the Great Lakes Container Corporation Superfund Site (Site), located in St. Louis, Missouri.

DATES: EPA will receive written comments relating to the proposed *de minimis* settlement until July 3, 2003.

ADDRESSES: Comments should be addressed to the Regional Administrator, United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101 and should refer to: In the Matter of the Great Lakes Container Superfund Site, City of St. Louis, St. Louis County, Missouri, Docket No. CERCLA–07–2003–0087.

FOR FURTHER INFORMATION CONTACT: Denise L. Roberts, Senior Assistant Regional Counsel, United States Environmental Protection Agency,

Region VII, 901 N. 5th Street, Kansas City, Kansas 66101.

SUPPLEMENTARY INFORMATION: This proposed settlement is intended to resolve the liability of Saveway Petroleum at the Great Lakes Container Corporation Superfund Site in St. Louis, Missouri.

Great Lakes Container Corporation is a former drum reclamation company who operated at the Site from 1976 to 1985. The same business was operated as Northwestern Cooperage from the 1950's to 1976 and then operated as Great Lakes Container Corporation. EPA conducted a time-critical removal completed in 1998 that consisted primarily of soil and drum removal. The EPA incurred costs of approximately $9,127,244.30. The hazardous substances at this Site consisted primarily of lead and polychlorinated biphenyls. Liability is based on the theory that *de minimis* parties arranged for disposal of hazardous substances at the Site by shipping drums for reclamation coated with paint containing lead. The *de minimis* parties either admitted that they sent drums for reclamation to the Site or EPA had separate evidence to prove that *de minimis* parties sent drums for reclamation to the Site.

This settlement is being offered to Saveway because it is liable for no more than one quarter a percent (.25%) of EPA's past costs at the Site. The majority of *de minimis* parties are each required to pay $4,839.44 or $5,133.72 depending on whether the party was required to pay prejudgment interest. Other settlements made for six *de minimis* parties varied from $3,794.19 to $22,856.56 because more volume-specific information was available for them allowing EPA to refine the calculation. The amount and toxicity of hazardous substances contributed by Saveway was minimal as compared to other parties' shares of hazardous substances. The EPA determined this amount to be Saveway's fair share of liability based on the amount of hazardous substances generated and disposed of at the Site and the volume of waste contributed. However, because Saveway has demonstrated an inability to pay, it will not be required to pay any of EPA's past costs at the Site. As a result, Saveway has agreed to provide access to EPA and maintain records for five (5) years.

The settlement also includes contribution protection from lawsuits by other potentially responsible parties as provided for under section 122(g)(5) of CERCLA, 42 U.S.C. 9622(g)(5). The *de minimis* settlement provides that EPA covenants not to sue Saveway for response costs at the Site or for injunctive relief pursuant to sections 106 and 107 of CERCLA and section 7003 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. 6973. The settlement contains a reopener clause which nullifies the covenant not to sue if any information becomes known to EPA that indicates that Saveway no longer meets the criteria for a *de minimis* settlement set forth in section 122(g)(1)(A) of CERCLA, 42 U.S.C. 9622(g)(1)(A). The United States maintains the ability to bring an action in the event that the financial information provided by Saveway was false. The covenant not to sue does not apply to the following matters:

(a) Claims based on the future arrangement for disposal or treatment of any hazardous substance, pollutant, or contaminant at the Site after the effective date of the *de minimis* settlement;

(b) Criminal liability; or

(c) Liability for damages or injury to, destruction of, or loss of the natural resources and for the costs of any natural resource damage assessments.

The *de minimis* settlement will become effective upon the date which the EPA issues a written notice to Saveway that the statutory public comment period has closed and that comments received, if any, do not require modification, of or EPA withdrawal from the settlement.

Dated: May 22, 2003.

James B. Gulliford,

Regional Administrator, Region VII.

[FR Doc. 03–13565 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0010; FRL–7300–6]

1,2-Ethylene Dichloride; Final Enforceable Consent Agreement and Testing Consent Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under section 4 of the Toxic Substances Control Act (TSCA), EPA has issued a testing consent order (Order) that incorporates an enforceable consent agreement (ECA) with the Dow Chemical Company, Vulcan Materials Company, Occidental Chemical Corporation, Oxy Vinyls, LP, Georgia Gulf Corporation, Westlake Chemical Corporation, PPG Industries, Inc., and Formosa Plastics Corporation, U.S.A. The Companies are members of the Hazardous Air Pollutant (HAP) Task Force, which represents the manufacturers of 1,2-ethylene dichloride (EDC). The Companies have agreed to: Conduct toxicity testing, develop pharmacokinetics and mechanistic test data, and develop a computational dosimetry model for quantitative route-to-route extrapolations of dose-response for EDC for acute, subchronic, developmental, reproductive and neurotoxicity effects that were identified in a proposed test rule for hazardous air pollutants. This notice announces the ECA and Order for EDC and summarizes the terms of the ECA.

DATES: The effective date of the ECA and Order is May 13, 2003.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting 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: Richard Leukroth or John Schaeffer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8157; fax number: (202) 564–4765; e-mail address: ccd.citb@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This announcement is directed to the public in general. However, as described in Unit IV., this ECA and Order may affect others in that EPA has initiated rulemaking under TSCA section 12(b) (62 FR 67038, December 23, 1997) (FRL–5762–8). When finalized, that rulemaking will require all persons who export or intend to export EDC to comply with the export notification regulations at 40 CFR part 707, subpart D. Although others may be affected by subsequent actions related to this announcement, this ECA and Order only applies to those Companies that are specifically named in this ECA and Order. 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–2003–0010. 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 the 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.

II. Background

A. What is EDC?

EDC is used as a chemical intermediate principally in the production of vinyl chloride, but also vinylidene chloride, 1,1,1-trichloroethane, trichloroethylene, tetrachloroethylene, aziridines, and ethylene diamines. It is also used as a solvent. An estimated 77,111 workders are exposed to EDC (Ref. 1). The Chemical Abstract Service Registry Number (CAS No.) for EDC is 107–06–2.

B. Why Does EPA Need Health Effects Data on EDC?

EPA proposed health effects testing under TSCA section 4(a) for a number of hazardous air pollutants (''HAPs'' or ''HAP chemicals''), including EDC (61 FR 33178, June 26, 1996) (FRL–4869–1), as amended at 62 FR 67466, December 24, 1997 (FRL–5742–2) and 63 FR 19694, April 21, 1998 (FRL–5780–6). In the original HAPs proposal, the Agency made preliminary findings for EDC (61 FR 33178, 33190, 33191; and Ref. 1) that:

1. EDC may present an unreasonable risk of injury to health.
2. EDC is or will be produced in substantial quantities, and there is or may be substantial human exposures to the chemical.
3. There are insufficient data to determine or predict the effects of activities on human health involving EDC.
4. Testing is necessary to develop health effects data for EDC.

The HAPs rule, as amended, proposed testing of EDC for acute toxicity, subchronic toxicity, developmental toxicity, reproductive effects toxicity, and neurotoxicity (61 FR 33178, 33198, June 26, 1996; 62 FR 67466, 67483, December 24, 1997).

III. ECA Development and Conclusion

A. How is EPA Going to Obtain Health Effects Testing on EDC?

In the proposed HAPs test rule, as amended, EPA invited the submission of proposals regarding the performance of pharmacokinetics studies that would permit extrapolation from oral data to predict risk from inhalation exposure. Such proposals could provide the scientific basis for alternative testing to the testing proposed and form the basis for developing needed HAPs data via ECAs (61 FR 33178, 33189, June 26, 1996; 62 FR 67466, 67474, December 24, 1997). EPA uses ECAs to accomplish testing where a consensus exists among EPA, affected manufacturers and/or processors, and interested members of the public concerning the need for and scope of testing (40 CFR 790.1(c)).

The procedures for ECA development are described at 40 CFR 790.22(b).

In response to EPA's request for proposals for ECAs, the HAP Task Force submitted a proposal for alternative testing that included physiologically-based pharmacokinetics (PBPK) studies and computational modeling to inform route-to-route extrapolations of dose-response for EDC on November 22, 1996 (Ref. 2). EPA responded to this proposal on June 26, 1997 (Ref. 3), indicating that the HAP Task Force alternative approach offered sufficient merit to proceed with discussions for developing an ECA for EDC. Consequently, EPA issued a document which was published in the **Federal Register** of December 19, 1997 (62 FR 66626) (FRL–5763–1), soliciting interested parties to monitor or participate in these discussions.

EPA held a public meeting to develop an ECA for EDC on January 12, 1998. Representatives of the Companies and other interested parties attended this meeting. The participants reached consensus on the general scope of the testing to be required under the ECA. Following the public meeting, the HAP Task Force submitted (March 19, 1999) a revised proposal for a testing program (Ref. 4). On February 13, 2001, EPA responded to the HAP Task Force with comments on the revised proposal and by initiating a draft ECA for consideration by the HAP Task Force (Ref. 5). A final version of the ECA was later circulated to the HAP Task Force for signature, and returned to EPA for signature. On February 3, 2003, EPA received the ECA signed by the Companies. On May 13, 2003, EPA signed the ECA and accompanying Order (Ref. 6).

B. What Testing Does the ECA for EDC Require?

The EDC ECA alternative testing program has four segments as follows: Tier I HAPs Testing, Tier I Program Review Testing, EPA Program Review, and Tier II Testing. This is described in Table 1 in this unit and includes the following testing, reporting, and review activities:

1. *Tier I HAPs Testing*. This testing consists of endpoint testing, conducted by inhalation exposure, that EPA deemed necessary to meet certain data needs identified in the proposed HAPs test rule, as amended, and includes acute toxicity with bronchoalveolar lavage (BAL) and histopathology, and acute neurotoxicity testing. These tests will be conducted under a combined protocol as described in Appendix D.1 of the ECA.

2. *Tier I Program Review Testing*. Under this segment of the EDC ECA alternative testing program, the Companies will conduct studies to extend the computational dosimetry model of D'Souza *et al*. (1987; 1988; Refs. 7 and 8) in order to apply the model to the specific health effects endpoints for EDC listed in the ECA, validate the model, and verify the model's ability to perform quantitative route-to-route extrapolations of dose-response. In addition, the Companies will sponsor development of

pharmacokinetics and mechanistic (PK/MECH) data to support the application of the model for the endpoints listed under Tier II of the EDC ECA. Specifically, the PK/MECH testing will develop data to inform:

i. Oral-to-inhalation extrapolation of subchronic toxicity data reported by Daniel, *et al.* (1994; Ref. 9) relevant to corn oil gavage.

ii. Oral-to-inhalation extrapolation of subchronic neurotoxicity data relevant to drinking water exposure of a study to be conducted under Tier II Testing.

iii. Oral-to-inhalation extrapolation of reproductive effects testing conducted under Tier II Testing and each dosing paradigm of studies reported by Alumot *et al.* (1976; Ref. 10), Rao, *et al.* (1980; Ref. 11) and Lane *et al.* (1982; Ref. 12).

In addition, the Companies will provide model simulations with point and uncertainty estimates of internal dose metrics (parent chemical peak and area under the curve (AUC) concentrations in blood and brain, and 24-hour total glutathione-dependent metabolism) in rats and humans to inform quantitative route-to-route extrapolations of dose-response. These simulations will be used to evaluate the acceptability of: Subchronic neurotoxicity testing of oral exposure via drinking water in rats, extant oral subchronic toxicity data of Daniel *et al.* (1994; Ref. 9) in rats via corn oil gavage, and reproductive toxicity testing of oral exposure via drinking water in rats.

3. *EPA Program Review.* Model development and data from Tier I Program Review Testing are subject to an EPA Program Review. It is essential to the success of the EDC ECA alternative testing program for EPA to ensure that the model and the PK/MECH data used to support the route-to-route extrapolations of dose-response are of the highest quality. The purpose of the EPA Program Review will be to determine:

i. Whether it is feasible and appropriate to apply Tier I Program Review Testing data and data from other studies acceptable to EPA to support computational route-to-route extrapolations of dose-response for endpoints listed in the Tier II Testing segment of the ECA.

ii. Whether the data from the Tier I Program Review Testing segment provide a sufficient basis for conducting the endpoint testing and/or the computational route-to-route extrapolations for the dose-responses specified in the Tier II Testing segment.

iii. The nature and scope of any additional work that may be required before Tier II Testing and application of the EDC model for route-to-route extrapolation of dose-response reporting (e.g., development of additional PK/MECH data, modification to the EDC model).

4. *Tier II Testing and/or Extrapolation Reporting.* This segment of the EDC ECA alternative testing program consists of endpoint testing by drinking water exposure for subchronic neurotoxicity and reproductive toxicity. The reproductive effects toxicity testing is intended to confirm studies reported by Alumot *et al.* (1976; Ref. 10), Rao *et al.* (1980; Ref. 11), and Lane *et al.* (1982; Ref. 12), and provide data needed on fertility index, gestation index, gross necropsy, organ weight, histopathology, estrous cycle, sperm evaluation, vaginal opening, and preputial separation as described in the ECA.

This segment will also include application of the EDC model for quantitative route-to-route extrapolation reporting (oral to inhalation) for Tier II endpoint testing (subchronic neurotoxicity and reproductive toxicity) and similar computational extrapolation reporting for extant subchronic toxicity reported by Daniel *et al.* (1994; Ref. 9).

Testing conducted under this ECA will allow EPA to characterize certain potential health hazards resulting from inhalation exposure to EDC. The following Table 1 sets forth the required testing, test standard, and reporting requirements under the ECA for EDC.

TABLE 1.—REQUIRED TESTING, TEST STANDARD, AND REPORTING REQUIREMENTS FOR EDC

Testing Segment	Required testing	Test standard	Deadline for final report[1] (Months)
Tier I HAPs Testing.	Acute toxicity, with BAL and histopathology (inhalation).	40 CFR 799.9135 (as annotated in ECA Appendix D.1).	18
	Acute neurotoxicity (inhalation).	40 CFR 799.9620 (as annotated in ECA Appendix D.1).	18
Tier I Program Review Testing.	PK/MECH data to support model validation and verification of oral-to-inhalation extrapolation of dose-response for the following data needs in the F344 rat: a. Subchronic toxicity. b. Subchronic neurotoxicity. c. Reproductive toxicity.	ECA Appendix C (1–4).	21
	PBPK model simulations.	ECA Appendix C (1–5).	21
Tier II Testing and/or Extrapolation Reporting.	Subchronic toxicity route-to-route extrapolation of dose-response (oral Tier II Testing to inhalation) of a study reported by Daniel *et al.* (1994).	ECA Appendix C.2 and C.6.	36
	Subchronic neurotoxicity (oral).	40 CFR 799.9620 (as annotated in ECA Appendix D.2).	42
	Subchronic neurotoxicity route-to-route extrapolation of dose-response (oral Tier II Testing to inhalation).	ECA Appendix C.3 and C.6.	52
	Reproductive toxicity (oral).	40 CFR 799.9380 (as annotated in ECA Appendix D.3).	42

TABLE 1.—REQUIRED TESTING, TEST STANDARD, AND REPORTING REQUIREMENTS FOR EDC—Continued

Testing Segment	Required testing	Test standard	Deadline for final report[1] (Months)
	Reproductive toxicity route-to-route extrapolation of dose-response (oral data to inhalation, including Tier II Testing and extant studies reported by Alumot *et al*. (1976), Rao *et al*. (1980), and Lane *et al*. (1982)).	ECA Appendix C.4 and C.6.	52

[1] Number of months after the effective date of the Order that incorporates this ECA when the final report is due. In addition, every 6 months from the effective date of the Order until the end of the ECA testing program, interim reports describing the status of all testing to be performed under this ECA must be submitted by the Companies to EPA.

C. What are the Uses for the Test Data for EDC?

EPA would use the data obtained from testing to implement several provisions of section 112 of the Clean Air Act (CAA), including the determination of residual risk, the estimation of the risks associated with accidental releases of chemicals, and other HAP risk assessments. EPA will also use the data from this ECA to fulfill part of the Tier I Testing portion of the Voluntary Children's Chemical Evaluation Program (VCCEP). (For more information about VCCEP, see: http://www.epa.gov/chemrtk/vceep/.) In addition, the data will be used by other Federal agencies (e.g., the Agency for Toxic Substances and Disease Registry (ATSDR), the National Institute for Occupational Safety and Health (NIOSH), the Occupational Safety and Health Administration (OSHA), and the Consumer Product Safety Commission (CPSC)) in assessing chemical risks and in taking appropriate actions within their programs (see the proposed HAPs test rule at 61 FR 33178, 33179, June 26, 1996).

D. Does the ECA for EDC Meet all the Testing Requirements for EDC that were Contained in the Proposed Test Rule?

In the proposed HAPs test rule, as amended, EPA proposed testing of EDC for acute, subchronic, developmental, and reproductive effects and neurotoxocity by the inhalation route of exposure. The ECA alternative testing program for EDC requires inhalation testing for acute toxicity and acute neurotoxicity, and oral drinking water testing for subchronic neurotoxicity and reproductive effects toxicity. The ECA requires the development of PK/MECH data to support computational PBPK modeling to inform quantitative route-to-route extrapolations of dose-response (oral to inhalation) for the endpoints of subchronic toxicity, subchronic neurotoxicity, and reproductive effects toxicity as described in the ECA.

During discussions to develop this ECA, EPA concluded that the developmental toxicity studies reported by Rao *et al*. (1980; Ref. 11), in rabbits, and Payan *et al*. (1995; Ref. 13), in rats, adequately fulfill the HAPs rulemaking testing requirement for developmental toxicity testing for EDC and, therefore, the ECA does not require, and the final HAPs test rule will not require this testing. In addition, the ECA does not require, and the final HAPs test rule will not require, macrophage function testing (a component of EPA's acute toxicity test gudeline 40 CFR 799.9135) because EPA considers existing data by Sherwood *et al*. (1987; Ref. 14) adequate to fulfill this aspect of the acute testing need. Furthermore, the Tier I HAPs Testing endpoints (acute toxicity and acute neurotoxicity) will not be included in the final HAPs test rule because the route of testing to be conducted under this ECA is identical to that specified in the HAPs rulemaking. Finally, depending on the outcome of EPA's Program Review, the Agency anticipates that the balance of the testing for EDC that was contained in the proposed HAPs test rule, as amended, will also not be included in the final HAPs test rule because the Companies will conduct equivalent testing as Tier II Testing and Extrapolation Reporting under this ECA alternative testing program for EDC. Therefore, EPA anticipates the fulfilling of all of the health effects testing requirements, identified in the HAPs proposed rule, as amended, by implementing the ECA and Order.

The issuance of the ECA and Order constitutes final EPA action for purposes of 5 U.S.C. 704.

E. What if EPA Should Require Additional Health Effects Testing on EDC?

If EPA decides in the future that it requires additional health effects data on EDC, the Agency will initiate a separate action.

IV. Other Impacts of the ECA for EDC

The issuance of the ECA and Order under TSCA section 4 subjects the Companies that signed the ECA to export notification requirements under TSCA section 12(b)(1), as set forth at 40 CFR part 707, subpart D, if they export or intend to export EDC.

In the 12(b) proposal published in the **Federal Register** of December 23, 1997 (62 FR 67038) (FRL–5762–8), EPA proposed to amend 40 CFR 799.5000 by adding EDC to the list of chemicals subject to testing consent orders. The listing of a chemical substance at 40 CFR 799.5000 serves as notification to all persons who export or intend to export the chemical substance that:

1. The chemical substance is the subject of an ECA and Order.

2. EPA's export notification regulations at 40 CFR part 707, subpart D, apply to those exporters who have signed the ECA, as well as those exporters who have not signed the ECA (40 CFR 799.19).

When a final rule based on the proposed rule is published in the **Federal Register**, all persons who export or who intend to export EDC will be subject to export notification requirements.

V. Paperwork Reduction Act

The ECA and Order announced in this notice do not contain any information collection requirements that require additional approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*. The information collection requirements related to test rules and ECAs issued under TSCA section 4 have already been approved by OMB under OMB control number 2070–0033 (EPA ICR No. 1139). The one-time public burden for this collection of information is estimated to be approximately 3,364 hours total (Ref. 15). Under the PRA, ''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. For this collection it includes the time needed to review instructions; 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 number for EPA's regulations, after initial display in the final rule, are listed in 40 CFR part 9.

VI. References

1. U.S. EPA, OPPT. *I. Ethylene Dichloride (107–06–2)*. Pp 24–27 *In*: ''TSCA Section 4 Findings for 21 Hazardous Air Pollutants: A Supporting Document for Proposed Hazardous Air Pollutants (HAPs) Test Rule.'' (June 25, 1996).
2. The HAP Task Force. Letter from Peter E. Voytek to Charles M. Auer with attachment entitled: ''Proposal for Pharmacokinetics Study of Ethylene Dichloride, November 22, 1996.'' (November 22, 1996).
3. U.S. EPA. Letter from Charles M. Auer to Peter E. Voytek with attachment entitled: ''Preliminary EPA Technical Analysis of Proposed Industry Pharmacokinetics (PK) Strategy for Ethylene Dichloride, June, 1997.'' (June 26, 1997).
4. The HAP Task Force. Letter from Peter E. Voytek to Charles M. Auer, U.S. EPA. (March 19, 1999).
5. U.S. EPA. Letter from Charles M. Auer to Peter E. Voytek, HAP Task Force, Re: ECA Development of Ethylene Dichloride (EDC) (OPPTS 42197C, with attachment: ''EDC ECA—DRAFT, dated February, 2001.'' (February 13, 2001).
6. Final Enforceable Consent Agreement for Ethylene Dichloride and Accompanying Testing Consent Order, signed by EPA on May 13, 2003.
7. D'Souza, R.W., Francis, W.R., Bruce R.D., and Andersen, M.E. *Physiologically based phamacokinetic model for ethylene dichloride and its application in risk assessment*. Pp 286–301, *In*: Pharmacokinetics in Risk Assessment. National Academy Press. Washington, D.C. (1987).
8. D'Souza, R.W., Francis, W.R., and Andersen, M.E. *Physiological model for tissue glutathione depletion and increased resynthesis after ethylene dichloride exposure*. Journal of Pharmacology and Experimental Therapeutics 245(2):563–568. 1988.
9. Daniel, F.B., Robinson, M., Olson, G.R., York, R.G., and Condie, L.W. *Ten and ninety-day toxicity studies of 1,2-dichloroethane in Sprague-Dawley rats*. Drug and Chemical Toxicology 17: 463–477. 1994.
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11. Rao, K.S., Murray, J.S., Deacon, M.M., John, J.A., Calhoun, L.L., and Young, J.T. *Teratogenicity and reproduction studies in animals inhaling ethylene dichloride*. Banbury Report 5: 149–166. (1980).
12. Lane, R.W., Riddle, B.L., and Borzelleca, J.F. *Effects of 1,2-dichloroethane and 1,1,1-trichloroethane in drinking water on reproduction and development in mice*. Toxicology and Applied Pharmacology 63: 409–421. 1982.
13. Payan, J.P., Saillenfait, A.M., Bonnet, P., Fabry, J.P., Langonne, I., and Sabate J.P. *Assessment of the developmental toxicity and placental transfer of the 1,2-dichloroethane in rats*. Fundamental and Applied Toxicology 28: 187–198. 1995.
14. Sherwood, R.L., O'Shea, W., Thomas, P.T., Ratajczak, H.V., and Aranyi, C. *Effects of inhalation of ethylene dichloride on pulmonary defenses of mice and rats*. Toxicology and Applied Pharmacology 91: 491–496. 1987.
15. U.S. EPA, OPPTS. ''Burden Estimates for the Enforceable Consent Agreement for Ethylene Dichloride.'' (January 31, 2002).

List of Subjects

Environmental protection, Hazardous chemicals.

Dated: May 13, 2003.

Stephen Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–13721 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0067; FRL–7287–4]

TSCA Section 8(e); Notification of Substantial Risk; Policy Clarification and Reporting Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is hereby finalizing revisions to certain parts of EPA's ''Statement of Interpretation and Enforcement Policy; Notification of Substantial Risk'' (policy statement) issued March 16, 1978, concerning the reporting of ''substantial risk'' information pursuant to section 8(e) of the Toxic Substances Control Act (TSCA). EPA is making these revisions after having considered public comments that were solicited in 1993 and 1995. Specifically, the revisions address the reporting of information on the release of chemical substances to, and the detection of chemical substances in, environmental media, the reporting deadline for written ''substantial risk'' information, and the circumstances under which certain information need not be reported to EPA under section 8(e) of TSCA. EPA is republishing the policy statement in its entirety in this document, including both those portions of the policy statement that are revised and those portions that are not affected by any revisions. Since the policy statement was published in 1978, this republication is intended to ensure that a single reference source for the TSCA section 8(e) policy and guidance is easily available to the regulated community and other interested parties.

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: Richard Hefter, Chief, High Production Volume Chemicals Branch, Risk Assessment Division, Office Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–7649; e-mail address: hefter.richard@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, process, import, or distribute in commerce chemical substances and mixtures. Potentially affected entities may include, but are not limited to:

- Chemical manufacturers, processors, and distributors (NAICS 325)
- Petroleum refiners and distributors (NAICS 324)
- Manufacturers of plastic parts and components (NAICS 325211)
- Paints and coatings and adhesive manufacturing (NAICS 3255)
- Cleaning compounds and similar products manufacturing (NAICS 3256)
- Electronics manufacturing (NAICS 334 and 335)
- Automobiles manufacturing (NAICS 3361)

• Aircraft manufacturing (NAICS 336411)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit VIII., Part II., of this document. 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–2002–0067. 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/. Information about the Office of Prevention, Pesticides and Toxic Substances (OPPTS) and OPPTS-related programs is available from http://www.epa.gov/opptsmnt/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

A. What Action is the Agency Taking?

The Agency is revising and clarifying certain provisions of the TSCA section 8(e) policy statement issued in 1978. Specifically the Agency is changing the interpretation that section 8(e) notices should be submitted within 15 working days by lengthening the reporting period to 30 calendar days. The Agency is revising and clarifying the guidance regarding the release and detection of chemical substances in environmental media, which includes previously unsuspected chemical contamination such as in soil and ground water, and emergency incidents of environmental contamination such as spills to water and releases to the atmosphere. Also, the Agency is expanding the types of information that it believes need not be reported under section 8(e) and changing the reporting periods to provide additional time for industry compliance with TSCA section 8(e). In addition, EPA is updating certain reporting contact phone numbers and the address for reporting section 8(e) notices.

While the Agency is only revising portions of the 1978 guidance it has issued in earlier documents, EPA is including in this **Federal Register** document, along with the revised guidance, those portions of earlier guidance documents that are not being changed. In that way, members of the regulated community will be able to find all current EPA guidance on compliance with section 8(e) in this **Federal Register** document, without having to consult older documents as well.

The Agency is including in this guidance document its preferences for how and where section 8(e) notices should be submitted. Although these preferences could be codified in procedural rules under the Administrative Procedures Act (APA), 5 U.S.C. 551 *et seq.*, EPA is not at this time adopting them as rules. While submitters of section 8(e) notices are not therefore obligated to comply with the preferences articulated in this document, EPA encourages submitters to consider and follow them when preparing and submitting TSCA section 8(e) notices.

Finally, the bulk of this document contains EPA's guidance on certain types of information it currently believes generally meet the statutory standard of ''information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment.'' Some of this guidance is new, and reflects public comment following the Agency's requests for comments in 1993 and 1995. As noted earlier, this document also contains earlier guidance issued on section 8(e) that has not been changed and that is being reprinted here for the convenience of all interested persons.

During the Compliance Audit Program (CAP) (see Unit II.C.), EPA reviewed the provisions in the reporting guidance for incidents involving chemical contamination of the environment. The changes set out in this document were developed as a result of that review. In 1993, EPA issued a **Federal Register** notice (58 FR 37735, July 13, 1993) that proposed changes to the reporting guidance. In 1995, after consideration of comments received on the 1993 proposal, EPA sought additional public comment on proposed changes to the reporting guidance (60 FR 14756, March 20, 1995) (FRL–4937–6). Unit III. describes the changes EPA proposed, the comments received on the proposed changes, and the Agency's resolution of the issues raised by the comments.

B. What is the Agency's Authority for Taking this Action?

TSCA section 8(e) states, ''Any person who manufactures, [imports,] processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the [EPA] Administrator of such information unless such person has actual knowledge that the Administrator has been adequately informed of such information.'' 15 U.S.C. 2607(e).

EPA hopes and expects that this guidance will be useful to manufacturers, including importers, processors, and distributers of chemical substances in fulfilling their responsibilities under section 8(e). This guidance is not, however, a substitute for rulemaking and it does not impose any binding requirements upon either the regulated community or the Agency. In any particular set of circumstances, any person who has a question about

the applicability of section 8(e) to certain information is welcome to contact EPA. In responding to such person, the Agency will consider the guidance contained in this document, but the guidance will not be determinative. It is also important to point out that the guidance provided will not be unalterable, and that the Agency may revise this guidance without notice or an opportunity to comment. EPA has sought public comment on this guidance so that it can ensure the utility of the guidance for the intended audience. If it becomes necessary, the Agency will revise this guidance.

C. What is the Agency's Current Policy on and Interpretation of the TSCA Section 8(e) Reporting Requirements?

The section 8(e) reporting requirements became effective on January 1, 1977, the effective date of TSCA. The statutory language of section 8(e) requires the exercise of a certain degree of judgment in determining what information must be reported. Although section 8(e) is self-implementing, EPA issued a proposed policy statement in the **Federal Register** of September 9, 1977 (42 FR 45362), and sought public comment with regard to the Agency's interpretation and implementation of section 8(e). Following receipt and consideration of public comments, on March 16, 1978 (43 FR 11110) (FRL–849–2), EPA issued a final TSCA section 8(e) policy statement hereinafter cited as the ''1978 Policy Statement.'' The 1978 Policy Statement described the types of information that EPA considers reportable under section 8(e) and described the procedures for reporting such information to EPA.

In the **Federal Register** of February 1, 1991 (56 FR 4128), the Agency announced a one-time voluntary TSCA section 8(e) CAP. The CAP was designed primarily to: (1) Obtain any section 8(e) information that was required to have been submitted to EPA before the CAP, and (2) encourage companies to voluntarily search (''audit'') their files for data reportable under section 8(e). The TSCA section 8(e) CAP established a schedule of monetary penalties for failure to submit section 8(e) data before the CAP, and also established a ceiling on penalties that would be collected from any single company.

D. The Reason for Issuing Revised Guidance

Companies considering whether to participate in the CAP had raised questions about Parts V.(b)(1) and V.(c) of the 1978 Policy Statement. Those sections outlined the reportability of data on ''widespread and previously unsuspected distribution in environmental media'' and ''emergency incidents of environmental contamination,'' respectively. In order to answer the questions raised by the companies, the Agency reviewed existing section 8(e) guidance and determined that Parts V.(b)(1) and V.(c) of the 1978 Policy Statement needed clarification and refinement. Therefore, in the **Federal Register** of June 20, 1991 (56 FR 28458), EPA announced that the Agency was suspending application of Parts V.(b)(1) and V.(c) of the 1978 Policy Statement.

That **Federal Register** document also stated that EPA was going to provide more specific guidance about the types of information on environmental releases and detection of environmental contamination that should be submitted under section 8(e). Phase 2 of the CAP, which was to deal with data on environmental contamination, would be triggered by publication of that revised guidance (phase 1 of the CAP had dealt with studies of ''effects'' of toxic substances on health or the environment.). On July 13, 1993, EPA issued a **Federal Register** document (58 FR 37735) that proposed changes to the 1978 Policy Statement, clarifying the types of environmental contamination data that EPA believes are subject to section 8(e) reporting.

Comments received on the proposed changes took issue with a number of the revisions proposed by the Agency as well as with the original guidance. Based on the comments received, it became apparent that any final guidance would likely be significantly different from previous guidance and should therefore be applied prospectively. Since the CAP was essentially a retrospective exercise, the decision to make substantial revisions in the guidance for reporting on environmental contamination called into question the utility of carrying out phase 2. Consequently, the Agency, in consultation with CAP participants, decided to conclude the CAP after phase 1 ''effects'' reporting. Letters were sent to CAP participants announcing the change in the program, and the CAP was terminated on May 15, 1996. EPA reached final settlements with CAP participants, announced those settlements on October 15, 1996, and collected payment for stipulated penalties.

III. Section 8(e) Policy Clarifications and Revisions

EPA's interpretation of section 8(e) is that it requires the reporting of certain ''substantial risk'' information concerning the release of chemical substances to, and the detection of chemical substances in, any environmental medium. In order to enhance implementation of TSCA section 8(e), EPA is, in this **Federal Register** document, publishing a complete version of the policy statement which reflects comments received on proposed refinements to the policy statement published on July 13, 1993 (58 FR 37735), and March 20, 1995 (60 FR 14756). EPA has also decided to reinstate application of Part V.(c) relating to ''emergency incidents of environmental contamination,'' which was suspended on June 20, 1991 (56 FR 28458).

A. What Changes were Proposed in 1993?

In a notice published in the **Federal Register** on July 13, 1993 (58 FR 37735), EPA proposed the following changes to the 1978 Policy Statement:

1. Revise the 1978 reporting guidance as to when the discovery of ''widespread and previously unsuspected [chemical] distribution in environmental media'' would trigger a substantial risk notice under section 8(e). EPA indicated that the key elements to consider would be the known hazard potential of the contaminant, how ''widespread'' the substance is in the environment, and the potential for actual human or environmental exposure. EPA further stated that the weight to be given exposure considerations would be judged in light of hazard potential, i.e., the more hazardous the chemical the less one would weigh exposure considerations.

2. Expand the categories of information cited in the 1978 reporting guidance that EPA believed no longer need to be reported to under section 8(e). The major change proposed was intended to reduce the potential for TSCA section 8(e) submissions to be duplicative of reporting under other mandates, by allowing an exemption for information reported under other EPA reporting requirements (including those delegated to the states). Also, a clarification of what would constitute ''corroborative'' data not subject to reporting was proposed.

3. Change the interpretation that section 8(e) notices for information other than ''emergency incidents of environmental contamination'' should be submitted within 15 working days by lengthening the reporting period to 30 calendar days.

4. Eliminate the need to follow up an emergency release notification under Part V.(c) with a written report.

5. Clarify standards for claiming CBI in section 8(e) notices.

6. Correct the address under Part IX. of the 1978 Policy Statement.

B. Summary of Public Comments on the 1993 and 1995 Proposed Revisions and EPA's Responses

In addition to the brief summaries of public comments and Agency responses presented in this **Federal Register** document, EPA has prepared a ''response to comments'' document that addresses in greater detail the significant comments it received on the proposed changes. The public version of the ''response to comments'' document, which does not contain any CBI information, is publicly available in the docket described in Unit I.B.1 of this document.

1. *Comments on the 1993 proposed changes.* EPA received comments from 49 companies and industry associations in response to the 1993 **Federal Register** document. Commenters suggested that EPA's proposed plan for environmental reporting lacked criteria that were sufficiently clear to enable companies to separate ''routine'' releases, which need not be reported, from the ''extraordinary'' releases, which were to be reported under section 8(e). Commenters stated that EPA should provide clearer criteria for determining when a situation presents a ''substantial risk,'' and should provide as many ''bright lines'' as possible to indicate what would and would not be reportable under section 8(e). Specifically, commenters:

• Questioned EPA's interpretation of when contamination would be ''widespread.''

• Stated that only a contaminant's ''known'' toxicity should be considered.

• Stated that for contamination to be reportable, it must be ''previously unsuspected'' contamination.

• Stated that the contamination must result in actual or high probability of significant exposure to humans or non-human organisms.

• Stated that any contamination to be reported under section 8(e) must ''present'' a substantial risk rather than only a speculative ''may present.''

• Proposed that EPA establish a decision tree that companies could follow to determine whether to report incidents involving environmental contamination under section 8(e). Commenters stated that if companies had sequential criteria, they would be in a much better position to comply with the reporting requirements of section 8(e).

• Supported the change to the section 8(e) notice reporting period from 15 working days to 30 calendar days.

The bulk of the remaining comments concerned circumstances under which companies need not report information to EPA. EPA had proposed to exempt from reporting under TSCA section 8(e) information companies were required to report under other EPA authorities (including those delegated to the States). However, the exemption would only apply if the information was submitted under the other authorities within 30 days of obtaining the information. Commenters believed that this would offer little relief because many of the other authorities have reporting periods longer than 30 days. The companies would either have to accelerate their reporting under authorities other than TSCA section 8(e) or submit two reports, one within 30 days under section 8(e) and another within the time frame of the other requirement. The commenters suggested allowing a longer time frame, i.e., 90 days or longer, for that information submitted under authorities other than TSCA section 8(e).

Commenters also suggested expanding the ''other authorities'' exemption to include reporting under all Federal environmental statutes as well as State laws and regulations, especially when a site is undergoing remediation for contamination with hazardous waste and any environmental or health threats associated with those contaminants are being addressed in the course of the remediation.

Finally, EPA received comments on the relationship of the revised guidance to phase 2 of the CAP. The sentiment expressed by all those who commented on this issue was that, given the limited guidance in the 1978 Policy Statement, EPA's suspension of the guidance section on environmental contamination, and the likelihood that EPA's final guidance would be essentially ''new,'' the final guidance should only be enforced prospectively. Consequently, companies should not be subject to any liability for past failures to report under the criteria of the ''new'' guidance.

2. *EPA's response to comments on the 1993 proposed changes; the 1995 proposed draft guidance.* In response to the comments received on the 1993 proposed changes to the 1978 guidance, on March 20, 1995, EPA issued revised proposed guidance to address the commenters' concerns.

First, in the 1995 notice, EPA proposed clarifications to the situations involving environmental contamination which EPA believes would need to be reported. Language suggested in comments to the 1993 notice was adopted, specifying that the contamination must be ''previously unsuspected,'' that ''exposure'' has occurred or there is a substantial likelihood that it will occur, and that the chemical(s) in question is ''known'' to cause serious adverse effects. EPA stated that information on those effects could be obtained from several sources:

• Databases available to the public (online or in paper versions), such as the National Library of Medicine (NLM) databases (Toxline, Medline, Hazardous Substances Data Bank, etc.), National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS), EPA's Aquatic Toxicity Information Retrieval database (AQUIRE) (Now the Ecotoxicology (ECOTOX) database) www.epa.gov/ecotox/.

• Reports to EPA or other government agencies.

• Unpublished data known to the person or entity subject to reporting.

As regards the issue of what is meant by ''known'' to cause serious adverse effects, EPA did not mean that the effects must be conclusively shown and did not intend a higher standard of certainty than for the ''effects'' reporting part of the 1978 Policy Statement. In that notice, EPA stated that all that is needed for an effect to be ''known'' is that the information reasonably supports that the chemical can cause the effect(s) of concern. This issue is addressed in the 1978 Policy Statement in EPA's response to comments that questioned the use of ''may suggest'' language regarding information obtained and the reporting of substantial risk information (see Supplementary Information paragraph (3) of the 1978 Policy Statement).

In addition, EPA agreed to allow the use of ''benchmark levels'' to help determine if the information should be reported. EPA has established benchmark levels for various substances. Benchmark levels are concentrations that either trigger a regulatory response, or concentrations above which a substance is presumed to present a risk to health and/or the environment. For instance, the Agency has developed Reference Doses (RfD's) for numerous substances under its Integrated Risk Information System (IRIS). Reference doses establish a level of exposure where no adverse effects would be expected to be manifested. Thus, if a person found groundwater contaminated with a chemical at a level that did not exceed the RfD for that

substance, the person could assume that a substantial risk does not exist. It should be noted that benchmark levels are often medium-specific, so their use should be limited accordingly. Examples of certain benchmark levels can be found at the following EPA Web sites: http://www.epa.gov/iris/ and http://www.epa.gov/ost/drinking/standards/dwstandards.pdf.

Second, EPA increased the number of types of information that it believed need not be reported under TSCA section 8(e). The types of information proposed to be exempted included:

• Draft and final reports made available to the public by other Federal agencies.

• Data obtained from scientific journals and databases, including, but not limited to, those to which EPA subscribes.

• Information obtained from news publications and radio/television broadcasts.

• Information obtained at scientific meetings or conferences where EPA is the sponsor, where the information is presented by an EPA employee or contractor acting on behalf of EPA, and at other similar meetings, provided that such information is cited or abstracted in a scientific journal or database within 90 days of a person subject to reporting under section 8(e) obtaining such information.

The rationale for these proposed changes was to relieve persons who are potentially subject to reporting under section 8(e) from the burden of considering information from secondary sources when the secondary source does not provide sufficient information for a person to judge whether the information should be reported. For instance, a manufacturer of a chemical might obtain a news article about research done by another company. A person reading the article would need the underlying study to evaluate the true significance of the results of the research and, based on that evaluation, make a judgment as to whether there is a substantial risk of injury to human health or the environment. In such a case, the potential reporting obligation falls on the company that generated the research discussed in the news article.

Third, EPA retained the interpretation proposed in the 1993 **Federal Register** notice that section 8(e) notices for information other than ''emergency incidents of environmental contamination,'' should be submitted within 30 calendar days. EPA continues to believe that the change from 15 working days to 30 calendar days would significantly relieve the burden on persons subject to section 8(e) reporting without substantially affecting EPA's ability to appropriately evaluate and respond in a timely manner to the reported information.

Fourth, EPA identified the group of statutes for which exemptions would be granted from reporting of non-emergency information under TSCA section 8(e), specifying the other statutes administered by EPA and those for which implementation was delegated to the States. The maximum allowable reporting period, in lieu of reporting under section 8(e), under those other authorities was increased from 30 to 90 days from the date reportable non-emergency situations of chemical contamination was obtained by a person subject to section 8(e), i.e, persons reporting to the other authorities within the 90–day time frame would be exempt from reporting the information under section 8(e). EPA believed that extending the time for reporting non-emergency situations of chemical contamination would allow for those instances where assembling several types of information in order to determine whether section 8(e) applies could take more than 30 days and was consistent with the majority of the reporting periods under the other statutes.

Fifth, if the Federal government or a State requires that information be submitted on a site remediation program carried out under Federal or State regulations, that information would not have to be separately submitted under section 8(e) beyond an initial section 8(e) notification. The Agency believed that once the chemical contamination situation has been identified, such as by a notice under section 8(e), and the site is undergoing remediation, little if any additional benefit is gained by subsequent section 8(e) reporting concerning that chemical contamination situation at the same site.

Sixth, usually only the person who operates or owns a site at which environmental contamination has occurred would have the responsibility to report under section 8(e). It is unlikely that a person not associated with a site as an owner or operator would have access to a sufficiently wide range of information about an environmental contamination situation to determine whether data on the contamination meet the test for section 8(e) reporting. This is unlike the acquisition of effects test data, because data on effects are not site-specific and have general applicability for production and use of the chemical of interest in the United States. Similarly, persons subject to section 8(e) would not have to report information obtained about a site outside the United States unless there is potential for contamination from that site to enter the United States.

Seventh, because of the number of changes made to the proposed guidance in the 1995 **Federal Register** notice and the fact that it represented a significant change from the original guidance suspended on June 20, 1991, the Agency concluded that the revised guidance when issued should be applied prospectively. This eliminates the need for companies to review files currently in their possession for information that may be subject to section 8(e) reporting in accordance with the revised guidance. However, data in such files could be subject to section 8(e) reporting if data obtained by a company after issuance of the revised guidance triggered a review of such preexisting data and in doing so the combination of preexisting and new data met the section 8(e) reporting criteria.

Eighth, the Agency stated that it would develop, in cooperation with interested parties, a ''question and answer'' (Q. and A.) document that would provide further detail and ''real world'' examples to further assist persons in fulfilling their section 8(e) reporting responsibilities as regards the revised guidance. The Agency stated that it intends to work with interested parties to prepare such a Q. and A. document, which EPA expects to have available several months from the issuance of the final reporting guidance. At that time, the Agency intends to post the Q. and A. document on the TSCA section 8(e) homepage (http://www.epa.gov/oppt/tsca8e). A copy may also be obtained from the contacts listed under **FOR FURTHER INFORMATION CONTACT**. As additional examples, or questions and answers are identified as being of potential value to share broadly, the Agency will refine this Q. and A. document.

Finally, some commenters requested an additional opportunity to review the revised draft guidance developed in response to the extensive comments of the proposed revisions in the July 13, 1993 **Federal Register** notice. On March 20, 1995 (58 FR 37735), the Agency published a notice of availability in the **Federal Register** of the revised draft guidance and allowed 45 days for comment. The 1995 draft guidance substantially responded to the comments received on the 1993 proposed revisions.

3. *Comments on the 1995 proposed changes and EPA's response*. In response to the Agency's request for comment on the revised draft guidance published in 1995, EPA received

comments from 22 companies and trade associations. The commenters generally agreed that the changes made by EPA addressed most of their major comments on the 1993 proposed guidance, and that the 1995 revised guidance was a significant improvement. For example, the Monsanto Company stated: ''The reproposed guidance, as summarized in the draft policy text for public comment dated March 9, 1995, is a significant improvement over the guidance published July 13, 1993. The reproposed guidance significantly minimizes the duplicative over-reporting burden that characterized the earlier guidance document. We support the reproposed guidance document and believe it is generally consistent with the Congressional intent of the original drafters of TSCA, as well as current Agency and Congressional efforts to reform government reporting requirements to minimize duplicative and unneeded over-reporting. The reproposed guidance document on environmental release/contamination is a significant move in the direction of clarifying the Agency's need for information that reasonably supports a conclusion of substantial risk.'' (Ref. 1).

In addition to their statements of support for the proposed changes, the commenters requested a number of clarifications/definitions of terms, editorial rewordings, and other less substantive changes that are addressed in a ''response-to-comments'' document that can be found in the docket as described in Unit I.B.1. Commenters expressed strong support for making the new guidance prospective, ending the CAP at phase 1, and developing a Q. and A. document. As previously discussed, EPA is in agreement with those comments.

One major area where industry commenters requested further changes was the exemption from reporting under section 8(e) for data submitted to EPA or other agencies under other authorities. The commenters were concerned about the extent to which exemptions from reporting under section 8(e) would be granted for reporting under authorities other than EPA statutes administered either by the Agency or, where implementation of an EPA statute has been delegated to the States. EPA had proposed to reduce the potential for duplicative submission under TSCA section 8(e) authorities by allowing an exemption to reporting under section 8(e) for all information which is required to be reported under other EPA statutes including where implementation had been delegated to the States, and where such reporting was required to be submitted within 90 days of being obtained. Industry commenters also questioned the length of the time period for reporting proposed by EPA. Industry commenters requested that the exemption be expanded to: (1) Include any mandatory reporting requirement whether Federal, State, or local, and (2) allow reporting within the time frame provided by the individual reporting authorities.

Regarding expanding the section 8(e) policy statement list of reporting authorities that would fall under a reporting exemption in Part VII. of the policy statement, the July 1993 and March 1995 proposals included an exemption to reporting only if the information was to be submitted under EPA statutes, including statutes such as the Clean Air Act, where implementation has been delegated in large part to the States. Delegation of implementation allowed a clear ''nexus'' to be shown between a State reporting requirement and EPA, thus following the statutory language of section 8(e) which does not require reporting if a company has ''actual knowledge that the Administrator has been adequately informed of such information.'' The commenters would have EPA expand the reporting exemption by including any Federal, State, or local reporting requirements.

The issue of expanding the reporting authorities is problematic because of the statutory language in section 8(e). However, it is also relevant to look to the purpose of TSCA, and section 8(e) in particular, in light of the legislative history concerning how TSCA should be implemented. TSCA was designed to fill a number of regulatory gaps. Those included review of ''new'' chemicals, collection of test data on new and existing chemicals, and regulation of chemicals to address risks associated with chemicals' production, use, or disposal. Specifically, regarding the submission of test data, Congress wanted to avoid the potential for industry to withhold ''information which would have revealed hazards associated with these chemicals at a much earlier date'' (Ref. 2). Thus, the reporting requirement of section 8(e) of TSCA was established so that the Agency would be ''adequately informed'' to enable it to take corrective action if necessary. While Congress envisioned TSCA as filling a major gap in the regulatory framework protecting human health and the environment, it also directed the Administrator to avoid duplicating existing (and future) regulatory and enforcement authorities.

Given the statutory language of section 8(e), it is hard to make a case that the Administrator is adequately informed of reporting under State or local authorities, other than those reporting requirements that originate in laws administrated by EPA in which the United States Congress has provided for delegation to the States, and such delegation has occurred. Except where such delegation of EPA authority has occurred, the Agency believes reporting to a state government may not result in EPA getting important information in a timely manner and, therefore, EPA does not believe it is appropriate to exempt from section 8(e), information that is reported to state governments.

However, at least some information reported under other Federal authorities could be viewed differently. While there is not a direct statutory ''nexus,'' often there is a considerable amount of interagency cooperation in dealing with environmental contamination situations, e.g., the National Response Center. To the extent EPA Headquarters and the Regions become involved in joint cleanups, assessments, etc., or act in advisory roles with other Federal agencies, the Administrator could reasonably be considered to be adequately informed. The Agency believes that information reported under other Federal authorities for site-specific contamination within 90 calendar days or immediately pursuant to a mandatory reporting requirement qualifies for exemption from section 8(e) reporting.

While this approach reduces the role of section 8(e) in the reporting of site-specific release/contamination information, Congress' goal in passing TSCA to ensure that important health and environmental related information are reported in a timely fashion will still be met. Further, since there is now a considerable array of Federal health and environmental reporting requirements, including section 8(e), which provide such information and for which there is enhanced public access, Congress's goal is not considered to be compromised by some of the expanded exemptions.

However, product contamination information that could be required to be submitted to the Consumer Product Safety Commission (CPSC) under their regulations is not analogous. CPSC has a more narrow purview (i.e., consumer product safety) and could not adequately assess or address chemical contamination from a product that may also have industrial/commercial applications or may present potential environmental risks during its manufacture and processing. In such instances, reporting to EPA, as well as CPSC would allow EPA, consistent with the intent of TSCA, to address all the potential risks presented, where appropriate. Consequently, EPA has

concluded that section 8(e) reporting will continue to be required for chemical product contamination, because EPA, uniquely among Federal agencies, has the authority to address all potential health and environmental risk aspects of a chemical's life cycle.

Regarding the issue of expanding the reporting exemption in Part VII. of the section 8 policy statement to allow reporting within the time frame provided by the individual reporting authorities, as originally proposed in 1993, companies would not be required to report information under section 8(e) if the information was required to be submitted under other EPA or EPA-delegated authorities, so long as the other statute required reporting within 30 days from the day a person who was required to report obtained information required to be submitted. Commenters noted that only a few of the regulations required reporting within 30 days, so the exemption would be of limited value given that companies would still be required to report the information under section 8(e) as well as under the other regulations. To address this concern, the reporting policy is being changed. Companies would be exempt from reporting information under section 8(e) as long as the company complies with the relevant reporting requirement of another statute, as described in Part VII. of the TSCA section 8(e) policy and guidance, that requires reporting within 90 days from the day a person obtained information required to be submitted. This change was based on information submitted by industry showing that roughly 70 percent of the reporting requirements have reporting periods of 90 days or less (see Ref. 3 at page 29, Table 1). Further, an examination of the cited reporting requirements shows that the 90–day period will capture reports that otherwise would be required under section 8(e), namely newly found environmental contamination from spills, leaking tanks, and other types of releases. By and large, the types of reporting for which the statutory time limits for filing of mandatory reports are longer than 90 days include periodic summary reports, minor operating changes allowed by permits, etc.

It appears that most or all of the exposure-related or site-specific release/detection information that might be considered reportable under section 8(e) would be required to be reported under other authorities within 90 days of such information being obtained. Therefore, there would be a negligible reduction of the reporting burden if authorities whose reporting time limits exceed 90 days were also exempted from reporting under section 8(e). Also, such a change seems inconsistent with the statutory language that substantial risk information be ''immediately'' reported. Given that a 90–day limit appears to resolve most of the problem with potentially duplicative reporting, and that longer limits may not be consistent with the statutory directive for ''immediate reporting,'' EPA has decided to keep the reporting time limit at 90 days as proposed in the 1995 draft guidance.

Additionally, as proposed in the 1993 and reproposed 1995 draft guidance, EPA is adopting the interpretation that section 8(e) notices for information other than ''emergency incidents of environmental contamination'' should be submitted within 30 calendar days. Thus the Agency is changing in this guidance document its interpretation of the term ''immediately'' in this context. EPA believes the term should be interpreted more flexibly based upon the Agency's experience of processing and use of data reported under section 8(e) and comments received from interested parties. EPA has concluded that, with the exception of reporting related to emergency incidents of environmental contamination, section 8(e) reports should be submitted to EPA within 30 calendar days of obtaining the reportable information, instead of the 15 working days that was articulated in previous guidance. The Agency believes that application of this interpretation for the statutory term ''immediately'' will not adversely impact section 8(e)'s purpose of assuring that the Agency becomes aware of important risk-related information in a timely manner. In addition, providing 30 calendar days for reporting to the Agency is consistent with the regulations under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, which provides that agencies should not require a written response in fewer than 30 days after receipt without demonstrating that it is necessary to satisfy a statutory requirement or other substantial need (5 CFR 1320.5(d)(2)(ii)). Although TSCA section 8(e) clearly provides the necessary statutory justification to require a shorter response time, the Agency is using the minimum time frame established under the PRA to respond to the commenters who indicated the need for additional time to process a submission.

C. EPA's reinstatement of Part V.(c)

''*Emergency incidents of environmental contamination.*'' Part V.(c) of the 1978 Policy Statement, which addresses what constitutes a ''substantial risk'' in the context of emergency incidents of environmental contamination, was suspended on June 20, 1991 (56 FR 28458). EPA has decided, for the following reasons, to reinstate Part V.(c):

- EPA is making a number of changes to the reporting guidance that would affect emergency incident reporting. Changes include reporting to the National Response Center, elimination of follow-up written section 8(e) reports, and expansion of the list of authorities persons could report under in lieu of section 8(e).
- Part V.(c) includes the basic elements of the new Part V.(b)(1) guidance: The adverse effect(s) in question have been ascribed to the chemical; human or environmental exposure may occur; exposure (in this case, an emergency release) threatens humans and/or non-human organisms with serious adverse effects.
- EPA believes such reporting under section 8(e) is still necessary. Although many release incidents are covered under other statutes, there may be instances where chemicals that have not yet been reviewed for release reporting under other EPA programs have the requisite hazard characteristics to require a response/notification if there is a release to the environment. In this regard, EPA agrees with a comment from the Chemical Manufacturers Association (CMA—CMA is now the American Chemistry Council) indicating that, if EPA retains the distinction between emergency and non-emergency situations of environmental contamination, ''emergency'' should be defined. CMA stated: ''CMA believes an 'emergency' should be defined as a situation in which a significant threat to human health or the environment is imminent or already present, and where immediate action is necessary to abate the hazard. Such an approach would be consistent with the Agency's previous description of non-emergency situations of environmental contamination as situations which do not require immediate action, but nevertheless reasonably support the conclusion of 'substantial risk.'" (Ref. 4). EPA believes that revised Part V.(b)(1), the reinstated Part V.(c), and the reporting procedures adequately make the distinction described by CMA in that a ''substantial risk'' in this context is an ''emergency incident of environmental contamination'' that ''seriously threatens'' humans or the environment.

IV. Claims of Confidentiality for Data Submitted under TSCA Section 8(e)

In general, health and safety information submitted to EPA—even as confidential—may be released to the

public, except as noted below. EPA considers information contained in a notice of substantial risk under TSCA section 8(e) to be health and safety information and, therefore, covered by the term ''health and safety study,'' as defined in section 3(6) of TSCA. TSCA section 3(6) defines a ''health and safety study'' as ''any study of any effect of a chemical substance or mixture on health or the environment or on both, including the underlying data and epidemiological studies, studies of occupational exposure to a chemical substance or mixture, toxicological, clinical, and ecological studies of a chemical substance or mixture, and any test performed pursuant to this Act.''

Under TSCA section 14(b), health and safety information may be disclosed to the public (i.e., may not be protected as confidential). However, the section does not authorize public release of information concerning the manufacturing process of a chemical substance or mixture which is the subject of submitted health and safety information, including data ''disclosing the portion of the mixture comprised by any of the chemical substances in the mixture.''

In the legislative history of TSCA, the Conference Committee stated that ''[i]t is intended that the term (health and safety studies) be interpreted broadly. Not only is information which arises as a result of a formal, disciplined study included, but other information relating to the effects of a chemical substance or mixture on health and the environment is also included. Any data that bears on the effects of a chemical substance on health or the environment would be included.'' (Ref. 5). EPA believes that TSCA section 8(e) information, such as information or underlying data from studies carried out to investigate the effects of a chemical (or a mixture of chemicals) on health or the environment, or reports concerning the effects of unintentional or accidental releases or exposures, is information that ''bears on the effects of a chemical substance on health or the environment.''

Therefore, incident information, exposure studies, and their underlying data should be considered covered under the term ''health and safety study.'' To the extent that information contained in a section 8(e) substantial risk report falls within the meaning of the term ''health and safety study'' under TSCA, it will not be afforded TSCA ''Confidential Business Information'' (CBI) protection except as noted in the following paragraph.

EPA considers chemical identity to be part of, the underlying data to, a health and safety study. See, for example, 40 CFR 716.3 and 40 CFR 720.3(k). Consequently, the confidential identity of a chemical substance will not be protected by EPA unless otherwise provided for under section 14 of TSCA and the interpreting regulations in 40 CFR part 2.

EPA urges persons submitting data under TSCA section 8(e) to observe the limitations imposed on CBI claims by section 14 and the applicable regulations at 40 CFR part 2, subpart B, in order to save both Agency and submitter resources.

V. References

The following is a listing of the documents that are specifically cited in this guidance document, and which are available as part of the public docket described in Unit I.B.1.:

1. Monsanto Company. Letter from J. Ronald Condray. Comment #12. May 3, 1995.

2. United States Congress. (1976) Report of the Senate Committee on Commerce on S. 3149, No. 94–698: 8.

3. Chemical Manufacturers Association (CMA). Comments of the Chemical Manufacturers Association on TSCA Section 8(e) Notice of Clarification. October 28, 1993.

4. Chemical Manufacturers Association (CMA). Comments of the Chemical Manufacturers Association on TSCA Section 8(e) draft policy statement. Comment #6, p. 24. May 4, 1995.

5. United States Congress. (1976) House of Representatives, 94th Congress, 2d Session. H.R. Report 94–1679 (Conference Report and Debates): 58.

VI. Statutory and Executive Order Reviews

As discussed in Unit II.B., the guidance document articulates EPA's preferences for how and where TSCA section 8(e) notices should be submitted. The guidance document is not a regulation, and submitters of TSCA section 8(e) notices are not obligated to comply with the preferences. Since this document is not a regulation and does not impose any new binding requirements it is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), or Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). For the same reason, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to, an information collection request as defined by the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after appearing in the **Federal Register**, are listed in 40 CFR part 9 and 48 CFR chapter 15, and included on the related collection instrument or form, if applicable.

This document does not contain any new information collection requirements that would require additional OMB review and approval under the PRA. The information collection activities related to the submission of information pursuant to TSCA section 8(e) have been approved by OMB under OMB control number 2070–0046 (EPA ICR No. 0794). The annual respondent burden for this information collection activity is estimated to average 27 hours per initial section 8(e) submission and 5 hours per follow-up/supplemental section 8(e) submission, which includes the average time for processing, compiling and reviewing the requested data, generating the request, follow-up correspondence with EPA, storing, filing, and maintaining the data.

As defined by the PRA and 5 CFR 1320.3(b), ''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.

This document will have a negligible impact on States, local or Tribal governments because they do not generally engage in activities that would subject them to reporting requirements under TSCA section 8(e). Further this guidance document imposes no requirements on any entities, and instead is announcing Agency policies

and interpretations that generally will ease the reporting burdens under section 8(e). This action will not have substantial direct effects on State or tribal governments, on the relationship between the Federal government and States or Indian tribes, or on the distribution of power and responsibilities between the Federal government and States or Indian tribes. As a result, no action is required under Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), or under Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Nor does it impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action requires no special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Specific Revisions to the Policy Statement

For the reasons discussed in Unit III., EPA is making the following specific changes to the 1978 Policy Statement:

1. Part II. Persons Subject to the Requirement is amended by revising the note at the end of Part II.
2. Part IV. Requirement That a Person ''Immediately Inform'' the Administrator, Part VII. Information Which Need Not Be Reported, and Part IX. Reporting Requirements are revised.
3. Part V. What Constitutes Substantial Risk is amended by revising the heading of paragraph (b) and paragraph (b)(1) and adding the paragraph heading ''Environmental effects.'' to the beginning of paragraphs (b)(2) through (b)(5).

VIII. Republication of TSCA Section 8(e) Policy Statement and Guidance

As discussed previously, the following is a republication of the entire TSCA section 8(e) Policy Statement and Guidance, as amended:

I. Definitions

The definitions set forth in TSCA section 3 apply to this policy statement. In addition, the following definitions are provided for purposes of this policy statement:

The term *manufacture or process for commercial purposes* means to manufacture or process: (1) For distribution in commerce, including for test marketing purposes, (2) for use as a catalyst or an intermediate, (3) for the exclusive use by the manufacturer or processor, or (4) for product research and development.

The term *person* includes any natural person, corporation, firm, company, joint-venture, partnership, sole proprietorship, association, or any other business entity, any State or political subdivision thereof, any municipality, any interstate body and any department, agency, or instrumentality of the Federal Government.

The term *substantial-risk information* means information which reasonably supports the conclusion that a chemical substance or mixture presents a substantial risk of injury to health or the environment.

II. Persons Subject to the Requirement

Persons subject to section 8(e) requirements include both natural persons and business entities engaged in manufacturing, processing, or distributing in commerce a chemical substance or mixture. In the case of business entities, the president, chief executive officer, and any other officers responsible and having authority for the organization's execution of its section 8(e) obligations should ensure that the organization reports substantial risk information to EPA. The business organization is considered to have obtained any information which any officer or employee capable of appreciating the significance of that information has obtained. It is therefore incumbent upon business organizations to establish procedures for expeditiously processing pertinent information consistent with the schedule set forth in Part IV.

Those officers and employees of business organizations who are capable of appreciating the significance of pertinent information are also subject to these reporting requirements. An employing organization may relieve its individual officers and employees of any responsibility for reporting substantial-risk information directly to EPA by establishing, internally publicizing, and affirmatively implementing procedures for employee submission and corporate processing of pertinent information. These procedures, at a minimum, should: (1) Specify the information that officers and employees must submit; (2) indicate how such submissions are to be prepared and the company official to whom they are to be submitted; (3) note the Federal penalties for failing to report; and (4) provide a mechanism for promptly advising officers and employees in writing of the company's disposition of the report, including whether or not the report was submitted to EPA (and if not reported, informing employees of their right to report to EPA, as protected by TSCA section 23). An employee of any company that has established and publicized such procedures, who has internally submitted pertinent information in accordance with them, shall have discharged his section 8(e) obligation. Establishment of such procedures notwithstanding, all officials responsible and having authority for the organization's execution of its section 8(e) obligations retain personal liability for ensuring that the appropriate substantial-risk information is reported to EPA.

Business organizations that do not establish such procedures cannot relieve their individual officers and employees of the responsibility for ensuring that substantial-risk information they obtain is reported to EPA. While officers and employees of such organizations may also elect to submit substantial-risk information to their superiors, for corporate processing and reporting, rather than to EPA directly, they have not discharged their individual section 8(e) obligation until EPA has received the information.

Note: Irrespective of a business organization's decision to establish and publicize procedures described above, the business organization is responsible for becoming cognizant of any ''substantial risk'' information obtained by its officers, employees, and agents, and for ensuring that such information is properly reported to EPA.

III. When a Person Will Be Regarded as Having Obtained Information

A person obtains substantial-risk information at the time he first comes into possession of or knows of such information.

Note: This includes information of which a prudent person similarly situated could reasonably be expected to possess or have knowledge. An establishment obtains information at the time any officer or employee capable of appreciating the significance of such information obtains it.

IV. Requirement That a Person ''Immediately Inform'' the Administrator

With the exception of certain information on emergency incidents of environmental contamination (see Part V.(c)) and information submitted under Part VII. (c), (d) and (e), a person has ''immediately informed'' the Administrator if information is received by EPA not later than the 30th calendar day after the date the subject person obtained such information. Supplementary information generated after a section 8(e) notification should, if appropriate, be immediately reported (within 30 calendar days of a person obtaining the information). This also applies to submitter responses to EPA requests for additional information related to submitted section 8(e) data. Section 8(e) reporting must be submitted to EPA and should be made as described under Part IX. For emergency incidents of environmental contamination, a person should report by telephone to the appropriate contact as directed in Part IX. as soon as the person has knowledge of the incident. The emergency incident report should contain as much of the information specified in Part IX. as is possible. A follow-up written report is not required.

Note: Preexisting information (i.e., of the kind described under Part V. (b)(1) and (c)) that predates June 3, 2003, is not subject to section 8(e) reporting unless its review is triggered by a person obtaining new information and that in combination with the preexisting information meets the criteria for section 8(e) reporting.

V. What Constitutes Substantial Risks

A ''substantial risk of injury to health or the environment'' is a risk of considerable concern because of (a) the seriousness of the effect (see subparts (a), (b), and (c) of this part for an illustrative list of effects of concern), and (b) the fact or probability of its occurrence. (Economic or social benefits of use, or costs of restricting use, are not to be considered in determining whether a risk is ''substantial.'') These two criteria are differentially weighted for different types of effects. The human health effects listed in subpart (a) of this part, for example, are so serious that relatively little weight is given to exposure: The mere fact the implicated chemical is in commerce constitutes sufficient evidence of exposure. In contrast, the remaining effects listed in subparts (b) and (c) of this part must involve, or be accompanied by the potential for, significant levels of exposure (because of general production levels, persistence, typical uses, common means of disposal, or other pertinent factors).

Note that information on the effects outlined below should not be reported: (i) If the respondent has actual knowledge that the Administrator is already informed of them, or (ii) information respecting these effects can be obtained either directly by observation of their occurrence, or inferred from designed studies as discussed in Part VI.

The Agency considers effects for which substantial-risk information should be reported to include the following.

(a) *Human health effects*. (1) Any instance of cancer, birth defects, mutagenicity, death, or serious or prolonged incapacitation, including the loss of or inability to use a normal bodily function with a consequent relatively serious impairment of normal activities, if one (or a few) chemical(s) is strongly implicated.

(2) Any pattern of effects or evidence which reasonably supports the conclusion that the chemical substance or mixture can produce cancer, mutation, birth defects or toxic effects resulting in death, or serious or prolonged incapacitation.

(b) *Non-emergency situations involving environmental contamination; environmental effects*—(1) *Non-emergency situations of chemical contamination involving humans and/or the environment*. Information that pertains to widespread and previously unsuspected distribution in environmental media of a chemical substance or mixture known to cause serious adverse effects, when coupled with information that widespread or significant exposure to humans or non-human organisms has occurred or that there is a substantial likelihood that such exposure will occur, is subject to reporting. The mere presence of a chemical in an environmental media, absent the additional information noted above, would not trigger reporting under section 8(e). Information concerning the detection of chemical substances contained within appropriate disposal facilities such as treatment, storage and disposal facilities permitted under RCRA should not be reported under this part.

Note: From time to time EPA establishes concentrations of various substances in different media that trigger a regulatory response or establish levels that are presumed to present no risk to human health or the environment. For example, EPA establishes Maximum Contaminant Levels (MCLs) in drinking water, Ambient Water Quality Criteria for receiving bodies of water, and Reference Doses (RfDs) or Concentrations (RfCs). For the purposes of section 8(e), information about contamination found at or below these kinds of benchmarks would not be reportable. Conversely, information about contamination found at or above benchmarks that trigger regulatory requirements, such as Resource Conservation and Recovery Act (RCRA) Toxicity Characteristic Limits, is to be considered for possible reporting, based on potential exposure to humans and/or non-human organisms and other relevant factors.

(2) *Environmental effects*. Measurements and indicators of pronounced bioaccumulation heretofore unknown to the Administrator (including bioaccumulation in fish beyond 5,000 times water concentration in a 30-day exposure or having an n-octanol/water partition coefficient greater than 25,000) should be reported when coupled with potential for widespread exposure and any non-trivial adverse effect.

(3) *Environmental effects*. Any non-trivial adverse effect, heretofore unknown to the Administrator, associated with a chemical known to have bioaccumulated to a pronounced degree or to be widespread in environmental media, should be reported.

(4) *Environmental effects*. Ecologically significant changes in species' interrelationships; that is, changes in population behavior, growth, survival, etc. that in turn affect other species' behavior, growth, or survival, should be reported.

Examples include: (i) Excessive stimulation of primary producers (algae, macrophytes) in aquatic ecosystems, e.g., resulting in nutrient enrichment, or eutrophication, of aquatic ecosystems.

(ii) Interference with critical biogeochemical cycles, such as the nitrogen cycle.

(5) *Environmental effects*. Facile transformation or degradation to a chemical having an unacceptable risk as defined above should be reported.

(c) *Emergency incidents of environmental contamination*. Any environmental contamination by a chemical substance or mixture to which any of the above adverse effects has been ascribed and which because of the pattern, extent, and amount of contamination (1) seriously threatens humans with cancer, birth defects, mutation, death or serious or prolonged incapacitation, or (2) seriously threatens non-human organisms with large-scale or ecologically significant population destruction, should be reported.

VI. Nature and Sources of Information Which ''Reasonably Supports the Conclusion'' of Substantial Risk

Information attributing any of the effects described in Part V. of this policy statement to a chemical substance or

mixture should be reported if it is one of the types listed below and if it is not exempt from the reporting requirement by reason of Part VII. of this policy statement. A person should not delay reporting until he obtains conclusive information that a substantial-risk exists, but should immediately report any evidence which ''reasonably supports'' that conclusion. Such evidence will generally not be conclusive as to the substantiality of the risk; it should, however, reliably ascribe the effect to the chemical.

Information from the following sources concerning the effects described in Part V. will often ''reasonably support'' a conclusion of substantial risk. Consideration of corroborative information before reporting can only occur where it is indicated below.

(1) *Designed controlled studies*. In assessing the quality of information, the respondent should consider whether it contains reliable evidence ascribing the effect to the chemical. Not only should final results from such studies be reported, but also preliminary results from incomplete studies where appropriate. Designed, controlled studies include:

(i) *In vivo* experiments and tests.

(ii) *In vitro* experiments and tests. Consideration may be given to the existence of corroborative information, if necessary to reasonably support the conclusion that a chemical presents a substantial risk.

(iii) Epidemiological studies.

(iv) Environmental monitoring studies.

(2) *Reports concerning and studies of undesigned, uncontrolled circumstances*. It is anticipated here that reportable effects will generally occur in a pattern, where a significant common feature is exposure to the chemical. However, a single instance of cancer, birth defects, mutation, death, or serious incapacitation in a human would be reportable if one (or a few) chemicals) was strongly implicated. In addition, it is possible that effects less serious than those described in Part V.(a) may be preliminary manifestations of the more serious effects and, together with another triggering piece of information, constitute reportable information; an example would be a group of exposed workers experiencing dizziness together with preliminary experimental results demonstrating neurological dysfunctions. Reports and studies of undesigned circumstances include:

(i) Medical and health surveys.

(ii) Clinical studies.

(iii) Reports concerning and evidence of effects in consumers, workers, or the environment.

VII. Information Which Need Not Be Reported

''Substantial risk'' information need not be reported under section 8(e) if it:

(a) Is obtained in its entirety from one of the following sources:

(1) An EPA study or report.

(2) An official publication or official report (draft or final) published or made available to the general public by another Federal agency and any information developed by another Federal Agency as a result of a toxicological testing/study program, or site evaluation for chemical contamination, in which EPA is collaborating in the design, review, or evaluation of testing/sampling plans or resultant data.

(3) Scientific publications, including bibliographic databases, available electronically or in hard copy (e.g., Science, Nature, New England Journal of Medicine, Medline, Toxline, NIOSH RTECS, International Uniform Chemical Information Database (IUCLID), etc.).

(4) Scientific databases (e.g., Agricola, Biological Abstracts, Chemical Abstracts, Dissertation Abstracts, Index Medicus, etc).

(5) A news publication (i.e., newspaper, news magazine, trade press) with circulation in the United States.

(6) A radio or television news report broadcast in the United States.

(7) A public scientific conference or meeting held within the United States, provided that the information is captured accurately by way of a meeting transcript, abstract, or other such record, and has been cited in a bibliographic/abstract computerized data base, publication, or report of the type cited in paragraphs (a) (1), (2), (3), or (4) of this part within 90 days of a subject person obtaining such information.

(8) A public scientific conference sponsored or co-sponsored by EPA or at a conference where the subject information is presented by an EPA employee or contractor acting on behalf of EPA.

(b) Corroborates (i.e., substantially duplicates or confirms) in terms of, for example, route of exposure, dose, species, strain, sex, time to onset of effect, nature and severity of effect, a well-recognized/well-established serious adverse effect for the chemical(s) under consideration, unless such information concerns effects observed in association with emergency incidents of environmental contamination as described in Part V.(c) and thus should be considered for reporting under section 8(e).

(c) Is information that will be reported to EPA within 90 calendar days of obtaining the information for non-emergency information under Part V.(b)(1), immediately (i.e., as soon as the subject person has knowledge of the incident) for emergency information under Part V.(c), or within 30 calendar days of obtaining the information for the other types of information specified under Part V., pursuant to a mandatory reporting requirement of any statutory authority that is administered by EPA (including, but not limited to, the Toxic Substances Control Act; the Federal Water Pollution Control Act; the Clean Air Act; the Federal Insecticide, Fungicide, and Rodenticide Act; the Safe Drinking Water Act; the Marine Protection, Research, and Sanctuaries Act; the Comprehensive Environmental Response, Compensation, and Liability Act; the Resource Conservation and Recovery Act, the Pollution Prevention Act; the Emergency Planning and Community Right-to-Know Act).

(d) Is information that will be reported to a State within 90 calendar days of obtaining the information for non-emergency information under Part V.(b)(1), immediately (i.e., as soon as the subject person has knowledge of the incident) for emergency information under Part V.(c), or within 30 calendar days of obtaining the information for the other types of information specified under Part V., pursuant to a mandatory reporting requirement under any Federal statute administered by EPA for which implementation has been delegated to that State (e.g., National Pollutant Discharge Elimination System (NPDES) permit requirements), or pursuant to a mandatory reporting provision of an EPA-authorized State program established under a Federal statute administered by EPA, e.g., state RCRA programs.

(e) Is information that will be reported to the Federal government within 90 calendar days of obtaining the information for non-emergency site-specific contamination information under Part V.(b)(1) or immediately (i.e., as soon as the subject person has knowledge of the incident) for emergency information under Part V.(c), pursuant to a mandatory reporting requirement under any Federal statute.

(f) Is information of the kind under Part V. (b)(1) and (c) submitted to the Federal government or a state that is developed in connection with an authorized (by the relevant Federal or state authority) site remediation program.

(g) Is information of the kind under Part V. (b)(1) and (c) concerning a site under the control of another person who is subject to the section 8(e) reporting authority.

(h) Is information of the kind under Part V.(b)(1) and (c) concerning a non-United States site provided the person who obtains the information does not have reason to believe that there is a substantial likelihood that the contamination will cause environmental contamination, of a nature that would be reportable under Part V. (b)(1) and (c), to occur in an area in the United States.

VIII. Information First Received By a Person Prior to the Effective Date of TSCA

Any substantial risk information possessed by a person prior to January 1,1977, of which he is aware after that date should be reported within 60 days of publication of this policy statement. The Agency considers that a person is aware of:

(a) Any information reviewed after January 1, 1971, including not only written reports, memoranda and other documents examined after January 1, 1971, but also information referred to in discussions and conferences in which the person participated after January 7, 1977;

(b) Any information the contents of which a person has been alerted to by date received after January 1, 1977, including any information concerning a chemical for which the person is presently assessing health and environmental effects;

(c) Any other information of which the person has actual knowledge.

IX. Reporting Requirements

Notices should be delivered to the Document Processing Center (7407M), (Attn: TSCA Section 8(e) Coordinator), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001

A notice should:

(a) Be sent by certified mail, or in any other way permitting verification of its receipt by the Agency.

(b) State that it is being submitted in accordance with section 8(e).

(c) Contain the job title, name, address, telephone number, and signature of the person reporting and the name and address of the manufacturing, processing, or distribution establishment with which the person is associated.

(d) Identify the chemical substance or mixture (including, if known, the Chemical Abstract Service (CAS) Registry Number).

(e) Summarize the adverse effect(s) or risk(s) being reported, describing the nature and the extent of the effect(s) or risk(s) involved.

(f) Contain the specific source of the information together with a summary and the source of any available supporting technical data.

For emergency incidents of environmental contamination (see Part V.(c)), a person should report the incident to the Administrator or the National Response Center by telephone as soon as he/she has knowledge of the incident. The report should contain as much of the information specified by paragraphs (c) through (f) of this part as possible. If any new substantial risk information concerning the incident and reportable under TSCA section 8(e) is obtained, supplementary reporting by the person is required. A twenty-four hour emergency telephone number is:

The National Response Center, (800) 424–8802 or (202) 267–2675 in the Washington, DC metropolitan area.

Region I (Maine, Rhode Island, Connecticut, Vermont, Massachusetts, New Hampshire), (617) 223–7265.

Region II (New York, New Jersey, Puerto Rico, Virgin Islands), (201) 548–8730.

Region III (Pennsylvania, West Virginia, Virginia, Maryland, Delaware, District of Columbia), (215) 814–3255.

Region IV (Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Florida), (404) 562–8700.

Region V (Wisconsin, Illinois, Indiana, Michigan, Ohio, Minnesota), (312) 353–2318.

Region VI (New Mexico, Texas, Oklahoma, Arkansas, Louisiana), (214) 655–6428.

Region VII (Nebraska, Iowa, Missouri, Kansas), (913) 281–0991.

Region VIII (Colorado, Utah, Wyoming, Montana, North Dakota, South Dakota), (800) 227–8917.

Region IX (California, Nevada, Arizona, Hawaii, Guam), (415) 972–4400.

Region X (Washington, Oregon, Idaho, Alaska), (206) 553–1263.

X. Confidentiality Claims

(a) EPA may release to the public health and safety data claimed confidential, including information submitted in a notice of substantial risk under section 8 (e) of TSCA. EPA will disclose any information claimed confidential only to the extent, and by means of the procedures, set forth in 40 CFR part 2 (41 FR 36902, September 1, 1976)

(b) If no claim accompanies the notice at the time it is submitted to EPA, the notice will be placed in an open file to be available to the public without further notice to the submitter.

(c) To assert a claim of confidentiality for information contained in a notice, the submitter must submit two copies of the notice.

(1) The first copy should be complete and unedited, clearly reflecting what specific information is being claimed confidential. This should be done on each page by placing brackets around the specific information in question together with a label such as ''confidential,'' ''proprietary,'' or ''trade secret.''

(2) The second copy should be identical to the first copy, but with all bracketed information blanked out within the brackets.

(3) Information within the first confidential copy of the notice will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 CPR part 2. The second copy will be placed in an open file to be available to the public

(d) Any person submitting a notice containing information for which they are asserting a confidentiality claim should send the notice in a double envelope.

(1) The outside envelope should bear the same address outlined in Part IX. of this policy statement.

(2) The inside envelope should be clearly marked ''To be opened only by the OPPT Document Control Officer.''

(e) The submitter should substantiate any CBI claims by answering substantiation questions according to the instructions located in the TSCA section 8(e) website: http://www.epa.gov/opptintr/tsca8e/doc/cbi.htm

XI. Failure to Report Information

Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to submit information required under section 8(e). Section 16 provides that a violation of section 15 renders a person liable to the United States for a civil penalty and possible criminal prosecution. Pursuant to section 17, the Government may seek judicial relief to compel submittal of section 8(e) information and to otherwise restrain any violation of section 8(e).

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 15, 2003.

Stephen L. Johnson,

Assistant Administrator for Prevention, Pesticides, and Toxic Substances.

[FR Doc. 03–13888 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7507–2]

Notice of Approval of Submissions to Prohibit Mixing Zones for Bioaccumulative Chemicals of Concern Pursuant to Section 118 of the Clean Water Act and the Water Quality Guidance for the Great Lakes System for the Commonwealth of Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given of approval of submissions by the Commonwealth of Pennsylvania to prohibit mixing zones for bioaccumulative chemicals of concern (BCCs) in the Great Lakes System pursuant to section 118(c) of the Clean Water Act and the Water Quality Guidance for the Great Lakes System, as amended.

DATES: EPA's approval is effective on June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Denise Hakowski, U.S. EPA, Region 3, 1650 Arch Street, Philadelphia, PA 19103, or telephone her at (215) 814–5726. Copies of materials considered by EPA in its decision are available for review by appointment at U.S. EPA, Region 3, 1650 Arch Street, Philadelphia, PA 19103. Appointments may be made by calling Ms. Hakowski.

SUPPLEMENTARY INFORMATION: On March 23, 1995, EPA published the Final Water Quality Guidance for the Great Lakes System (Guidance). *See* 60 FR 15366. The 1995 Guidance established minimum water quality standards, antidegradation policies, and implementation procedures for the waters of the Great Lakes System in the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin. Specifically, the 1995 Guidance specified numeric criteria for selected pollutants to protect aquatic life, wildlife and human health within the Great Lakes System and provided methodologies to derive numeric criteria for additional pollutants discharged to these waters. The 1995 Guidance also contained minimum implementation procedures and an antidegradation policy.

The 1995 Guidance, which was codified at 40 CFR part 132, required the Great Lakes States to adopt and submit to EPA for approval water quality criteria, methodologies, policies and procedures that are consistent with the Guidance. 40 CFR 132.4 & 132.5. EPA is required to approve of the State's submission within 90 days or notify the State that EPA has determined that all or part of the submission is inconsistent with the Clean Water Act (CWA) or the Guidance and identify any necessary changes to obtain EPA approval. If the State fails to make the necessary changes within 90 days after the notification, EPA must publish a notice in the **Federal Register** identifying the approved and disapproved elements of the submission and a final rule identifying the provisions of part 132 that shall apply for discharges within the State.

Soon after being published, the Guidance was challenged in the U.S. Court of Appeals for the District of Columbia Circuit. On June 6, 1997, the Court issued a decision upholding virtually all of the provisions contained in the 1995 Guidance (*American Iron and Steel Institute, et al.* v. *EPA,* 115 F.3d 979 (D.C. Cir. 1997)); however, the Court vacated the provisions of the Guidance that would have eliminated mixing zones for BCCs (115 F.3d at 985). The Court held that EPA had ''failed to address whether the measure is cost-justified,'' and remanded the provision to EPA for an opportunity to address this issue (115 F.3d at 997). In response to the Court's remand, EPA reexamined the factual record, including its cost analyses, and published the Proposal to Amend the Final Water Quality Guidance for the Great Lakes System to Prohibit Mixing Zones for Bioaccumulative Chemicals of Concern in the **Federal Register** on October 4, 1999 (64 FR 53632). EPA received numerous comments, data, and information from commenters in response to the proposal.

After reviewing and analyzing the information in the rulemaking record, including those comments, on November 13, 2000, EPA published the final rule amending the Final Water Quality Guidance for the Great Lakes System to Prohibit Mixing Zones for Bioaccumulative Chemicals of Concern, to be codified in appendix F, procedure 3.C of 40 CFR part 132. As amended, the Guidance requires that States adopt mixing zone provisions that prohibit mixing zones for new discharges of BCCs effective immediately upon adoption of the provision by the State, and to prohibit mixing zones for existing discharges of BCCs after November 15, 2010, except where a mixing zone is determined by the State to be necessary to support water conservation measures and overall load reductions of BCCs or where a mixing zone is determined by the State to be necessary for technical or economic reasons. Under the amended Guidance, States were given two years to adopt and submit revised water quality standards conforming with the amended Guidance.

The Commonwealth of Pennsylvania's regulation banning mixing zones for BCCs is found at 25 Pa. Code Chapter 93, section 93.8a. It was adopted on September 17, 2002, and the revisions were published in the Pennsylvania Bulletin on December 14, 2002. The Department of Environmental Protection's Office of Chief Counsel certified on January 23, 2003, that these regulatory changes were adopted pursuant to the Commonwealth's legal procedures, and that the Office of Attorney General and the Governor's Office of General Counsel have also approved the final regulatory changes for form and legality. In accordance with section 303(c)(2)(A) of the Clean Water Act (CWA) and 40 CFR 131.20(c), the Pennsylvania Department of Environmental Protection (PADEP) forwarded the amended regulation to the U.S. Environmental Protection Agency on February 7, 2003, and we received it on February 19, 2003.

EPA has conducted its review of Pennsylvania's submission to prohibit mixing zones for BCCs in the Great Lakes System in accordance with the requirements of section 118(c)(2) of the CWA and 40 CFR part 132. Section 118 requires that States adopt policies, standards and procedures that are ''consistent with'' the Guidance. EPA has interpreted the statutory term ''consistent with'' to mean ''as protective as'' the corresponding requirements of the Guidance. Thus, the Guidance gives States the flexibility to adopt requirements that are not the same as the Guidance, provided that the State's provisions afford at least as stringent a level of environmental protection as that provided by the corresponding provision of the Guidance. In making its evaluation, EPA has considered the language of the Commonwealth's standards, policies and procedures, as well as any additional information provided by Pennsylvania clarifying how it interprets or will implement its provisions.

In this proceeding, EPA has reviewed the Pennsylvania's submission to determine its consistency only with respect to appendix F, procedure 3.C of 40 CFR part 132. EPA has not reopened part 132 in any respect, and today's action does not affect, alter or amend in any way the substantive provisions of part 132. To the extent any members of the public commented during this

proceeding that any provision of part 132 is unjustified as a matter of law, science or policy, those comments are outside the scope of this proceeding.

With regard to the element of the Commonwealth's regulation submitted for EPA approval, EPA is approving this provision as a revision to the Commonwealth's water quality standards under section 303 of the CWA. EPA is also approving this submission under section 118 of the CWA. Additional explanations of EPA's review of and conclusions regarding this action are contained in the administrative record for today's actions. EPA is taking no action at this time with respect to other revisions a State may have made to its NPDES program or water quality standards in areas not addressed by the Guidance or applicable outside of the Great Lakes System.

Dated: May 20, 2003.

Donald S. Welsh,

Regional Administrator, Region 3.

[FR Doc. 03–13887 Filed 6–2–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 98–67; DA 03–1729]

Notice of Certification of State Telecommunications Relay Service (TRS) Programs

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The purpose of this document is to notify state Telecommunications Relay Service (TRS) programs that certification of their program has been granted through July 26, 2008. Notice is hereby given that the applications for certification of state Telecommunication Relay Services (TRS) programs of the states listed below have been granted, subject to the condition described below, pursuant to Title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. 225(f)(2), and section 64.605(b) of the Commission's rules, 47 CFR 64.605(b). The Commission will provide further Public Notice of the certification of the remaining applications for certification once final review of those states' applications has been completed. On the basis of the state applications, the Commission has determined that: The TRS program of the states meet or exceed all operational, technical, and functional minimum standards contained in section 64.604 of the Commission's rules, 47 CFR 64.604; the TRS programs of the listed states make available adequate procedures and remedies for enforcing the requirements of the state program; and the TRS programs of the listed states in no way conflict with federal law.

DATES: This certification shall remain in effect for a five year period, beginning July 26, 2003, and ending July 25, 2008, pursuant to 47 CFR 64.605(c).

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For further information regarding this *Public Notice*, contact Erica Myers, (202) 418–2429 (voice), (202) 418–0464 (TTY), or e-mail *emyers@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice,* CC Docket No. CC 98–67, released May 19, 2003. Copies of applications for certification are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. The applications for certification are also available on the Commission's Web site at *http://www.fcc.gov/cgb/dro/trs_by_state.html.* They 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.*

To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call Consumer & Governmental Affairs Bureau, at (202) 418–0531 (voice), (202) 418–7365 9 (tty). This *Public Notice* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro.*

Synopsis

The Commission also has determined that, where applicable, the intrastate funding mechanisms of the listed states are labeled in a manner that promotes national understanding of TRS and does not offend the public, consistent with section 64.605(d) of the Commission's rules, 47 CFR 64.605(d).

Because the Commission may adopt changes to the rules governing relay programs, including state relay programs, the certification granted herein is conditioned on a demonstration of compliance with the new rules adopted and any additional new rules that are adopted by the Commission. The Commission will provide guidance to the states on demonstrating compliance with such rule changes.

This certification, as conditioned herein, shall remain in effect for a five year period, beginning July 26, 2003, and ending July 25, 2008, pursuant to 47 CFR 64.605(c). One year prior to the expiration of this certification, July 25, 2007, the states may apply for renewal of their TRS program certification by filing documentation in accordance with the Commission's rules, pursuant to 47 CFR 64.605 (a) and (b).

First Group of States Approved for Certification

File No: TRS–46–02
Alabama Public Service Commission
State of Alabama
File No: TRS–47–02
Commission for the Deaf and Hearing Impaired
State of Arkansas
File No: TRS–32–02
California Public Utilities Commission
State of California
File No: TRS–04–02
Commission of the Deaf and Hearing Impaired
State of Connecticut
File No: TRS–49–02
District of Columbia Public Service Commission
District of Columbia
File No: TRS–43–02
Idaho Public Service Commission
State of Idaho
File No: TRS–08–02
Indiana Telephone Relay Access
State of Indiana
File No: TRS–19–02
Alaska Public Utilities Commission
State of Alaska
File No: TRS–02–02
Arizona Council for Hearing Impaired
State of Arizona
File No: TRS–23–02
Colorado Public Utilities Commission
State of Colorado
File No: TRS–32–02
State of Delaware Public Service Commission
State of Delaware
File No: TRS–50–02
Florida Public Utilities Commission
State of Florida
File No: TRS–10–02
Illinois Commerce Commission
State of Illinois
File No: TRS–03–02
Iowa Utilities Board
State of Iowa
File No: TRS–52–02
Kentucky Public Service Commission
State of Kentucky
File No: TRS–53–02
Maine Public Utilities Commission

State of Maine
File No: TRS 37–02
Telecommunications Access Minnesota
State of Minnesota
File No: TRS–15–02
Missouri Public Utilities Commission
State of Missouri
File No: TRS–40–02
Nebraska Public Service Commission
State of Nebraska
File No: TRS–42–02
New Hampshire Public Service Commission
State of New Hampshire
File No: TRS–16–02
New York State Department of Public Service
State of New York
File No: TRS–13–02
Louisiana Administration Board
State of Louisiana
File No: TRS–33–02
Maryland Department of Budget and Management
State of Maryland
File No: TRS–55–02
Mississippi Public Service Commission
State of Mississippi
File No: TRS–56–02
Telecommunications Access Service
State of Montana
File No: TRS–25–02
Dept. of Employment, Training and Rehabilitation
State of Nevada
File No: TRS–14–02
Commission for the Deaf and Hard of Hearing
State of New Mexico
File No: TRS–30–02
Department of Health and Human Services
State of North Carolina
File No: TRS–12–02
North Dakota Information Services Division
State of North Dakota
File No: TRS–57–02
Oklahoma Telephone Association
State of Oklahoma
File No: TRS–58–02
Pennsylvania Public Utilities Commission
State of Pennsylvania
File No: TRS–20–02
Tennessee Regulatory Authority
State of Tennessee
File No: TRS–09–02
Division of Public Utilities
State of Utah
File No: TRS–04–02
Virginia Public Service Commission
State of Virginia
File No: TRS–06–02
West Virginia Public Service Commission
State of West Virginia
File No: TRS–37–02
Public Utilities Commission of Ohio
State of Ohio
File No: TRS–36–02
Oregon Public Utilities Commission
State of Oregon
File No: TRS–60–02
Department of Human Services
State of South Dakota
File No: TRS–03–02
Public Utility Commission of Texas
State of Texas
File No: TRS–44–02
Department of Public Service
State of Vermont
File No: TRS–27–02
Department of Social and Health Services
State of Washington
File No: TRS–01–02
Wisconsin Department of Administration
State of Wisconsin
File No: TRS–18–02
Wyoming Department of Administration
State of Wyoming

Federal Communications Commission.

June Taylor,

Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 03–13514 Filed 6–2–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 17, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Mary Bobbie Bailey, Atlanta, Georgia; to retain voting shares of Decatur First Bank Group, Inc., and thereby indirectly retain voting shares of Decatur First Bank, Decatur, Georgia.

Board of Governors of the Federal Reserve System, May 28, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–13890 Filed 6–2–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 27, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Carver Financial Corporation, Savannah, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Carver State Bank, Savannah, Georgia.

Board of Governors of the Federal Reserve System, May 28, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–13889 Filed 6–2–03; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0274]

Office of the Chief Architect; Art in Architecture Program National Artist Registry

AGENCY: Public Buildings Service, GSA.

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the General Services Administration has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement regarding the Art in Architecture Program National Artist Registry form. A request for public comments was published at 68 FR 11395, March 10, 2003. No comments were received.

The Art in Architecture Program is the result of a policy decision made in January 1963 by GSA Administratorm Bernard L. Boudin, who had served on the Ad Hoc Committee on Federal Office Space in 1961–62. The program has been modified over the years, most recently in 1996 when a renewed focus on commissioning works of art that are an integral part of the building's architecture and adjacent landscape was instituted. The program continues to commission works of art from living American artists. One half of one percent of the estimated construction cost of new or substantially renovated Federal buildings and U.S. courthouses is allocated for commissioning works of art.

Public comments are particularly invited on: Whether this collection of information is necessary and 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; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before: July 3, 2003.

FOR FURTHER INFORMATION CONTACT: Susan Harrison, Public Buildings Service, Office of the Chief Architect, Art in Architecture, Room 3341, 1800 F Street, NW., Washington, DC 20405.

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 3090–0274.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Art in Architecture Program actively seeks to commission works from the full spectrum of American artists, and strives to promote new media and inventive solutions for public art. The GSA Form 7437, Art In Architecture Program National Artist Registry, will be used to collect information from artists across the country to participate and to be considered for commissions.

B. Annual Reporting Burden

Respondents: 360.

Responses Per Respondent: 1.

Hours Per Response: .25.

Total Burden Hours: 90.

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 OMB Control No. 3090–0274, Art in Architecture Program National Artist Registry, in all correspondence.

Dated: May 28, 2003.

Michael W. Carleton,

Chief Information Officer.

[FR Doc. 03–13861 Filed 6–2–03; 8:45 am]

BILLING CODE 6820–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Applications for a Cooperative Agreement Demonstration Project for the Medical Reserve Corps, Citizens Corps, USA Freedom Corps

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of the Surgeon General.

ACTION: Notice.

Authority: This program is authorized by section 301 of the Public Health Service Act, as amended, 42 U.S.C.; and, funded under Public Law 108–007.

CFDA Number: 93.008.

SUMMARY: To provide funding for a demonstration project to demonstrate approaches to establishment of community-based, citizen volunteer Medical Reserve Corps (MRC) units. Awards will provide funding to community-based organizations under the terms of cooperative agreements. The Cooperative Agreement (CA) will facilitate start-up of MRC units and provide insights into best practices in such areas as: (1) Structure and organization, (2) recruitment and verification of credentials, (3) community-level partnership building, (4) competency levels for effective action, (5) training, (6) risk assessment, and (7) strategy development and planning.

The community-based, volunteer MRC units are intended to supplement existing community emergency medical response systems as well as contribute to meeting the public health needs of the community throughout the year. MRC units are not intended to replace or substitute for local, existing emergency response systems. MRC units should help provide additional response capacity during the initial hours following an emergency before assistance from other geographic localities may arrive and, as needed, to help local authorities provide assistance to the community following an emergency in the effort to return to normalcy.

The local MRC unit is intended to provide an organized framework which will attract volunteers and provide them with planned assignments as well as skills needed to work effectively in emergency situations. An MRC unit will help to ensure that MRC volunteers are deployed locally in a manner that is fully planned and coordinated with broader emergency and medical response plans of the communities in which they are located. Moreover, the MRC unit will serve as a mechanism for

helping to ensure that volunteers have appropriate credentials for assignments which they will undertake when the MRC unit is activated. The MRC unit will help facilitate not only coordinated action, but provide a greater predictability in volunteer resource capability when and where such services are needed.

The establishment of sustainable, community-based volunteer MRC units throughout the nation will help meet the goal of enabling communities in the United States to be better prepared to respond to emergencies and urgent public health needs. It is anticipated that these community-based MRC units will grow in number and in quality across the country.

The MRC demonstration project programs will be supported through the cooperative agreement mechanism. This will enable a collaborative relationship between the awardee, the local MRC unit, and the Office of the Surgeon General (OSG), Department of Health and Human Services (HHS). The OSG will coordinate, through a private sector contractor, technical assistance needed for the implementation, conduct, and assessment of program activities. The OSG will provide oversight of the program and has a senior program staff member dedicated to the continued development of the MRC initiative. The OSG has established an MRC Web site at *http://www.medicalreservecorps.gov.* This Web site includes a guidance document for local leaders who plan to develop and implement a local MRC initiative. This document is entitled Medical Reserve Corps—A Guide for Local Leaders.

The OSG is supporting the development of MRC units through four strategic approaches. Specifically, the Federal Government's support includes the following:

1. Limited financial support through the CA covered by this and earlier announcements (**Federal Register** Vol. 67, No. 139, page 47550, July 19, 2002).

2. Communication, Information and Education including the following:

- The MRC Web site at: *http://www.medicalreservecorps.gov.*
- The MRC guidance document on how to establish an MRC unit and related considerations. This document is entitled Medical Reserve Corps—A Guide for Local Leaders and is accessible on the MRC Web site.
- Information on the MRC Web site addressing new developments in the MRC, trends and issues, best practices, training opportunities, meetings, and more.
- MRC workshops which will, as appropriate, include MRC unit leaders and participants; state, county, and local citizen corps leaders and coordinators, health and emergency response system officials.
- Development of an MRC logo for marketing and identification purposes. Note: An award of funds under this RFA does not include any right to use the associated trademarks of the OSG relating to the MRC. Successful applicants must still execute a nonexclusive license under the terms and policies set by the OSG prior to any use of these marks.

3. Technical Assistance (TA) through the OSG's private sector contractor. TA will, as appropriate and available, be provided to eligible MRC units. Examples of TA might include advice on matters such as development of operational plans, evaluation approaches, etc.

4. Policy Analysis and Action. Issues currently being addressed include, but will not be limited to: liability, credentialing, and training standards.

Background

During his January 2002 State of the Union address, President Bush called on all Americans to dedicate at least two years—the equivalent of 4,000 hours of their time—to provide volunteer service to others. To help every American answer the call to service, the President created the USA Freedom Corps, and charged it with strengthening and expanding service opportunities for volunteers to protect our homeland, to support our communities, and to extend American compassion around the World. The USA Freedom Corps is a coordinating council, similar to the National Economic Council or National Security Council, that relies upon the Federal agencies and departments that are a part of the coordinating council to carry out policies and programs.

Simultaneously, the President also created the Citizen Corps initiative to offer Americans new opportunities to get involved in their communities through emergency preparation and response activities. The Citizen Corps initiative includes several new and existing programs that share the common goal of helping communities prevent, prepare for, and respond to crime, natural disasters, and other emergencies. The programs include: Community Emergency Response Teams (CERT), under the direction of the Federal Emergency Management Agency; Neighborhood Watch and Volunteers in Police Service, under the direction of the Department of Justice (DOJ); and, the MRC, under the broad guidance and support of the Department of Health and Human Services.

DATES: To be considered for review, applications must be received by close of business, 5 PM Eastern Daylight Savings Time, July 18, 2003 at the address indicated in the **ADDRESSES** section of this announcement. The submission deadline date supersedes the postmark date information as stated in the PHS–5161. Applicants that meet this deadline will receive notification that their application was received by the Office of Grants Management. Applications that do not meet the deadline will be considered late and will be returned to the applicant without comment. Applications sent via facsimile or by electronic mail will not be accepted for review.

ADDRESSES: Applications must be prepared using Form PHS 5161–1 (revised July 2000). This form is available in Adobe Acrobat format at the following Web site: *http://www.cdc.gov/od/pgo/forminfo.htm.* Form PHS 5161–1 includes U.S. Government Standard Form (SF) 424, the required face page for CA applications submitted for Federal assistance and SF 424 A, a budget format for non-construction projects.

Complete applications should be submitted to: Ms. Karen Campbell, Director, Office of Grants Management, Office of Public Health and Science, 1101 Wootton Parkway, Suite 550, Rockville, Maryland, 20852. Ms. Campbell can be reached by telephone at: (301) 594–0758.

FOR FURTHER INFORMATION CONTACT: Questions regarding programmatic information related to preparation of CA applications should be directed in writing to Ronald Schoenfeld, Ph.D., Acting MRC Project Officer, Office of the Surgeon General, Office of Public Health and Science, U.S. Department of Health and Human Services, Room 18–66, 5600 Fishers Lane, Rockville, MD 20857, e-mail: *rschoenfeld@osophs.dhhs.gov.*

Information on budget and business aspects of the application may be obtained from Ms. Karen Campbell, Director, Office of Grants Management, Office of Public Health and Science, 1101 Wootton Parkway, Suite 550, Rockville, Maryland, 20852. Ms. Campbell can be reached by telephone at: (301) 594–0758.

SUPPLEMENTARY INFORMATION:

Availability of Funds

The total amount of funds for new awards competition will be $6 million. The OSG anticipates making 120 awards of up to $50,000 to new applicant communities in fiscal year 2003. Awards will be for up to three years,

with funds for years two and three subject to availability of funds and satisfactory progress of the project. The actual number and dollar amount of the awards will depend on the number of applications received as well as the number of acceptable applications that the OSG determines to fund.

Matching Requirements

The applicant is not required to match or share project costs, if an award is made.

Period of Support

The start date for the cooperative agreement will be September 30, 2003 or sooner, depending on the date of issuance of the notice of award. Support may be requested for a project period not to exceed three years. Awardees will be eligible for awards up to $50,000 total cost. Noncompeting continuation awards of up to $50,000 will be made in fiscal years 2004 and 2005, subject to satisfactory performance and the availability of funds.

Eligible Applicants

The MRC CA program applicant must be a public or private nonprofit, community-based organization. Applicants may be an entity of the local government, a local nonprofit, or a non-government organization. If a local Citizen Corps Council (CCC) meets any of these criteria, the CCC can be the applicant. Acceptable proof of non-profit status includes:

- A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations in the IRS Code;
- A copy of a currently valid IRS tax exemption certificate;
- A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals;
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; or
- Any of the items above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Additionally, faith-based organizations that meet the definition of a private, nonprofit, community-based organization are eligible to apply under this announcement. Tribes, tribal organizations, and local affiliates of national, state-wide, or regional organizations that meet the definition of a private nonprofit, community-based organization are eligible to apply.

To ensure wide geographic distribution of local MRC units, applications will be accepted from organizations in all of the American States and Territories.

In general, only one CA will be awarded per community. If more than one application with a qualifying score is received from the same community, the OSG will contact local officials to make a determination of which application should be given priority. It is recognized, however, that a large metropolitan area may warrant the establishment of more than one MRC unit and, therefore, could receive more than one MRC CA. For communities where more than one group/organization is planning/developing a local citizen volunteer MRC unit, it is recommended that these groups work together to submit one application. For large metropolitan areas, applications should be coordinated. In such instances, however, the applicant(s) must make a convincing case that more than one MRC unit and more than one CA is essential, and that the applicant organizations have not only coordinated their planning, but also have the imprimatur of the local health and emergency response authorities.

Program Goals

The goals of the MRC demonstration project CA are to:

1. Demonstrate whether medical response capacity in communities can be strengthened through the establishment of MRC units consisting of citizen volunteers who represent a broad range of medical/health professions;
2. Demonstrate whether additional capacity can be created at the community level to deal with emergency situations which have significant consequences for the health of the population;
3. Demonstrate whether the MRC does enable current and/or retired health professionals and related support personnel in communities to obtain additional training needed to work effectively and safely during emergency situations;
4. Demonstrate whether the MRC approach does provide an organizational framework, with a command and control system, within which appropriately trained and credentialed citizen volunteers can put their skills in health and medicine to use effectively (including prearranged assignments) when there is an emergency;
5. Demonstrate whether the MRC approach facilitates coordination of local citizen volunteer services in health/medicine with other response programs of the community/county/state during an emergency;
6. Demonstrate whether the MRC approach does provide cadres of health professionals, from within their home communities, who contribute to the resolution of public health problems and needs throughout the year; and
7. Demonstrate whether the MRC approach is sustainable beyond the CA funding period.

Project Requirements

MRC units should: (1) Be comprised of citizen volunteers from within the community, including the immediate surrounding area; (2) have an organizational framework with a command and control system and have operational policies and procedures; (3) have a plan of action that is consistent with the risks and vulnerabilities of the community; (4) be fully coordinated and appropriately integrated into the existing emergency planning and response programs of the community; (5) develop strategies for activation of the local MRC unit(s), training of MRC unit members to achieve needed competency standards, building working relationships/partnerships within the community, communications and logistics during emergencies, and practicing/drilling before emergencies occur; (6) develop plans for additional functions, beyond emergency response, to promote public health in the community; and (7) have a plan for sustaining the MRC unit after federal funding stops.

Application Requirements

In addition to the eligibility criteria cited above and use of the form PHS 5161–1 (revised July 2000), successful candidates will address the following criteria in the narrative of their applications and provide the noted documentation:

- Documentation that the applicant is a unit of local government or community-based, nonprofit organization;
- Established leadership structure for the MRC unit;
- Draft action plan, including initial measurable milestones, for establishment of a citizen volunteer MRC unit, including goals, objectives, and time lines;
- Documentation of the existence of a planning body for the MRC, including the name of the chair or lead

organization, and the principals of the organization;

• Specification of any arrangements or agreements with other local public or private organizations [*e.g.*, Citizen Corps Council, Mayor's office, City Council, County Commission, County Chief Executive, Fire Department, Department of Health, Chief of Emergency Response for the Community, community hospital(s), Red Cross, local medical society and/or other health professions organizations, local-based government hospitals (VA, Indian Health Service), service organizations] for the purposes of planning, establishing, and utilization of a local MRC unit(s);

• Demonstration of linkages with and/or understanding of existing emergency medical response entities in the community (*e.g.*, minutes of a planning meeting in which there was substantive involvement of other key community stakeholders, including NGOs);

• Demonstration of a linkage with local government health and emergency response authorities;

• A proposed budget which is consistent with the approved types of expenditures set forth below;

• Other letter(s) of support are optional.

Plan for sustaining the MRC unit after federal funding stops.

Use of CA Funds

Applicants may request funds for the following types of allowable expenses, subject to Federal Government regulations regarding non-allowable expenses in Federal assistance programs:

1. Organizing an MRC unit, including establishment of a leadership and management structure;
2. Implementation of mechanisms to assure appropriate integration and coordination with existing local emergency response and health assets and capabilities;
3. Recruiting volunteers for the MRC unit;
4. Assessing the community's risks and vulnerabilities;
5. Development of plans to develop, organize and mobilize the MRC unit in response not only to urgent needs but also to address other public health needs in the community;
6. Training for leadership and preparedness; and
7. Training in specific skills.

Review of Applications

Applications will be screened upon receipt. Those that are judged to be incomplete, non-conforming to the announcement, or arrive after the deadline will be returned without review or comment. Applications will be reviewed for conformity with the applicant eligibility criteria. Applications will be considered non-conforming and returned unread if the budget request exceeds the amount stated in the ''Availability of Funds'' section of this announcement, or exceeds the page limitations as stated in this section, ''Review of Applications.'' Similarly, an application will be considered non-conforming if it requests funds in excess of the length of the projects funded years as stated in ''Period of Support'' section of this announcement. Accepted applications will be objectively reviewed for technical merit in accordance with HHS policies.

Applications will be evaluated by an objective review panel composed of experts in the fields of emergency medical response, medicine, public health, program management, community service delivery, and community leadership development. Consideration for award will be given to applicants that best demonstrate progress toward establishment of a local citizen volunteer MRC unit. Additionally, applications that best demonstrate the development of plausible strategies, including a time line for organizing, recruitment, and making operational a citizen volunteer MRC unit that is linked to other community-based programs for emergency response will rank more highly than those applications which do not. Applicants which have a linkage or plan a linkage with the community's Citizen Corps Council (if one has been established) should address that point, as applicable and appropriate.

Organization of Application

Applicants are required to submit: (1) an original ink-signed (blue ink in order to be distinguished from a copier product) and dated application; and (2) two photocopies. All pages must be numbered clearly and sequentially beginning with the Project Profile. The application must be typed double-spaced on one side of plain 8½″ x 11″ white paper, using at least a 12 point font, and contain 1″ margins all around.

The Project Summary and Project Narrative must not exceed a total of 20 double-spaced pages, excluding any appendices. The original and each copy must be stapled. An outline for the minimum information to be included in the ''Project Narrative'' section and related appendices is presented below.

I. Background (location, responsible organization/body, linkages within community)
II. Objectives
III. Summary of existing relevant community resources
IV. Organization structure, local MRC initiative leadership and key staff (with biographical sketches)
V. Strategy/plans with time line (can be in sequenced, bullet form)
VI. Summary of community partnerships and linkages developed/being developed
VII. Evaluation—how progress will be measured
VIII. Statement of willingness to contribute written information on local MRC unit experiences, particularly what has worked well and lessons learned, to the OSG for sharing with other communities establishing MRC units.
IX. Plan for sustaining the MRC unit in the years after federal funding stops.

Application Review Criteria

The technical review of applications will consider the following factors:

Factor 1: Implementation Plan—45 points

This section should discuss:

1. Brief summary of existing community resources and linkages to deliver coordinated emergency medical response services in a large scale (for the locality) emergency.
2. The role the MRC unit will most likely play in relationship to existing services, including local health department, fire department, community hospital(s), Red Cross and other NGOs; and, if an officially recognized Citizen Corps Council (CCC) has been established in the community, the nature of any linkage to the CCC.
3. The proposed plan and time line for establishment of an MRC unit, ranging from establishment of a planning/steering group, organizational meetings, goals and objectives, development of organizational structure, policies and procedures, recruitment, liaison and partnership building, training, etc.

Although components of an MRC unit do not necessarily have to be in place at the time the application is submitted, the applicant must discuss/describe the resources available to support these components and plans for phasing in the components of the action plan and the relationship of the plans to existing programs/institutions in the community/county/area.

Factor 2: Management Plan—20 points

Applicant organization's capability to manage the project as determined by the availability and qualifications of the proposed staff (may be either volunteer or hired). Applicant organization's listing of partners in the establishment and utilization of the citizen volunteer MRC unit and their relationships and

the mechanism(s) that will be utilized to convene the partners for constructive planning and implementation.

Factor 3: Evaluation Plan—10 points

A clear but brief statement of program goals and how progress toward meeting those goals will be assessed.

Factor 4: Background—10 points

Adequacy of demonstrated knowledge of emergency medical response/care systems, and utilization of volunteers.

Factor 5: Supporting Documentation—5 points

Adequacy of supporting documentation that the MRC unit planning group is appropriately connected to local government entities (*e.g.*, Mayor's office, City Council, County Executive, County Council, Fire Department, Department of Emergency Planning and Response) and appropriate local organizations such as the Citizen Corps Council (if one has been officially established), American Red Cross, civic organizations (*e.g.*, Kiwanis, Rotary, Siroptomist, Lions, Clubs); veterans organizations, health professions organizations, and faith-based groups, etc.

Factor 6: Statement of Willingness to Share Information with OSG—5 points

A clear statement that the CA recipient is willing to contribute information on the progress, lessons learned, best practices, etc. to the OSG at 6-month intervals.

Factor 7: Sustainability Plan—5 points

This area should address, in as much detail as possible, the applicant's plan for how the MRC unit will continue to exist and thrive in the years beyond the applicant's funding eligibility (Year 4 and beyond).

Reporting and Other Requirements

General Reporting Requirements: A CA recipient under this notice will submit: (1) A six-month progress report to the OSG: (2) an annual Financial Status Report; and (3) a final progress report and Financial Status Report in the format established by the OSG, in accordance with provisions of the general regulations which apply under 45 CFR Part 74.51—74.52, with the exception of State and local governments to which CFR Part 92, Subpart C reporting requirements apply.

The OSG has established the following requirements for inclusion in the annual and/or final report(s):

- A summary of the status of development of the MRC unit (not to exceed 5 pages in the main report), including the major activities and accomplishments, objectives met and not met, lessons learned, and an evaluation plan update;
- Copy of organizational chart and brief narrative description of the structure of the MRC unit, including its chain-of-command;
- Copy of policies and procedures (*e.g.*, scope of operations, criteria for mobilization and demobilization, recruitment, and verification of credentials) for the local MRC unit;
- Copy of risk/vulnerability assessment (a copy of such an assessment prepared by other entities in the community and to which the MRC unit is linked may be submitted);
- Resource availability and needs assessment; and
- Copy of database of appropriately credentialed volunteers who are committed to participate as members of the MRC unit.

Public Health System Reporting Requirements

This program is subject to the Public Health Systems Reporting Requirements. Under these requirements, a community-based, non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to state and local health officials to keep them apprised on proposed health services CA applications submitted by community-based non-governmental organizations within their jurisdictions.

Community-based, non-governmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted: (a) A copy of the face page of the application (SF 424); and (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) A description of the population to be served; (2) a summary of the services to be provided; and (3) a description of the coordination planned with state or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the OSG.

State Reviews: This program is subject to the requirements of Executive Order 12372, which allows states the option of setting up a system for reviewing applications from within their states for assistance under certain Federal programs.

Because of the importance of coordination of emergency medical response and public health improvement at the state and community levels, the OSG, for purposes of this announcement, is establishing a special mechanism to enable designated state points of contact to provide comments in an orderly and uniform way to the OSG for purposes of according scores to applications from their respective states for applications submitted under this notice. The application kit available under this notice will contain a list of state points of contact. Applicants (other than federally recognized Indian tribes) should contact their state contact point as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. The due date for state process recommendations is 15 working days after the application deadline established by the OMH Grants Management Officer.

The OSG does not guarantee that it will accommodate or explain its responses to state process recommendations received after that date.

Provision of Smoke-Free Workplaces and Non-use of Tobacco Products by Recipients of PHS CA.

HHS strongly encourages all CA recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children.

Definitions

For the purposes of this CA program, the following definitions are provided:

Citizen Corps Council: A Citizen Corps Council established at the community or county level within the overall framework of the Citizen Corps, USA Freedom Corps. The Citizen Corps Council structure falls within the overall purview of FEMA.

Cooperative Agreement (CA): An award instrument of financial assistance where ''substantial involvement'' is anticipated between the HHS awarding agency and the recipient during performance of the contemplated project or activity. ''Substantial involvement'' means that the recipient can expect Federal programmatic collaboration or participation in managing the award.

Community-based: The locus of control and decision making powers are located at the community level,

representing the service area of the community or a significant segment of the community.

Non-governmental organization (NGO): A public or private institution of higher education; a public or private hospital; an Indian tribe or Indian tribal organization which is not a Federally-recognized Indian tribal government; and a quasi-public or private gateway.html organization or commercial organization. The term does not include a State or local government, a Federally recognized Indian Tribal Government, an individual, a Federal agency, a foreign or international governmental organization (such as an agency of the United Nations), or a government-owned contractor-operated facility or research center providing continued support for mission oriented large scale programs that are government-owned or controlled or are developed as a Federally Funded Research and Development Center under Office of Federal Procurement Policy letter 84–1.

Office of the Surgeon General (OSG): The Office of the Surgeon General, Office of Public Health and Science, Office of the Secretary, Department of Health and Human Services, which is the designated lead agency for the MRC program.

Dated: May 28, 2003.

Richard H. Carmona,

Surgeon General and Acting Assistant Secretary for Health.

[FR Doc. 03–13799 Filed 6–2–03; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

President's Council on Physical Fitness and Sports

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, President's Council on Physical Fitness and Sports.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the President's Council on Physical Fitness and Sports will hold a meeting. This meeting is open to the public. A description of the Council's functions is included also with this notice.

Date and Time: June 26, 2003, from 8:30 a.m. to 4 p.m.

ADDRESSES: Department of Health and Human Services, Hubert H. Humphrey Building, Room 505A, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Penelope S. Royall, Acting Executive Director, President's Council on Physical Fitness and Sports, Hubert H. Humphrey Building, Room 738H, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–5187.

SUPPLEMENTARY INFORMATION: The President's Council on Physical Fitness and Sports (PCPFS) was established originally by Executive Order 10673, dated July 16, 1956. PCPFS was established by President Eisenhower after published reports indicated that American boys and girls were unfit compared to the children of Western Europe. Authorization to continue Council operations was given at appropriate intervals by subsequent Executive Orders. The Council has undergone two name changes and several reorganizations. Presently, the PCPFS serves as program office that is located organizationally in the Office of Public Health and Science within the Office of the Secretary in the U.S. Department of Health and Human Services.

On June 6, 2002, President Bush signed Executive Order 13256 to reestablish the PCPFS. Executive Order 13256 was established to expand the focus of the Council. This directive instructed the Secretary to develop and coordinate a national program to enhance physical activity and sports participation. The Council currently operates under the stipulations of the new directive. The primary functions of the Council include to: (1) Advise the President, through the Secretary, on the progress made in carrying out the provisions of the enacted directive and recommend actions to accelerate progress; (2) advise the Secretary on ways and means to enhance opportunities for participation in physical fitness and sports, and, where possible, to promote and assist in the facilitation and/or implementation of such measures; (3) to advise the Secretary regarding opportunities to extend and improve physical activity/fitness and sports programs and services at the national, state and local levels; and (4) to monitor the need for the enhancement of programs and educational and promotional materials sponsored, overseen, or disseminated by the Council, and advise the Secretary, as necessary, concerning such needs.

The PCPFS holds at a minimum, one meeting in the calendar year to (1) assess ongoing Council activities and (2) discuss and plan future projects and programs.

Dated: May 27, 2003.

Penelope S. Royall,

Acting Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. 03–13798 Filed 6–2–03; 8:45 am]

BILLING CODE 4150–35–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–71]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210. CDC is requesting an emergency clearance for this data collection with a two week public comment period. CDC is requesting OMB approval of this package 7 days after the end of the public comment period.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 14 days of this notice.

Proposed Project: Project DIRECT: Phase 2, Evaluation of Impact of Multilevel Community Interventions—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). Project DIRECT (Diabetes Intervention Reaching and Educating Communities Together) is the first comprehensive

community based project in the United States to address the growing burden of diabetes in African Americans. The goal of the project is to use existing knowledge of diabetes risk factors and complications to implement community level interventions to reduce the prevalence and severity of diabetes in communities with large African American populations. A community in Raleigh, North Carolina was selected as the demonstration site for the project. An area in Greensboro, NC, was identified as a suitable comparison community. The Division of Diabetes Translation (DDT) at the Centers for Disease Control and Prevention (CDC) is collaborating with the state of North Carolina to implement and evaluate public health strategies for reducing the burden of diabetes in this predominately African American community.

Project DIRECT has three distinct intervention components—Health Promotion, Outreach, and Diabetes Care. The goals of all three interventions are to reduce or prevent diabetes and its complications, but each has a different but complimentary approach.

Project DIRECT implemented a baseline population-based survey in 1996–1997. Interventions have been employed since then and continue to the present. A follow-up study is now required to evaluate the impact of this multilevel approach to diabetes prevention and control. Data from this project will be critical to the Division of Diabetes Translation's on-going efforts to reduce the burden of diabetes, and to determine whether a similar program could be implemented successfully in other communities. A pre-post design was selected for the evaluation to determine if any changes observed for these outcomes might be attributed to the interventions used in Project DIRECT by comparing changes in the intervention and comparison communities. The baseline study for the pre-post evaluation was conducted during 1996–1997. Households in Raleigh and Greensboro communities would be selected at random using mailing lists. An interviewer will verify the address and do an initial screening for eligible participants in the household. Eligible participants will be asked to participate in the study and will have to complete a consent form. All participants will be asked to complete an interview on their health status and lifestyle and measured for height and weight. Participants who self-report a history of diabetes will be asked additional questions (diabetes module) about their management of diabetes and its complications and other related health conditions.

All participants who self-report a history of diabetes and a sub-sample of those without diabetes would be invited to participate in a household examination that will include blood pressure and waist circumference measurement and a blood draw for laboratory analysis including blood glucose and lipids concentrations. For quality control purposes, a small sample of participants will be asked to do a short telephone interview to verify information collected during the general interview.

The only cost to respondents is their time to participate in the study.

Form	Number of respondents	Responses per respondent	Average burden per response (hours)	Total burden (hours)
Screening Questionnaire	4,600	1	5/60	383
General Population Questionnaire	2,603	1	30/60	1,302
Diabetes Module	565	1	30/60	283
Verification Questionnaire	1,535	1	30/60	768
Total	4,600			2,736

Dated: May 28, 2003.

Thomas A. Bartenfeld,

Acting Director, Office of Program Planning and Evaluation, Centers for Disease Control Prevention.

[FR Doc. 03–13786 Filed 6–2–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[DHHS/ACF/ADD/FY03–01]

Developmental Disabilities: Notice of Availability of Financial Assistance and Request for Applications To Fund Family Support Model Demonstration Projects Under the Projects of National Significance Program

CFDA: Federal Catalog of Domestic Assistance Number 93.631 Developmental Disabilities—Projects of National Significance.

AGENCY: Administration on Developmental Disabilities (ADD), ACF, DHHS.

ACTION: Announcement of availability of financial assistance for Family Support Demonstration Projects for fiscal year 2003.

SUMMARY: The Administration on Developmental Disabilities, Administration for Children and Families (ACF), is accepting applications for fiscal year 2003 Family Support Demonstration Projects.

This Program Announcement DHHS/ACF/ADD/FY03–01 consists of five parts. Part I, the Introduction, discusses the goals and objectives of ACF and ADD. Part II provides background information on ADD for applicants. Part III describes the application review process. Part IV describes the priority area under which ADD requests applications for fiscal year 2003 funding of projects. Part V describes the process for preparing and submitting the application.

Grants will be awarded under this Program Announcement subject to the availability of funds for support of these activities.

DATES: The closing date for submittal of applications under this announcement is August 4, 2003.

Deadline

Applications Submitted by Mail

Mailed applications shall be considered as meeting the announced deadline if they are received on or before the deadline date at the U.S. Department of Health and Human Services, ACF/Office of Grants Management, 370 L'Enfant Promenade, SW., 8th Floor, Washington, DC 20447–0002, Attention: Lois B. Hodge. Applications received after 4:30 p.m. on the deadline date will not be considered for competition.

Application Submitted by Courier

Applications hand-carried by applicants, applicant couriers, other representatives of the applicant, or by

overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., e.s.t., Monday through Friday (excluding Federal holidays), at the U.S. Department of Health and Human Services, ACF/Office of Grants Management, ACF Mailroom, 2nd Floor (near Loading Dock), Aerospace Center, 901 D Street, SW., Washington, DC 20024. Applicants using express/overnight services should allow two working days (Monday through Friday, excluding holidays) prior to the deadline date for receipt of applications. (**Note to applicants:** Express/overnight mail services do not always deliver at the time to which they agreed.)

Receipt of Applications

Applications must either be hand delivered or mailed to the addresses listed above (under *Deadline*). Notification will not be sent to applicants regarding the receipt of their application.

ACF cannot accommodate transmission of applications by fax or through other electronic media. Applications transmitted electronically will not be accepted. Videotapes and cassette tapes may not be included as part of a grant application for panel review.

Additional material will not be accepted, or added to an application, unless it is received by the deadline date.

Closed Captioning for Audiovisual Efforts

Applicants must include closed captioning and audio description in the development of any audiovisual products.

Late Applications

Applications that do not meet the criteria above are considered late applications. ADD shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines

The Administration for Children and Families (ACF) may extend application deadlines when circumstances such as acts of God (*e.g.*, floods, hurricanes) occur, or when there is widespread disruption of the mail service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

Notice of Intent to Submit Application: If you intend to submit an application, under this announcement, please contact, Joan Rucker of ADD at (202) 690–7898 within 15 days of the date of this announcement. Please give your organization's name and address, and your contact person's name, phone and fax numbers, and e-mail address.

The information will be used to determine the number of expert reviewers needed and to update the mailing list for program announcements.

FOR FURTHER INFORMATION CONTACT: For information about the application process, program information and application materials contact, Administration for Children and Families (ACF), Lois Hodge, Grants Officer, 370 L'Enfant Promenade, SW., Washington, DC, 20447, 202/401–2344, *lhodge@acf.hhs.gov,* or Joan Rucker, Program Specialist, 370 L'Enfant Promenade, SW., Washington, DC, 20447, 202/690–7898, *jrucker@acf.hhs.gov.* Copies of this program announcement and many of the required forms may be obtained electronically at the ADD World Wide Web page: *http://www.acf.dhhs.gov/programs/add/.*

Project Duration: The projects will be awarded for a project period of up to seventeen (17) months.

Federal Share of Project Costs: The maximum Federal shares for applicants requesting planning funds shall not exceed $200,000 for a state or $100,00 for a territory for the budget period. The maximum Federal shares for applicants requesting development funds shall not exceed $100,000 for a state and not to exceed $50,000 for a territory.

Anticipated Number of Projects to be Funded: It is anticipated that up to 14 projects will be funded.

SUPPLEMENTARY INFORMATION:

Part I. General Information

A. Goals of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is located within the Administration for Children and Families (ACF), Department of Health and Human Services (DHHS). ADD shares goals with other ACF programs that promote the economic and social well being of families, children, individuals, and communities. ACF and ADD envision:

- Families and individuals empowered to increase their own economic independence and productivity;
- Strong, healthy, supportive communities having a positive impact on the quality of life and the development of children;
- Partnerships with individuals, front-line service providers, communities, States, and Congress that enable solutions that transcend traditional agency boundaries;
- Services planned and integrated to improve client access;
- A strong commitment to working with Native Americans, persons with developmental disabilities, refugees, and migrants to address their needs, strengths and abilities;
- A recognition of the power and effectiveness of public-private partnerships, including collaboration among community groups, such as faith-based organizations, families, and public agencies; and
- A community-based approach that recognizes and expands on the resources and benefits of diversity.

These goals will enable individuals, including people with developmental disabilities, to live productive and independent lives integrated into their communities.

B. Purpose of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is the lead agency within ACF and DHHS responsible for planning and administering programs to promote the self-sufficiency and protect the rights of persons with developmental disabilities. ADD administers the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (the DD Act of 2000). The DD Act defines developmental disabilities, reauthorizes four major programs under ADD, authorizes States to provide advocacy, promote consumer oriented systems change and capacity building activities and facilitates network formations.

This Act supports and provides assistance to States, public, private non-profit agencies, and organizations, including faith-based organizations, to assure that individuals with developmental disabilities and their families participate in the design of and have access to culturally competent services, supports, and other assistance and opportunities that promote independence, productivity, integration, and inclusion into the community.

The Act establishes, in part, as the policy of the United States:

- Individuals with developmental disabilities have competencies, capabilities and personal goals that should be recognized, supported, and encouraged, and any assistance to such individuals should be provided in an individualized manner, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individual;

• Individuals with developmental disabilities and their families are the primary decision makers regarding the services and supports such individuals and their families receive; and play decision making roles in policies and programs that affect the lives of such individuals and their families; and

• Services, supports, and other assistance should be provided in a manner that demonstrates respect for individual dignity, personal preference, and cultural differences. Toward these ends, ADD seeks: to enhance the capabilities of families in assisting people with developmental disabilities to achieve their maximum potential; to support the increasing ability of people with developmental disabilities to exercise greater choice and self-determination; to engage in leadership activities in their communities; as well as to ensure the protection of their legal and human rights.

The four programs funded under the DD Act are:

(1) State Councils on Developmental Disabilities that engage in advocacy, capacity building and systematic change activities.

(2) Protection and Advocacy Systems (P&As) that protect the legal and human rights of individuals with developmental disabilities.

(3) The National Network of University Centers for Excellence in Developmental Disabilities, (UCEDD) that engages in training, outreach, and dissemination activities.

(4) Projects of National Significance (PNS), including Family Support Grants that support the development of family-centered and directed systems for families of children with disabilities, including children with developmental disabilities.

C. Statutory Authorities Covered Under This Announcement

This announcement is covered under the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15001, *et seq.* Projects of National Significance is Part E of the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15081, *et seq.* Provisions under this section provide for the award of grants, contracts, or cooperative agreements for Projects of National Significance that support:

• The development of national and State policies that reinforce and promote the self-determination, independence, productivity, integration, and inclusion in all facets of community life of individuals with developmental disabilities;

• Family support activities, data collection and analysis, technical assistance to entities that provide family support and data collection activities; and

• Other projects of sufficient size and scope that hold promise to expand or improve opportunities for individuals with developmental disabilities.

Part II. Background Information for Applicants

Description of Family Support Program

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C., *et seq.* was authorized on October 30, 2000. The DD Act includes a new title II, the ''Families of Children With Disabilities Support Act of 1999''. The purpose of this new family support program is for states to create or expand statewide systems change. It allows for the award of competitive grants to conduct training, technical assistance, and other national activities designed to address the problems that impede the self-sufficiency of families with children with disabilities, including children with developmental disabilities.

Part III. The Application Review

A. Eligible Applicants

Eligible applicants include any public or private non-profit organization, including State and local governments, Federally recognized Indian tribes, faith-based organizations, and private nonprofit organization including universities and other institutions of higher education designated by the governor or chief executive officer of the State as the lead agency for this project. A letter from the office of the governor or the chief executive officer designating the applicant as the lead agency for the State or Territory must accompany the application. This lead agency is responsible for coordinating the planning, development, implementation (or expansion and enhancement), and evaluation of a statewide system of family support services for families of children with disabilities, including children with developmental disabilities.

All applications developed jointly by more than one agency or organization must identify only one organization as the lead organization and the official applicant. The other participating agencies and organizations can be included as co-participants, subgrantees, or subcontractors.

Any nonprofit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by submitting a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code, or by providing a copy of a valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation certifying nonprofit status and bearing the seal of the State in which the corporation is located. ADD cannot fund a non-profit applicant without acceptable proof of its nonprofit status.

Applicants, who have never received a Family Support grant, may submit an application for a planning grant. Applicants who have not been previously awarded family support planning grants are eligible for family support development grants under this announcement.

Before applications under this Program Announcement are reviewed, each one will be screened to determine whether the applicant is eligible for funding. Applications from organizations that do not meet eligibility requirements will not be considered or reviewed in the competition, and the applicant will be so informed.

B. Review Process and Funding Decisions

Applications from eligible applicants received by the deadline date will be reviewed and scored by a panel of at least three (3) reviewers (primarily experts in the field from outside the Federal Government). To facilitate this review, applicants should ensure that they address each minimum requirement in the program description under each section of the project Narrative Statement.

Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed in part IV, provide comments, and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each applicant may receive per section in the review process. The results of this review are a primary factor in making funding decisions.

ADD reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal Government or the applicant.

Grantees funded by ADD may be requested to cooperate in evaluation efforts funded by ADD. The purpose of these evaluation activities is to learn from the combined experience of

multiple projects funded under a particular program description.

ADD requires all applications to focus on or feature: Services to culturally diverse or ethnic populations among others; a substantially innovative strategy with the potential to improve theory or practice in the field of human services; a model practice or set of procedures that holds the potential for replication by organizations administering or delivering human services; substantial involvement of volunteers; substantial involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and non-Federal funds available for the proposed project; the potential for high benefit for low Federal investment; a programmatic focus on those most in need; or substantial involvement in the proposed project by national or community foundations.

Applications that are more clearly focused on, and directly responsive to, the concerns of the program description usually score better than those that are less specific and generally defined. Applicants are encouraged to tailor their responses according to the specific requirements of the program description.

To the greatest extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country and rural and urban areas. In making these decisions, ADD may also take into account the need to avoid unnecessary duplication of effort.

C. Available Funds

ADD intends to award new grants resulting from this announcement during the fourth quarter of fiscal year 2003. Up to $1.5 million in Federal funds will be available to support these projects this fiscal year.

The term ''budget period'' refers to the interval of time (usually 12 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term ''project period'' refers to the total time a project is approved for support, including any extensions.

D. Grantee Share of Project Costs

Grantees must provide at least 25 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. Cash or in-kind contributions may meet the non-Federal share, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 in Federal funds (based on an award of $100,000 per budget period) must include a match of at least $33,333 (total project cost is $133,333, of which $33,333 is 25 percent).

An exception to the grantee cost-sharing requirement relates to applications originating from American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands. Applications from these areas are covered under section 501(d) of Pub. L. 95–134, as amended, which requires that the Department waive any requirement for local matching funds for grants under $200,000.

The applicant contribution must generally be secured from non-Federal sources. Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. However, funds from some Federal programs benefiting tribes and Native American organizations have been used to provide valid sources of matching funds. If this is the case for a tribe or Native American organization submitting an application to ADD, that organization should identify the programs which will be providing the funds for the match in its application. If the application successfully competes for PNS grant funds, ADD will determine whether there is statutory authority for this use of the funds. The Administration for Native Americans and the DHHS Office of General Counsel will assist ADD in making this determination.

E. General Instructions for the Uniform Project Description

The following ACF Uniform Project Description (UPD) has been approved under OMB Control Number 0970–0139.

Applicants required to submit a full project description should prepare the project description statement in accordance with the following instructions.

Project summary/abstract: Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and need for assistance: Clearly identify the physical, economic, social, financial, institutional, or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or benefits expected: Identify the results and benefits to be derived. For example, extent to which the application is consistent with the objectives of the application, and the extent to which the application indicates the anticipated contributions to policy practice, theory and research. Extent to which the proposed project cost is reasonable in view of the expected results.

Approach: Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates. If any data are to be collected, maintained, and disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.'' List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Organizational Profile: Provide information on the applicant organization(s) and cooperating partners such as with organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification

Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Budget and Budget Justification: Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

Part IV. Fiscal Year 2003 Families of Children with Disabilities Support Projects—Description and Requirements

Purpose: Project funds must be used to support the planning and development of family support activities contributing to the self-determination, independence, productivity, and integration and inclusion in all facets of community life of such individuals. Projects will:

(1) Ensure the full participation, choice and control of families of children with disabilities, including children with developmental disabilities, in decisions related to the provision of such family support for their family;

(2) Ensure the active involvement of families of children with disabilities, including children with developmental disabilities, in the planning, development, implementation, and evaluation of the project; increase the availability of, funding for, access to, and provision of family support for families of children with disabilities, including children with developmental disabilities;

(3) Promote training activities that are family-centered and family-directed and that enhance the ability of family members of children with disabilities, including children with developmental disabilities, to increase participation, choice, and control in the provision of family support for families of children with disabilities, including children with developmental disabilities;

(4) Increase and promote interagency coordination among State agencies, and between State agencies and private entities that are involved in these projects; and

(5) Increase the awareness of laws, regulations, policies, practices, procedures, and organizational structures that facilitate or impede the availability or provision of family support for families of children with disabilities, including children with developmental disabilities.

Background Information: Promoting family support for families with a child with a disability is a new phase in the evolution of Federal disability policy. Historically, families with a child with a severe disability would only receive support once the child was placed in a state institution. In recent decades, disability policies have progressed to promote a more family-centered approach to service provision; indeed, many States have or have initiated family support legislation. This accomplishment is often the result of initiatives developed by the State Developmental Disabilities Councils. Currently, all the States and the District of Columbia offer some type of family support program. This support consists of any community-based service administered or financed by the State mental retardation/developmental disabilities agency providing for vouchers, direct cash payments to families, reimbursement, or direct payments to service providers that the State agency itself identified as family support. A broad range of services fall within family support including—cash subsidy payments, respite care, family strengthening through such services as parenting education and marriage education, architectural adaptation of the home, in-home counseling, sibling support programs, education and behavior management services, and the purchase of specialized equipment. Family support is a growing expenditure in State budgets. Family support expenditures advanced from $569 million for 279,266 families in 1996 to $1.0 billion for 385,414 families in 2000. Family support spending constituted 3.6 percent of total MR/DD State resources in 2000, up from 2.3 percent in 1996. All 50 States reported a family support initiative in either cash subsidy, or other family support activity. (Braddock, D., Hemp, R., Rizzolo, M.C., Parish, S. & Pomeranz, A. (The State of the States in Developmental Disabilities: 2002 Study Summary. Boulder, CO: Coleman Institute for Cognitive Disabilities & Department of Psychiatry, University of Colorado).

The Federal government's involvement in family support began in 1982 with what is known as the ''Katie Beckett Waiver.'' This provision amended the Medicaid law to give States the option to waive the deeming of parental income and resources for any child 18 years of age and under who is eligible for placement in a Medicaid certified long-term care institution or hospital, ICF/MR or nursing home. This waiver allows parents access to an array of family, home and community supports. Many States use this option, which requires States to determine that (1) the child requires the level of care provided in an institution; (2) it is appropriate to provide care outside the facility; and (3) the cost of care at home is no more than the cost of institutional care. In States that use this option, parents may choose either institutional or community care for their Medicaid eligible children.

Federal disability policy in the 1980s increasingly began to reflect the principles of family-centered, community-based, coordinated care as Federal programs were established or reauthorized. Among these were:

(1) The Temporary Respite Care and Crisis Nurseries Act of 1986 that funded a variety of in-home and out-of-home respite programs;

(2) A new part H for infants, toddlers, and their families was added in 1986 to the Education of the Handicapped Act; (as of 1997, part C of the Individuals with Disabilities Education Act (IDEA));

(3) The reauthorization of the Maternal and Child Health Care Block grant in 1989 emphasized these principles in its Children with Special Health Care Needs program; and

(4) A definition of family support services was added in 1990 to the Developmental Disabilities Assistance and Bill of Rights Act.

Minimum Requirements for Project Design: ADD requires grant funds to be used to support the development of State policies that reinforce and promote, with the support of families, guardians, advocates, and communities, of individuals with developmental

disabilities, the self-determination, independence, productivity and integration and inclusion in all facets of community life of such individuals through family support activities. Project activities should accomplish any of the following:

• Establishment of a State Policy Council of families with children with disabilities, including children with developmental disabilities, or utilize an existing council which will advise and assist the lead entity in the performance of activities under the project. The State Policy Council shall be composed of a majority of participants who are family members of children with disabilities, including children with developmental disabilities, or who are youth with disabilities (ages 18–21), or qualify under both categories;

• Training and technical assistance for family members, service providers, community members, professionals, members of the Policy Council, State agency staff, students and others;

• Interagency coordination of Federal and State policies, resources, and services; interagency workgroups to enhance public funding options and coordination; and other interagency activities that promote coordination;

• Outreach to locate families who are eligible for family support and to identify groups who are underserved or unserved;

• Policy studies that relate to the development and implementation, or expansion and enhancement, of a statewide system of family support for families of children with disabilities, including children with developmental disabilities;

• Hearings and forums to solicit input from families of children with disabilities, including children with developmental disabilities, regarding family support programs, policies, and plans for such families;

• Public awareness and education to families of children with disabilities, including children with developmental disabilities, parent groups and organizations, public and private agencies, students, policymakers, and the general public;

• Needs assessment;

• Data collection and analysis related to the statewide system of family support for families of children with disabilities, including children with developmental disabilities;

• Implementation plans to utilize generic community service organizations in innovative partnerships to include families of children with disabilities, including children with developmental disabilities;

• Pilot demonstration projects to demonstrate new approaches to the provision of family support for families of children with disabilities, including children with developmental disabilities, including family strengthening services such as parenting education and marriage education;

• An evaluation system using measurable outcomes based on family satisfaction indicators. Indicators include the extent to which a service or support meets a need, solves a problem, or adds value for a family, as determined by the individual family.

ADD expects to fund applications that include or incorporate into these activities one or more of the following populations relevant to their State: (1) Unserved and underserved populations that include populations such as individuals from racial and ethnic minority backgrounds, economically disadvantaged individuals, individuals with limited-English proficiency, and individuals from underserved geographic areas (rural or urban); (2) aging families of adult children with disabilities, including children with developmental disabilities, who are over age 21 with a focus on assisting those families and their adult child to be included as self-determining members of their communities; (3) foster/adoptive families of children with disabilities, including children with developmental disabilities; (4) families participating in the State's Temporary Assistance to Needy Families Program (TANF) , welfare-to-work, and/or SSI program; (5) veterans with families having a child with a developmental disability; (6) parents with developmental disabilities, especially with cognitive disabilities, having children with or without disabilities; and (7) families of children with developmental disabilities who have behavioral/emotional issues.

ADD intends to fund those applications that describe how the project will:

• Ensure consumer/self-advocate orientation and participation;

• Include key project personnel with direct life experience living with a disability;

• Have strong advisory components that consist of a majority of individuals with disabilities and a structure where individuals with disabilities make real decisions that determine the outcome of the grant;

• If the project includes research, reflect the principles of participatory action;

• Consider cultural competency (''cultural competency'' as defined in the DD Act as—services, supports, or other assistance that is conducted or provided in a manner that is responsive to the beliefs, interpersonal styles, attitudes, language, and behavior of individuals who are receiving the services, supports or other assistance, and in a manner that has the greatest likelihood of ensuring their maximum participation in the program involved);

• Allow individuals with disabilities and their families to be involved in all aspects of the design, implementation, and evaluation of the project;

• Attend to unserved and inadequately served individuals, having developmental disabilities, from mild to severe, from multicultural backgrounds, rural and inner-city areas, migrant, homeless, and refugee families, with severe disabilities;

• Comply with the Americans with Disabilities Act, if applicable, and Section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act amendments of 1998 (Pub. L. 105–220);

• Use collaboration through partnerships and coalitions;

• Develop the capacity to communicate and disseminate information and technical assistance through E-mail and other effective, affordable, and accessible forms of electronic communication;

• Develop and establish system change activities beyond project period; and

• Disseminate models, products, best practices, and strategies for distribution between networks and beyond.

Applications must also include provisions for the travel of a key staff person during the project period to Washington, DC.

Evaluation Criteria: Five (5) criteria will be used to review and evaluate each application under this announcement. Each criterion should be addressed in the project description section of the application. The point values indicate the maximum numerical weight possible for a criterion in the review process. The specific information to be included under each of these headings is described in section E of part III, General Instructions for the Uniform Project Description. Additional information that must be included is described below.

Criterion 1: Approach (Maximum 35 points)

Discuss the criteria to be used to evaluate the results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. Applicants are expected to present a plan that (1) reflects an

understanding of the characteristics, needs and services currently available to the targeted population; (2) provides services that directly address the needs of the target population; (3) is evidence based and grounded in theory and practice; (4) is appropriate and feasible; (5) can be reliably evaluated; and (6) if successfully implemented, can be sustained after Federal funding has ceased.

The applicant must:

(1) Outline a plan of action pertaining to the scope and detail on how the proposed work will be accomplished for each project. Define goals and specific measurable objectives for the project (8 points);

(2) Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Describe how the proposed project will be evaluated to determine the extent to which it has achieved its stated goals and objectives; and whether the methods of evaluation include the use of performance measures that are clearly related to the intended outcome of the project (8 points);

(3) Describe any unusual features of the project, such as design or technological innovation, reductions in cost or time, or extraordinary social and community involvement (5 points);

(4) Provide for each assistance program quantitative projects of the accomplishments to be achieved, if possible. When accomplishments cannot be quantified, activities should be listed in chronological order to show the schedule of accomplishments and their target date (4 points);

(5) Describe the products to be developed during the implementation of the proposed project. This can include questionnaires, interview guides, data collection instruments, software, Internet applications, reports, article outcomes and evaluation results. Also present a dissemination plan for conveying the information (4 points);

(6) Cite factors which might accelerate or decelerate the work and provide reasons for taking this approach as opposed to others (3 points);

(7) List each organization, operator, consultant, or other key individual who will work on the project along with a short description of the nature of their effort of contribution (3 points).

Criterion 2: Objectives and Need for Assistance (Maximum 25 points)

The application must describe the context of the proposed demonstration project, including the geographic location, environment, magnitude and severity of the problem(s) to be solved and the needs to be addressed. Those eligible applicants applying for development funds, in addition to providing the following information, please submit a summary/abstract of the project goals and accomplishments during your planning grant.

The applicant must:

(1) Demonstrate the need for the assistance and state the principal and subordinate objectives for the project (10 points).

(2) Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution (5 points).

(3) Provide supporting documentation or other testimonies from concerned interests other than the applicant (5 points).

(4) Provide any relevant data based on planning studies (4 points); and

(5) Provide maps and other graphic aids (1 point).

Criterion 3: Results or Benefits Expected (Maximum 20 points)

Identify results and benefits to be derived. The anticipated contribution to policy, practice, theory and research should be indicated.

The applicant must:

(1) Clearly describe project benefits and results as they relate to the objectives of the project (10 points); and

(2) Provide information as to the extent to which the project will build on current theory, research, evaluation and best practices to contribute to increased knowledge of understanding the problems, issues or effective strategies and practices in family support (10 points).

Criterion 4: Organizational Profile (13 points)

This section should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is structured, the types and quantity of services, and the research and management capabilities it possesses. Applicants need to demonstrate that they have the capacity to implement the proposed project. Capacity includes (1) experience with similar projects; (2) experience with the target population; (3) qualifications and experience of the project leadership; (4) commitment to developing sustaining work among key stakeholders; (5) experience and commitment of any proposed consultants and subcontractors; and (6) appropriateness of the organizational structure, including its management information system, to carry out the project.

The applicant must:

(1) Identify the background of the project director/principal investigator and key project staff (including name, address, and training, educational background and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project; present brief resumes (4 points);

(2) Provide a brief background description of how the applicant organization is organized, the types and quantity of services it provides, and the research and management capabilities it possesses (4 points);

(3) Describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable (3 points); and

(4) Provide an organization chart showing the relationship of the project to the current organization (2 points).

Criterion 5: Budget and Budget Justification (7 points)

Applicants are expected to present a budget with reasonable project costs, appropriately allocated across component areas, and sufficient to accomplish the objectives. The dollar amount requested must be fully justified and documented.

Applications must provide a narrative budget justification that describes how the categorical costs are derived and discuss the reasonableness and appropriateness of the proposed costs. Line item allocations and justifications are required for both Federal and non-Federal funds.

A letter of commitment of non-Federal resources must be submitted with the application in order to be given credit in the review process. A fully explained non-Federal share budget must be prepared for each funding source.

The applicant must:

(1) Discuss and justify the costs of the proposed project which are reasonable and programmatically justified in view of the activities to be conducted and the anticipated results and benefits (3 points);

(2) Describe the fiscal control and accounting procedures that will be used to ensure prudent use, proper disbursement, and accurate accounting of funds received under this program announcement (2 points); and

(3) Include a fully explained non-Federal share budget and its source(s) (2 points).

This year, an additional five (5) points will be awarded in scoring for any project that demonstrates in their application a partnership and collaboration with any of the 140 Empowerment Zones/Enterprise Communities. To receive the five points, the application must specify how the involvement of the EZ/EC is related to the objectives and activities of the project. The application must also include a letter from an authorized representative of the EZ/EC indicating its agreement to participate and describing its role in the project. Applications submitted for development funds must include a letter from the EZ/EC pledging its continued support.

Applicable Administrative Regulations

Applicable administrative regulations include 45 CFR part 74, Administration of Grants, for Institutions of Higher Education, non-profit organizations and Indian Tribal Governments; and 45 CFR part 92, Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments.

Part V. Instructions for the Development and Submission of Applications

This part contains information and instructions for submitting applications in response to this announcement. Application forms and other materials can be obtained by any of the following methods: from Joan Rucker, ADD, 370 L'Enfant Promenade, SW., Washington, DC, 20447, 202/690–7898; *http://www.acf.dhhs.gov/programs/add*; or from *add@acf.dhhs.gov*. Please copy and use these forms in submitting an application.

Potential applicants should read this section carefully in conjunction with the information contained in the program description in part IV of this announcement.

A. Required Notification of the State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under this Order, States may design their own process for reviewing and commenting on proposed Federal assistance under covered programs. Note: State/territory participation in the intergovernmental review process does not signify applicant eligibility for financial assistance under a program. A potential applicant must meet the eligibility requirements of the program for which it is applying prior to submitting an application to its single point of contact (SPOC), if applicable, or to ACF.

All States and Territories, except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington, have elected to participate in the Executive Order process and have established a State Single Point of Contact (SPOC). Applicants from these jurisdictions, or for projects administered by federally recognized Indian tribes, need not take any action regarding E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the potential applications and to receive any necessary instructions.

Applicants must submit all required materials to the SPOC as soon as possible. This will enable the program office to obtain and to review SPOC comments as part of the award process. It is imperative that an applicant submits all required materials and indicate the date of the submittal (or date SPOC was contacted, if no submittal is required) on the SF 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application due date to comment on proposed new or competing continuation awards. These comments are reviewed as part of the award process. Failure to notify the SPOC can result in delays in awarding grants.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those Official State process recommendations that may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade, SW., 8th Floor, Washington, DC 20447, Attn: 93.631 ADD—Projects of National Significance.

Contact information for each State's SPOC is found at the ADD website (*http:// www. acf.dhhs.gov/programs/add*) or by contacting Joan Rucker, ADD, 370 L'Enfant Promenade, SW., Washington, DC, 20447, 202/690–7898.

B. Notification of State Developmental Disabilities Planning Councils

A copy of the application must also be submitted for review and comment to the State Developmental Disabilities Council in each State in which the applicant's project will be conducted. A list of the State Developmental Disabilities Councils can be found at ADD's website: *http://www.acf.dhhs.gov/programs/add* or by contacting Joan Rucker, ADD, 370 L'Enfant Promenade, SW., Washington, DC 20447, 202/690–7898.

C. Instructions for Preparing the Application and Completing Application Forms

The SF 424, SF 424A, SF 424A-page 2 and Certifications/Assurances are contained in the application package that can be accessed as mentioned earlier in this announcement. Please prepare your application in accordance with the following instructions:

1. SF 424 Page 1, Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Top of Page. Please indicate that you are applying for new or implementation funds.

Item 1. ''Type of Submission''—Preprinted on the form.

Item 2. ''Date Submitted'' and ''Applicant Identifier'' —Date application is submitted to ACF and applicant's own internal control number, if applicable.

Item 3. ''Date Received By State''—State use only (if applicable).

Item 4. ''Date Received by Federal Agency''—Leave blank.

Item 5. ''Applicant Information''.

''Legal Name''—Enter the legal name of applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

''Organizational Unit''—Enter the name of the primary unit within the applicant's organization that will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

''Address''—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

''Name and telephone number of the person to be contacted on matters involving this application (give area code)''—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

Item 6. ''Employer Identification Number (EIN)''—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

Item 7. ''Type of Applicant''—Self-explanatory.

Item 8. ''Type of Application''—Preprinted on the form.

Item 9. ''Name of Federal Agency''—Preprinted on the form.

Item 10. ''Catalog of Federal Domestic Assistance Number and Title''—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title. For ADD's priority area, the following should be entered, ''93.631—Developmental Disabilities: Projects of National Significance.''

Item 11. ''Descriptive Title of Applicant's Project''—Enter the project title. The title is generally short and is descriptive of the project, not the priority area title.

Item 12. ''Areas Affected by Project''—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13. ''Proposed Project''—Enter the desired start date for the project and projected completion date.

Item 14. ''Congressional District of Applicant/Project''—Enter the number of the Congressional district where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If Statewide, a multi-State effort, or nationwide, enter ''00.''

Items 15. Estimated Funding Levels. In completing 15a through 15f, the dollar amounts entered should reflect, for a 17-month or less project period, the total amount requested.

Item 15a. Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the priority area description.

Items 15b–e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b-e are considered cost sharing or ''matching funds.'' The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding as well as exceptions to these rules, *see* part III, sections C and D.

Item 15f. Enter the estimated amount of program income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this program income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a-15e.

Item 16a. ''Is Application Subject to Review By State Executive Order 12372 Process? Yes.''—Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided online at *www.whitehouse.gov/omb/grants/spoc.html.* The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application.

Item 16b. ''Is Application Subject to Review By State Executive Order 12372 Process? No.''—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17. ''Is the Applicant Delinquent on any Federal Debt?''—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18. ''To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.'' —To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a–c. ''Typed Name of Authorized Representative, Title, Telephone Number''—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d. ''Signature of Authorized Representative''—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. ''Date Signed''—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering (1) the total project period of 17 months or less or (2) the first year budget period, if the proposed project period exceeds 15 months.

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories. This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers the total project period of 17 months or less. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate budget justification should be included to fully explain and justify major items, as indicated below. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The budget justification should immediately follow the second page of the SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants; this should be included on line 6h, ''Other.''

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, ''Other.''

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. For State and local governments, including Federally recognized Indian tribes, ''equipment'' is tangible, non-expendable personal property having a useful life of more than one year and acquisition cost of $5,000 or more per unit.

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations, including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. If the name of the contractor, scope of work, and estimated total costs are not available or have not been negotiated, include on Line 6h, ''Other.''

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or the entire program to another agency, the applicant/grantee must complete this section (section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements.

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: Insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as ''miscellaneous'' and ''honoraria'' are not allowable.

Justification: Specify the costs included.

Total Direct Charges—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter ''none.'' Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with DHHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant.

In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

For training grant applications, the entry under line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a*) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b*) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

(c) Subtract (b*) from (a*). The remainder is what the applicant can claim as part of its matching cost contribution.

Justification: Enclose a copy of the indirect cost rate agreement. Applicants subject to the limitation on the Federal reimbursement of indirect costs for training grants should specify this.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled ''Totals.'' In-kind contributions are defined in title 45 of the Code of Federal Regulations, parts 74.51 and 92.24, as ''property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant.''

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs. Not applicable.

Section E—Budget Estimate of Federal Funds Needed for Balance of the Project. This section should only be completed if the total project period exceeds 17 months.

Totals—Line 20. For projects that will have more than one budget period, enter the estimated required Federal funds for the second budget period (months 13 through 24) under column ''(b) First.'' If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under ''(c) Second.'' Columns (d) and (e) are not applicable in most instances, since ACF funding is almost always limited to a three-year maximum project period. They should remain blank.

Section F—Other Budget Information.

Direct Charges—Line 21. Not applicable.

Indirect Charges—Line 22. Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. Project Summary/Abstract

Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, the priority area number as shown at the top of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Provide a summary description that accurately and concisely reflects the proposal. The summary should describe the objectives of the project, the approaches to be used and the expected outcomes. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals must be closed captioned and audio described). The project summary description, together with the information on the SF 424, will constitute the project ''abstract.'' This is a major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

4. Project Description

The Project Description is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in part IV. The narrative should also provide information concerning how the application meets the evaluation criteria, using the following headings:

(a) Objectives and Need for Assistance;

(b) Results and Benefits Expected;

(c) Approach;

(d) Organization Profile; and

(e) Budget and Budget Justification

The specific information to be included under each of these headings is described in section E of part III, General Instructions for the Uniform Project Description, and under part IV, and Evaluation Criteria.

The narrative should be typed double-spaced on a single-side of an 8½″ x 11″ plain white paper, with 1″ margins on all sides, using black print no smaller than 12 pitch or 12 point size. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with ''Objectives and Need for Assistance'' as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including the application forms and all attachments, should not exceed 75 pages. This will be strictly enforced. A page is a single side of an 8½″ x 11″ sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose copying difficulties. These materials, if submitted, will not be included in the review process if they exceed the 75-page limit. Each page of the application will be counted to determine the total length.

5. Part V—Assurances/Certifications

Applicants are required to file a SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Both must be signed and returned with the application. Applicants must also provide certifications regarding: (1) Drug-Free Workplace Requirements and (2) Debarment and Other Responsibilities. These two certifications are self-explanatory. Copies of these assurances/certifications can be obtained from the ADD Web site (*http://www.acf.dhhs.gov/programs/add*) or by contacting Joan Rucker, ADD, 370 L'Enfant Promenade, SW., Washington, DC, 20447, 202/690–7898. These forms can be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. *A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, and Debarment and Other Responsibilities certifications, and need not be mailed back with the application.*

D. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

____One original, signed and dated application, plus two copies.

____Application is from an organization that is eligible under the eligibility requirements defined in part IV under Program Description and Requirements.

____Application length does not exceed 75 pages, unless otherwise specified in the priority area description.

A complete application consists of the following items in this order:

____Application for Federal Assistance (SF 424, REV 4–92);

____A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable.

____Budget Information—Non-Construction Programs (SF 424A, REV 4–92);

____Budget justification for section B—Budget Categories;

____Proof of designation as lead agency;

____Table of Contents;

____Letter from the Internal Revenue Service, etc. to prove non-profit status, if necessary;

____Copy of the applicant's approved indirect cost rate agreement, if appropriate;

____Project Description (*see* part III, section E);

____Any appendices/attachments; Assurances—Non-Construction Programs (Standard Form 424B, REV 4–92);

____Certification Regarding Lobbying;

____Certification of Protection of Human Subjects, if necessary; and

____Certification of the Pro-Children Act of 1994 (Environmental Tobacco Smoke), signature on the application represents certification.

E. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

F. Paperwork Reduction Act of 1995 (Pub. L.104–13)

The Uniform Project Description information collection within this announcement is approved under the Uniform Project Description (0970–0139), Expiration Date 12/31/2003.

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining

the data needed, and reviewing the collection of 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.

Eligible State and Territory Applicants

1. Alabama
2. Arizona
3. California
4. Colorado
5. Connecticut
6. Delaware
7. Florida
8. Indiana
9. Iowa
10. North Dakota
11. Pennsylvania
12. South Dakota
13. Tennessee
14. Puerto Rico

Dated: May 19, 2003.

Patricia Morrissey,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 03–13871 Filed 6–2–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0514]

Agency Information Collection Activities; Announcement of OMB Approval; Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Irradiation in the Production, Processing, and Handling of Food'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 28, 2003 (68 FR 15209), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0186. The approval expires on May 31, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: May 27, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–13754 Filed 6–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0200]

Agency Information Collection Activities; Proposed Collection; Comment Request; Export of Medical Devices—Foreign Letters of Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting requirements for firms that intend to export certain unapproved medical devices.

DATES: Submit written or electronic comments on the collection of information by August 4, 2003.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm*. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Export of Medical Devices—Foreign Letters of Approval (OMB No. 0910–0264)—Extension

Section 801(e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381(e)(2)) provides for the exportation of an unapproved device under certain circumstances if the exportation is not contrary to the public health and safety and it has the approval of the foreign country to which it is intended for export.

Requesters communicate (either directly or through a business associate in the foreign country) with a representative of the foreign government to which they seek exportation, and written authorization must be obtained from the appropriate office within the foreign government approving the importation of the medical device. An alternative to obtaining written

authorization from the foreign government is to accept a notarized certification from a responsible company official in the United States that the product is not in conflict with the foreign country's laws. This certification must include a statement acknowledging that the responsible company official making the certification is subject to the provisions of 18 U.S.C. 1001. This statutory provision makes it a criminal offense to knowingly and willingly make a false or fraudulent statement, or make or use a false document, in any manner within the jurisdiction of a department or agency of the United States.

FDA uses the written authorization from the foreign country or the certification from a responsible company official in the United States to determine whether the foreign country has any objection to the importation of the device into their country.

The respondents to this collection of information are companies that seek to export medical devices.

FDA estimates the reporting burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
801(e)(2)	20	1	20	2.5	50
Total					50

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on the experience of FDA's medical device program personnel, who estimate that completion of the requirements of this collection of information should take approximately 2.5 hours to complete.

Dated: May 27, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–13755 Filed 6–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Arthritis Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Arthritis Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 23 and 24, 2003, from 8 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Johanna Clifford, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *cliffordj@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12532. Please call the Information Line for up-to-date information on this meeting.

Agenda: On June 23, 2003, the committee will discuss fibromyalgia, clinical trial design, including important disease endpoints in the study, and development of therapies and treatments. On June 24, 2003, the committee will discuss the safety and efficacy of submission tracking number 103795/5123, ENBREL (etanercept), Immunex, for reducing signs and symptoms of active ankylosing spondylitis.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 13, 2003. Oral presentations from the public will be scheduled between approximately 11:30 a.m. and 12 noon on both days. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 13, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact LaNise Giles at 301–827–7001, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 24, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–13757 Filed 6–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Drug Manufacturing Inspections; Public Workshops

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshops.

SUMMARY: The Food and Drug Administration (FDA) is announcing a series of public workshops to discuss current good manufacturing practice (CGMP) issues, including quality subsystems, areas of change control, and quality management. There will also be a discussion of current compliance issues and trends and the status of the part 11 (21 CFR part 11) draft guidance. The first workshop will be held in June 2003, then repeated in July 2003 and August 2003 at different locations to enable as many people to attend as possible. Held in collaboration with the Consumer Healthcare Products Association (CHPA), the workshops are intended to update participants with respect to issues involving CGMP compliance. Participants will also hear from FDA and industry speakers on

specific topics related to methodologies and implementation of quality systems including areas such as global change control and corrective action preventative action (CAPA) investigations.

DATES: For the dates of the workshops, see table 1 in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: For the locations of the workshops, see table 1 in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Fred Razzaghi, Consumer Healthcare Products Association, 1150 Connecticut Ave. NW., Washington, DC 20036, FAX 202–223–6835, *fred.razzaghi@chpa-info.org*; *http://www.chpa-info.org*; or Erik N. Henrikson, Center for Drug Evaluation and Research (HFD–320), Food and Drug Administration, 11919 Rockville Pike, Rockville, MD 20852, 301–827–9004, FAX 301–827–8907, *henriksone@cder.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Who Should Attend?

This document is directed towards professionals involved in the manufacture, control, and regulation of pharmaceutical products. Examples of professionals who may be interested include process/production engineers, quality assurance/quality control and regulatory affairs professionals, auditors, repackers and relabelers, consultants, regulatory investigators, CGMP compliance officials, and FDA center and field personnel. Other entities or individuals may also be interested in attending.

B. Where and When Will The Workshops Be Held?

We have scheduled three workshops at different times and locations to enable as many people to participate as possible. Attendees can attend the workshop that is most convenient. The times and locations of the workshops are listed in table 1 of this document.

TABLE 1.—WORKSHOP LOCATIONS AND SCHEDULES

Workshop Location	Date and Time
Sheraton Meadowlands Hotel, Two Meadowlands Plaza, East Rutherford, NJ 07073, 201–896–0500, FAX 201–896–9696.	Monday, June 16, 2003, from 8:30 a.m. to 5 p.m.
San Juan Marriott Resort, 1309 Ashford Ave., San Juan, PR 00907, 800–981–8546, FAX 809–722–6800.	Monday, July 14, 2003, from 8:30 a.m. to 5 p.m.
Hyatt Regency Chicago, 151 East Wacker Dr., Chicago, IL 60601, 312–565–1234, FAX 312–565–2966.	Tuesday, August 12, 2003, from 8:30 a.m. to 5 p.m.

C. How Can I Participate?

You can participate in person. Anyone interested in attending a workshop can register through the **INFORMATION CONTACT**.

D. Is There a Registration Fee for This Workshop?

Yes, a registration fee of $ 320.00 is required. The registration fee includes workshop reference materials and lunch plus a continental breakfast and coffee breaks. Government employees qualify for a discounted rate of $75.

E. How Can I Get Additional Information?

The notice of participation form, information about the workshop, and other related documents are available from the **INFORMATION CONTACT** or from the Internet at *http://www.fda.gov.cder/workshop.htm*.

II. Background Information

A. Why is FDA Cosponsoring These Workshops?

FDA is cosponsoring this series of workshops to provide information and training opportunities for industry as well as FDA center and field personnel. The workshops are being scheduled for three different times and locations to enable as many participants to attend as possible.

B. What Will Be Covered?

The workshops will provide an update on the progress of the agency's CGMP initiative, the status of the part 11 draft guidance, and the agency's progress in developing ideas about risk management associated with CGMP. In addition, FDA and industry speakers will present information and training on specific topics related to methodologies and implementation of quality systems in categories such as global change control and CAPA investigations. Presentations by both FDA and industry will provide a regulatory and practical perspective on the current relevant critical topics.

Dated: May 27, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–13756 Filed 6–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0207]

Preparation for ICH Meetings in Brussels, Belgium, and ICH 6 Conference in Osaka, Japan: Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is announcing a public meeting entitled ''Preparation for ICH Meetings in Brussels, Belgium, July 15–18, 2003, and ICH 6 Conference in Osaka, Japan, November 12–15, 2003'' to solicit information and receive comments on the International Conference on Harmonisation (ICH) as well as the upcoming Meetings in Brussels, Belgium. The topic to be discussed is the Common Technical Document, GMPs Initiative and Update on other topics for discussion at the forthcoming ICH Steering Committee Meeting. The purpose of the meeting is to solicit public input prior to the next Steering Committee and Expert Working Group meetings in Brussels, Belgium, July 2003, at which discussion of the topics underway and the future of ICH will continue and also to inform the public about the ICH 6 Public Conference in Osaka, Japan in November 2003.

Date and Time: The public meeting will be held on June 24, 2003, from 10 a.m. to 1 p.m.

Location: The public meeting will be held at 5630 Fishers Lane, rm. 1066, Rockville, MD 20857.

Contact Person: Kimberly L. Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, FAX 301–827–6801, email: Topperk@cder.fda.gov.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, and fax number), and written material and requests to make oral presentations, to the contact person by June 9, 2003.

If you need special accommodations due to a disability, please contact

Kimberly Topper at least 7 days in advance.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

SUPPLEMENTARY INFORMATION: The International Conference on Harmonisation of Technical Requirements for the Registration of Pharmaceuticals for Human Use (ICH) was established in 1990 as a joint regulatory/industry project to improve, through harmonization, the efficiency of the process for developing and registering new medicinal products in Europe, Japan, and the United States without compromising the regulatory obligations of safety and effectiveness.

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for medical product development among regulatory agencies. ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. ICH is concerned with harmonization among three regions: The European Union, Japan, the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health, Labor and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA). The ICH Steering Committee includes representatives from each of the ICH sponsors and Health Canada, the European Free Trade Area and the World Health Organization. The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the three ICH regions.

The current ICH process and structure can be found on the Internet at http://www.ich.org.

Interested persons may present data, information, or views orally or in writing, on issues pending at the public meeting. Oral presentations from the public will be scheduled between approximately 12:15 p.m. and 1 p.m. Time allotted for oral presentations may be limited to 10 minutes. Those desiring to make oral presentations should notify the contact person by June 9, 2003, and submit a brief statement of the general nature of the evidence or arguments they which to present, the names and addresses, phone number, fax, and e-mail of proposed participants, and an indication of the approximate time requested to make their presentation.

The Agenda for the public meeting will be made available on June 9, 2003, via the internet at http://www.fda.gov/cder/calendar/meeting/ich2003.

Information on the ICH 6 Public Conference in Osaka, Japan on November 12–15, 2003, can be obtained via the Internet at http://www.ich.org/ich6bis.html.

Dated: May 28, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–13830 Filed 6–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0197]

Guidance for Industry on Drug Products Containing Ensulizole, Hypromellose, Meradimate, Octinoxate, and Octisalate—Labeling Enforcement Policy; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Drug Products Containing Ensulizole, Hypromellose, Meradimate, Octinoxate, and Octisalate—Labeling Enforcement Policy.'' This guidance discusses how FDA plans to exercise its enforcement discretion after September 1, 2002, with regard to drug products whose labeling does not use the established names for ensulizole, hypromellose, meradimate, octinoxate, and octisalate.

DATES: General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Wayne Mitchell, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

The FDA is announcing the availability of a guidance for industry entitled ''Drug Products Containing Ensulizole, Hypromellose, Meradimate, Octinoxate, and Octisalate—Labeling Enforcement Policy.'' This guidance explains that the agency intends to exercise enforcement discretion by not initiating any enforcement action, until September 1, 2003, based on a firm's failure to bring its products' labeling into compliance with the United State Pharmacopeia (USP) monograph title changes for ensulizole, hypromellose, meradimate, octinoxate, and octisalate, as required by section 502(e)(1)(A)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(e)(1)(A)(i)).

As explained in detail in the guidance, a series of events has lead to the development of the guidance. These events include USP monograph title changes, changes to the FDA's monograph for over-the-counter (OTC) sunscreen drug products, and the receipt of two petitions regarding these changes and their effective date (September 1, 2002).

We are issuing this level 1 guidance for immediate implementation, consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on this issue. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative

approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the guidance. Two paper copies of any mailed comments are to be submitted, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: May 19, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–13828 Filed 6–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0289]

Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA.'' This guidance will serve as a special control for eight surgical suture devices. This guidance document describes a means by which surgical sutures may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to amend the classification regulations for eight surgical suture devices previously reclassified into class II to specify a special control for those devices.

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Anthony D. Watson, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090, ext. 164.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance entitled ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA.'' This guidance document describes a means by which surgical suture devices may comply with the requirement of special controls for class II devices. Designation of this guidance document as a special control means that a manufacturer attempting to establish that its device is substantially equivalent to a predicate class II surgical suture will need to address the recommendations in this special control guidance. However, the firm need only show that its device is as safe and effective as a device that meets guidance recommendations. The firm may use alternative approaches if those approaches address the performance, testing, and labeling issues identified in the guidance. This guidance supercedes ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA'' issued on December 19, 2002.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on surgical sutures. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

The guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB under the PRA under OMB control number 0910–0485.

IV. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document at any time. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

To receive ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA'' by fax, call the CDRH Facts-on-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1387) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains a site on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including

lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Dockets Management Branch Internet site at *http://www.fda.gov/ohrms/dockets*.

Dated: May 20, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–13826 Filed 6–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0181]

Guidance for Industry and FDA on Pediatric Expertise for Advisory Panels; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Pediatric Expertise for Advisory Panels; Guidance for Industry and FDA.'' The guidance defines pediatric subpopulations by age and specifies when we would seek pediatric expertise on our advisory panels. This guidance document is immediately in effect, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the draft guidance document entitled ''Pediatric Expertise for Advisory Panels; Guidance for Industry and FDA'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818.

Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Comments are to be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Nancy J. Pluhowski, Center for Devices and Radiological Health (HFZ- 400), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2022, ext. 133

SUPPLEMENTARY INFORMATION:

I. Background

This guidance describes internal office procedures to ensure that an advisory panel reviewing a premarket submission or other regulatory documents includes or consults with one or more pediatric experts, when appropriate.

FDA is making this guidance effective immediately because there is a statutory requirement that requires immediate implementation, and guidance is needed to help effect such implementation. On October 26, 2002, the Medical Device User Fee and Modernization Act of 2002 (MDUFMA) was signed into law. MDUFMA amended section 515(c) (21 U.S.C. 360e(c)) Application for Premarket Approval of the Federal Food, Drug, and Cosmetic Act to read in part, ''Where appropriate, the Secretary shall ensure that such panel includes, or consults with, one or more pediatric experts.'' The guidance describes circumstances where FDA believes that pediatric expertise on the advisory panel is appropriate as well as the steps FDA will take to ensure pediatric expertise is available.

II. Significance of Guidance

This guidance is being issued consistent with FDA's GGPs regulation (21 CFR 10.115). The guidance represents the agency's current thinking on pediatric expertise in FDA advisory panels. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

You may obtain a copy of ''Pediatric Expertise for Advisory Panels; Guidance for Industry and FDA'' via your fax machine, by calling the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document, then enter the document number (1208) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

You may also obtain a copy of the guidance though the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes: (1) Device safety alerts; (2) **Federal Register** reprints; (3) information on premarket submissions (including lists of approved and cleared applications and submissions, and manufacturers' addresses); (4) small manufacturer's assistance; (5) information on video conferencing and electronic submissions; (6) mammography matters; and (7) other device oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Dockets Management Branch Internet site at *http://www.fda.gov/ohrms/dockets*.

Dated: May 23, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–13753 Filed 6–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

HRSA–03–101 Fiscal Year 2003 Competitive Application Cycle for the Comprehensive Geriatrics Education Program (CGEP)

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Correction of deadline date.

SUMMARY: In notice document FR Doc. 03–13225, in the issue of Wednesday, May 28, 2003, make the following correction:

On page 31722, under the section ''Application Requests, Availability, Dates and Addresses:'', in the third column, lines 23 and 24, the language ''applications must be postmarked by the due date of July 7, 2003. Applicants'' is corrected to read ''applications must be postmarked by the due date of June 30, 2003. Applicants''.

Dated: May 28, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–13831 Filed 6–2–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[Announcement Number: HRSA–03–094]

Medicare Rural Hospital Flexibility Program Evaluation Cooperative Agreement

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of up to $1 million in fiscal year 2003 to fund a single competitive cooperative agreement to support the continuing evaluation of the Medicare Rural Hospital Flexibility grant program (Flex). The evaluation project will continue to assess the effectiveness of implementing the grant program in States and in rural communities and to provide recommendations for increasing the impact of the program to improve healthcare in rural America. Public and private entities possessing appropriate qualifications are eligible to apply. Faith based organizations are eligible to apply for these funds. Applications must be postmarked on or before June 30, 2003, to be considered. The award will be for a period of five years; continuation funding of up to $1 million annually in succeeding years is contingent upon availability of funds and grantee performance.

Name of Grant Program: Medicare Rural Hospital Flexibility Program Evaluation (MRHFPE), Catalog of Federal Domestic Assistance (CFDA) number 93.241.

Program Authorization: In 1997, section 1820 of the Social Security Act authorized the Medicare Rural Hospital Flexibility program. Reauthorization is pending. The appropriation for this program is provided in Public Law 108–7 (Consolidated Appropriations Resolution, 2003).

Submitting Applications: To receive a complete application kit, applicants may telephone the HRSA Grants Application Center at 1–877–477–2123 beginning June 4, 2003. This program uses the standard form PHS 5161–1 (revised 7/00) for applications (approved under OMB number 0920–0428). Applications must be received by 4 p.m. eastern time on July 3, 2003. An original and two copies must be submitted to the HRSA Grants Applications Center (GAC), 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879, telephone 1–877–477–2123, e-mail *HRSAGAC@HRSA.gov.* Applicants will be notified through the same channels that currently announce the availability of downloadable and paper application materials, including notices on HRSA Web sites and e-mail communications. HRSA anticipates our first on-line grant applications will be available later in 2003. On-line submission of applications will be encouraged at that time; hard copy applications will still be accepted.

SUPPLEMENTARY INFORMATION: For the 65 million people living in rural America, the U.S. Department of Health and Human Services' mission to protect health and to provide assistance for those in need is especially relevant. Healthcare in rural communities supports communities' well-being and represents a significant segment of the local economies. These programs, however, frequently lack adequate funds, personnel and support networks.

For more than a decade, the Office of Rural Health Policy (ORHP) has supported activities that assist States, localities and rural citizens as they work to build and sustain high-quality rural health care delivery systems. The Flex program provides funds to States to develop State rural health plans, support conversion of eligible small rural hospital facilities to critical access status (*see* Medicare conditions of participation for critical access hospitals), support rural EMS, and foster rural health care network development. This combination of activities is managed by each State in a manner that meets program objectives and is simultaneously most appropriate for the individual State. Taken as a whole, the purpose of the program is to improve access to care and quality of care by strengthening and integrating rural health care delivery systems while improving small hospital finances through providing cost based reimbursement.

Evaluation of the Flex program during its first four operational years has produced an important body of knowledge about rural health care, rural hospitals, financial issues, network development, EMS integration and community engagement in rural health care decision-making. This work has been performed by a consortium of six Centers: Southern Maine University, University of Minnesota, University of North Carolina Sheps Center, University of Nebraska (Rural Policy Research Institute), University of Washington and the Walsh Center of Project Hope. Information resulting from the evaluation is publicly available. As the program matures, the evaluation process will focus less on the process of converting hospitals to critical access status and more on development of rural organized systems of care, financial performance, impact on access to and quality of care, disease management, community role, and impact on health status of rural populations served by these emerging systems. Improving clinical, financial and leadership performance of rural healthcare organizations, access to capital and progress in acquisition and use of technology will be important areas of evaluation. Development of appropriate performance measures and documenting the impact of this program will provide enormous value to rural Americans.

Purpose: The purpose of this cooperative agreement is to measure and evaluate the effectiveness of implementation of the Flex program both nationally and at the level of the State, to make the information thus obtained publicly available, and to make recommendations for improving program effectiveness at all levels. Specifically, through this cooperative agreement, the grantee will:

- Design and implement appropriate mechanisms for the next phase of evaluation and dissemination;

• Maintain and disseminate data and information to public entities and the rural healthcare community;

• Design and apply a logic model to evaluate the effectiveness of State grantees in using Federal funds to improve rural healthcare in their State, achieve program objectives and perform Statewide planning and evaluation processes;

• Measure changes in quality, network development, EMS, utilization and community participation resulting from the Flex program;

• Collaborate with other entities in the evaluation process for discrete components and projects;

• Assess the impact of Flex upon the access to care and health status of rural populations served through Flex supported provider systems;

• Document the impact on clinical quality, financial performance and leadership of rural providers served through Flex.

This cooperative agreement involves substantial ORHP policy expertise and programmatic involvement with the awardee. Under the terms of this cooperative agreement in addition to the required monitoring and technical assistance, Federal responsibilities will include:

(1) Participation in annual project meetings conducted during the period of the agreement;

(2) Ongoing review of evaluation activities and procedures;

(3) Review of project information prior to public dissemination;

(4) Participation in design of evaluation process;

(5) Shared decision-making on collaborators and their projects;

(6) Assistance with the establishment of contacts with Federal and State agencies, grant projects and other contacts that may be relevant to the project's mission.

Eligibility: Any public or private entity is eligible to apply. Under the President's initiative, community-based and faith based organizations that are otherwise eligible and believe they can contribute to HRSA's program objectives are encouraged to consider this initiative. There is no requirement for matching funds with this program.

Review criteria: Applications that are complete and responsive to the guidance will be evaluated by an objective review panel specifically convened for this solicitation in accordance with HRSA grants management policies and procedures. Preference will be given to applicants who have participated in the first four years of the evaluation project. This means that applications carrying the preference and recommended for approval by the panel will be considered ahead of applications without the preference.

Applications will be reviewed using the following criteria:

• *Demonstrated knowledge and understanding of relevant issues* (30%) including the Medicare rural hospital flexibility program, rural healthcare networking, rural health care quality, performance of rural healthcare organizations, and rural organized systems of care.

• *Merits of the proposal* (20%) including: (1) Degree to which the application responds to grant guidance and project vision, 6%; (2) quality and feasibility of the design and implementation proposal, 5%; (3) understanding of collaborative relationships between the project officer and the grantee, 3%; and (4) clear and comprehensible presentation of budget with tight connection to project objectives, activities and required resources, 6%.

• *Applicant capability, capacity and relevant experience* (40%) including prior experience with and relevant knowledge of the Medicare Rural Hospital Flexibility program, prior experience in program evaluation, established working relationships with potential collaborators with relevant experience and strong capabilities, adequacy of staff, facilities and technology, and commitment and demonstrated ability to manage projects and adhere to agreed timelines and delivery schedules.

• *Appropriateness of budget* (10%) including maximization of the proportion of funds devoted to program objectives, the extent to which the proposed budget is realistic, adequately justified and consistent with the proposed project plan, and the degree to which the costs of the proposed project are economical in relation to the proposed activities.

Additional criteria may be used in the review of applications for this competition. Any such criteria will be identified in the program guidance included in the application kit. Applicants should pay strict attention to addressing these criteria in addition to those referenced above.

Program Contact Person: Forrest Calico, M.D., M.P.H., Office of Rural Health Policy, HRSA, Rm. 9A–55, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857. Phone (301) 443–0835, Fax (301) 443–2803, e-mail *fcalico@hrsa.gov.*

Paperwork Reduction Act: OMB approval for any data collection in connection with this corporate agreement will be sought, as required under the Paperwork Reduction Act of 1995.

This program is subject to the provisions of executive order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Please visit the Web site *http://www.whitehouse.gov/omb/grants/spoc.html* for a listing of these States. The application packages to be made available under this notice will contain a listing of States which have chosen to set up such a review system and will provide a single point of contact (SPOC) in the States for review. Applicants (other than federally-recognized Indian tribal governments) should contact their State SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to ''accommodate or explain'' for State process recommendations it receives after that date. (*See* part 148, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements). This program is not subject to the public health systems reporting requirements.

Dated: May 8, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–13758 Filed 6–2–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Effectiveness of the National Institute on Drug Abuse's Publications Project

Summary: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the National Institute on Drug Abuse (NIDA), the National Institutes of Health (NIH) will publish periodic summaries

of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: The Effectiveness of NIDA's Publications Project. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* This is a request for a three-year generic clearance to study the level of customer satisfaction in relation to public health information publications produced by the Institute. This effort is made according to Executive Order 12862, which directs Federal agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. The primary purpose of the Project is to assess NIDA's effectiveness in developing and disseminating selected public health information publications designed to promote the use of science-based evidence to improve drug abuse and addiction prevention, treatment, and policy. A multi-method approach (survey, in-person interviews, focus groups) will be used to determine the use and usefulness of selected NIDA public health information publications for several of NIDA's key audiences. Measures will include outcomes associated with the following variables: knowledge/awareness of the publications, receipt of the publications, reading of the publications, use of the publications, perceived utility of the publications, and the impact of the publications on the use of science-based evidence to improve drug abuse and addiction prevention, treatment, and policy. *Frequency of Response:* This project will be conducted annually or biennially. *Affected Public:* Individuals or households; state or local governments; organizations; businesses or educational institutions. *Type of Respondents:* Community coalition leaders, drug abuse treatment and prevention service providers, drug abuse researchers, Native Americans, middle school science and health educators, public health policy makers and public health officials, and the general public. The annual reporting burden is as follows: *Estimated Number of Respondents:* 22,326; *Estimated Number of Responses per Respondent:* one for six of the seven key audiences and two for one audience. *Average Burden Hours Per Response:* .4357. *Estimated Total Annual Burden Hours Requested:* 9,727. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report. The estimated annualized burden is summarized below.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total burden hours
1. Community Coalition Leaders	1782	2	0.26	909
2. Drug Abuse Treatment and Prevention Service Providers	6042	1	0.42	2532
3. Drug Abuse Researchers	6020	1	0.42	2504
4. Native Americans and Native American Intermediaries	50	1	1.14	57
5. Middle School Science and Health Educators	3532	1	0.51	1784
6. Public Health Policy Makers and Public Health Officials	1800	1	0.36	645
7. The General Public	3100	1	0.42	1296
Total				9727

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the proposed collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

For Further Information Contact: To request more information on the proposed project, contact Denise Pintello, Project Officer, Office of Science Policy and Communications, NIDA/NIH/DHHS, 6001 Executive Boulevard, MSC 9591, Bethesda, MD 20892; or call non-toll-free number (301) 443–6071; fax (301) 443–6277; or e-mail your request, including your address to: *dp276v@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: May 23, 2003.

Laura Rosenthal,

Executive Officer, National Institute for Drug Abuse.

[FR Doc. 03–13840 Filed 6–2–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel.

Date: June 16, 2003.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Tommy L. Broadwater, PhD, Senior Advisor to the Director, National Center on Minority Health, and Health Disparities, 6707 Democracy Plaza, Room 800, Bethesda, MD 20892, 301–402–1366.

Dated: May 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–13843 Filed 6–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Minority Health and Health Disparities.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Minority Health and Health Disparities.

Date: June 17, 2003.

Open: 8:30 a.m. to 1:30 p.m.

Agenda: The agenda will include Opening Remarks, Administrative Matters, Director's Report, NCMHD, various scientific presentations and other business of the Council.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: 1:30 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lisa Evans, JD. Senior Advisory for Policy, National Center for Minority Health and Health Disparities, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, 301–402–1366, *evansl@ncmhd.nih.gov.*

Dated: May 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–13844 Filed 6–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, SCCOR in Pediatric Heart Development and Disease.

Date: June 22–24, 2003.

Time: 7 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: William J Johnson, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7184, MSC 7924, Bethesda, MD 20892, 301/435–0275.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorder Research; 93.837, Heart and Vascular Disease Research; 93.838, Lung Diseases Research; 93.839, Blood Disease and Resources Research, National Institutes of Health, HHS)

Dated: May 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–13846 Filed 6–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Macrophage-Derived Oxysterol and Endometriosis.

Date: June 2, 2003.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 23, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–13841 Filed 6–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group, Microbiology and Infectious Diseases Research Committee.

Date: June 19–20, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Gary S. Madonna, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2149, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 496–3528, *gm12w@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–13842 Filed 6–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Disease; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6). Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of committee: Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: June 10, 2003.

Time: 9 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, Bethesda, MD 20817.

Contact Person: John R. Lymangrover, PhD, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–13845 Filed 6–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institute of Environmental Health Sciences (NIEHS); National Toxicology Program (NTP); Notice of Availability of the Report: ''Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) Evaluation of In Vitro Test Methods for Detecting Potential Endocrine Disruptors: Estrogen Receptor and Androgen Receptor Binding and Transcriptional Activation Assays''

Summary

The National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM) announces the availability of the report entitled, ''ICCVAM Evaluation of In Vitro Test Methods for Detecting Potential Endocrine Disruptors: Estrogen Receptor and Androgen Receptor Binding and Transcriptional Activation Assays,'' NIH Publication 02–4503. The report contains ICCVAM's recommendations on minimum procedural standards and reference substances for standardization and validation of in vitro estrogen and androgen receptor binding and transcriptional activation assays.

Availability of Report

The report is available electronically (PDF format) on the NICEATM/ICCVAM web site at *http://iccvam.niehs.nih.gov.* A limited number of printed reports and CDs are available. To receive a printed report or CD, please send a request to Dr. William S. Stokes, Director, NICEATM, PO Box 12233, MD EC–17, Research Triangle Park, NC 27709, phone: 919–541–2384, fax: 919–541–0947, or email *niceatm@niehs.nih.gov.* Inquiries about the report or its availability should be sent to Dr. Stokes at the above address.

Background

In April 2000, the EPA asked the ICCVAM to evaluate the validation status of in vitro estrogen receptor (ER) and androgen receptor (AR) binding and transcriptional activation (TA) assays that were proposed as possible components of the EPA Endocrine Disruptor Screening Program (EDSP) Tier 1 screening battery. ICCVAM, which is charged by law (Pub. L. 106–545) to evaluate the scientific validity of new, revised, and alternative test methods proposed for specific regulatory uses, agreed to evaluate these test methods based on their potential interagency applicability and public health significance.

The NICEATM, which administers and provides scientific support for the ICCVAM, subsequently compiled available data and information on in vitro ER and AR binding and TA assays. Four draft Background Review Documents (BRDs) (available at *http://iccvam.niehs.nih.gov/methods/endocrine.htm*) were prepared according to published guidelines for submission of test methods to ICCVAM (ICCVAM 1999). This comprehensive review found that there are no adequately standardized and validated in vitro ER- or AR-based test methods. The NICEATM proposed minimum procedural standards that should be incorporated into standardized protocols for each of the four types of assays. In addition, NICEATM included within each BRD a list of proposed substances that should be used for the validation of in vitro ER and AR binding and TA assays.

In collaboration with the ICCVAM Endocrine Disruptor Working Group (EDWG), NICEATM organized an independent technical evaluation of the four types of in vitro endocrine disruptor test methods on May 20–21, 2002 in Research Triangle Park, NC [**Federal Register**. 66 FR 57: 16278–16279, March 23, 2001 and 67 **Federal Register** 66: 16415–16416, April 5, 2002). This meeting was open to the public with time set aside for public comment.

A 24-member scientific expert panel reviewed the information and recommendations provided in the four draft BRDs and developed its own conclusions and recommendations for each type of test method on the following:

- Specific test methods that should undergo further evaluation in validation studies and their relative priority for evaluation;
- The adequacy of the proposed minimum procedural standards;
- The adequacy of protocols for specific test methods recommended for validation; and
- The adequacy and appropriateness of substances proposed for validation studies.

The expert panel presented its evaluations, conclusions, and recommendations at the meeting. Following the meeting, the expert panel's written evaluations and consensus recommendations were consolidated into an independent report (*http://iccvam.niehs.nih.gov/methods/endocrine.htm*).

In October 2002 (67 FR 204: 64902–64903, October 22, 2002), the NICEATM made available for public comment the expert panels' final report. This report contains the expert panel's evaluations and consensus recommendations for the four types of assays and a revised list of proposed substances for validation of in vitro ER and AR binding and TA test methods. Following review of this report and the public comments, ICCVAM finalized its recommendations and developed recommended minimum procedural standards and the list of proposed substances that should be used to standardize and validate in vitro ER and AR binding and TA assays. The final expert panel report, public comments, and other relevant documents are appended to the ICCVAM report. The ICCVAM report, whose availability is announced in this notice (see above), will be forwarded to Federal agencies for their consideration and information.

The minimum procedural standards and the list of recommended substances for validation should facilitate standardization and validation of in vitro endocrine disruptor assays. Data from validation studies on test methods that incorporate the recommended minimum procedural standards will serve as the basis for developing minimum performance standards for acceptable in vitro ER-or AR-based test methods. The EDSP will use data generated from validated in vitro and in vivo Tier 1 screening test methods to reach weight-of-evidence decisions on whether to conduct large multi-generational in vivo studies. It is also anticipated that data obtained during the validation of the four different types of in vitro ER- and AR-based test methods will help characterize the extent to which individual or batteries of in vitro endocrine disruptor test methods might be used to prioritize chemicals for Tier 1 screening and Tier 2 testing. Finally, implementation of the recommendations in this report is expected to decrease and perhaps eventually eliminate the need to use male and female animals as a source of AR and ER, respectively, for in vitro screening assays.

Test method developers are encouraged to submit in vitro test methods for evaluation by ICCVAM that adhere to the minimum procedural standards outlined in this report and that have undergone validation using the recommended substances. Following adequate validation of in vitro endocrine disruptor test methods, ICCVAM and NICEATM will coordinate their scientific peer review. Formal ICCVAM test recommendations will then be forwarded to Federal agencies as required by the ICCVAM Authorization Act of 2000 (Pub. L. 106–545).

Dated: May 28, 2003.

Kenneth Olden,

Director, National Institute of Environmental Health Sciences.

[FR Doc. 03–13839 Filed 6–2–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Evaluation of the Buprenorphine Waiver: Addiction Physician Survey—New—The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), Division of Pharmacologic Therapies (DPT), is evaluating a program that permits office-based physicians to obtain Waivers from the requirements of the Narcotic Addict Treatment Act of 1974 (21 U.S.C. 823 (g)). Under the Drug Addiction Treatment Act of 2000 (21 U.S.C 823 (g)(2)), the Waiver Program permits qualifying physicians to prescribe and dispense buprenorphine, a schedule III narcotic drug recently approved by the FDA for the treatment of opiate addiction. Furthermore, the Drug Abuse Treatment Act specifies that the Secretary of the Department of Health and Human Services make a determination of whether: (1) Treatments provided under the Waiver Program have been effective forms of maintenance treatment and detoxification treatment in clinical settings; (2) the Waiver Program has significantly increased (relative to the beginning of such period) the availability of maintenance treatment and detoxification treatment; and, (3) the Waiver Program has adverse consequences for the public health. In addition to the objectives above, the Evaluation of the Buprenorphine Waiver Program will examine other related objectives, including: (1) Describing the impact of the Waiver-based treatment on the existing treatment system; (2) providing information useful to guide and refine the processing/monitoring system being developed and maintained by CSAT/DPT; and (3) providing baseline data to inform future research and policy concerning the medicalization and mainstreaming of addiction treatment.

The evaluation by DPT of the Buprenorphine Waiver Program will be accomplished using three survey efforts. The first of these is a mail survey of addiction physicians from the American Society of Addiction Medicine (ASAM) and/or the American Academy of Addiction Psychiatry (AAAP). Some of these specialists will be prescribing and distributing buprenorphine, while others not prescribing buprenorphine may or may not provide referrals or ancillary services to patients receiving buprenorphine treatment. The survey will provide early data about the availability, effectiveness, and public health consequences associated with the Waiver Program. Specifically, the survey will assess early perceptions of

physicians specializing in addiction medicine of whether buprenorphine as prescribed and distributed under the Waiver Program is a useful tool in the treatment of substance abuse, and whether there are any negative consequences associated with it. The survey will also assess whether there are early indications of limitations to the availability of the medication, related to factors such as geographic location, type of medical practice, patient population, or ability to pay. Physicians who do not respond after two mailings will receive a brief postcard to complete.

Results from this survey will influence the focus and content of two additional proposed surveys to be fielded later in 2003. A second survey will focus on the clinical practice and perceived effectiveness of buprenorphine among physicians who are actively prescribing the medication. A third survey of patients who have received buprenorphine will assess its effectiveness and availability from the patients' point of view. A separate **Federal Register** notice will be published for each of these surveys. The estimated response burden for the first survey of physicians is summarized below.

Addiction physicians	Number of respondents	Responses/ respondent	Hours per response	Total hour burden
Physician Survey	957	1	.33	316
Followup Postcard	335	1	.017	6
Total	957			322

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; because of mail delays, it is recommended that comments be sent by fax to: (202) 395–6974.

Dated: May 27, 2003.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–13789 Filed 6–2–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at the following Web sites: *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, (414) 328–7840/(800) 877–7016, (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, (585) 429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, (901) 794–5770/(888) 290–1150.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, (615) 255–2400.

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, (513) 585–6870, (Formerly: Jewish Hospital of Cincinnati, Inc.).

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, (501) 202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, (800) 445–6917.

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, (800) 876–3652 / (417) 269–3093, (Formerly: Cox Medical Centers).

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, (239) 561–8200 / (800) 735–5416.

Doctors Laboratory, Inc., PO Box 2658, 2906 Julia Dr., Valdosta, GA 31602, (912) 244–4468.

DrugProof, Division of Dynacare/ Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, (206) 386–2661 / (800) 898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

DrugScan, Inc., PO Box 2969, 1119 Mearns Rd., Warminster, PA 18974, (215) 674–9310.

Dynacare Kasper Medical Laboratories,* 10150–102 Street, Suite 200, Edmonton, Alberta, Canada TJ5 5E2, (780) 451–3702 / (800) 661–9876.

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, (662) 236–2609.

Express Analytical Labs, 3405 7th Avenue, Suite 106, Marion, IA 52302, (319) 377–0500.

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, (519) 679–1630.

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, (608) 267–6225.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, (504) 361–8989 / (800) 433–3823, (Formerly: Laboratory Specialists, Inc.).

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, (913) 888–3927 / (800) 873–8845, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, (713) 856–8288 / (800) 800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, (908) 526–2400 / (800) 437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, (919) 572–6900 / (800) 833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 10788 Roselle Street, San Diego, CA 92121, (800) 882–7272, (Formerly: Poisonlab, Inc.).

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, (715) 389–3734 / (800) 331–3734.

MAXXAM Analytics Inc.,* 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, (905) 890–2555, (Formerly: NOVAMANN (Ontario) Inc.).

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, (651) 636–7466 / (800) 832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, (503) 413–5295 / (800) 950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, (612) 725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, (661) 322–4250 / (800) 350–3515.

Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, (801) 293–2300 / (800) 322–3361, (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.).

One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, (713) 920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Oregon Medical Laboratories, PO Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, (541) 687–2134.

Pacific Toxicology Laboratories, 9348 De Soto Ave., Chatsworth, CA 91311, (800) 328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory.

Pathology Associates Medical Laboratories, 110 West Cliff Drive, Spokane, WA 99204, (509) 755–8991 / (800) 541–7891x8991.

PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, (817) 605–5300, (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory).

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, (913) 339–0372 / (800) 821–3627.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, (770) 452–1590/(800) 729–6432, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, (800) 824–6152, (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, (702) 733–7866 / (800) 433–2750, (Formerly: Associated Pathologists Laboratories, Inc.).

Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, (610) 631–4600 / (877) 642–2216, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, (800) 669–6995 / (847) 885–2010, (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories).

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, (818) 989–2520 / (800) 877–2520, (Formerly: SmithKline Beecham Clinical Laboratories).

Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, (804) 378–9130.

Sciteck Clinical Laboratories, Inc., 317 Rutledge Road, Fletcher, NC 28732, (828) 650–0409.

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, (505) 727–6300 / (800) 999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, (574) 234–4176x276.

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, (602) 438–8507 / (800) 279–0027.

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, (517) 377–0520, (Formerly: St. Lawrence Hospital & Healthcare System).

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, (405) 272–7052.

Sure-Test Laboratories, Inc., 2900 Broad Avenue, Memphis, Tennessee 38112, (901) 474–6028.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, (573) 882–1273.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the ''Mandatory Guidelines for Workplace Drug Testing'' (59 **Federal Register**, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Toxicology Testing Service, Inc., 5426 NW., 79th Ave., Miami, FL 33166, (305) 593–2260

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson Street, Fort George G. Meade, MD 20755–5235, (301) 677–3714.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–13791 Filed 6–2–03; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 and Fiscal Year (FY) 2004 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for SAMHSA Cooperative Agreements for the Comprehensive Community Mental Health Services Program for Children and their Families.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS) announces the availability of FY 2003 and FY 2004 funds for the cooperative agreement described below. A synopsis of this funding opportunity, as well as many other Federal government funding opportunities, is also available at the Internet site: *www.fedgrants.gov.*

This notice is not a complete description of the program; potential applicants must obtain a copy of the Request for Applications (RFA), including part I, Cooperative Agreements for the Comprehensive Community Mental Health Services Program for Children and their Families, part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, and the PHS 5161–1 (Rev. 7/00) application form before preparing and submitting an application.

Funding Opportunity Title: Cooperative Agreements for the Comprehensive Community Mental Health Services Program for Children and their Families—Short Title: Child Mental Health Initiative.

Funding Opportunity Number: SM 03–009.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: Section: part E of title V section 561 *et seq.* of the Public Health Service Act, as amended and subject to the availability of funds.

Funding Opportunity Description: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services is accepting applications for Fiscal Year 2003 and Fiscal Year 2004 for cooperative agreements to develop systems of care that deliver effective comprehensive community mental health services for a target population of children and adolescents with serious emotional disturbance and their families. Funds will be awarded to develop community service systems for the target population, and also to fund a broad array of services delivered through those service systems. In addition, awardees will participate in a national multi-site evaluation, conducted through a separate contract, and will be encouraged to develop the capacity for continuous evaluation of their systems of care.

Eligible Applicants: Eligibility for this program is statutorily limited to public entities such as: State governments; Indian tribes or tribal organizations (as defined in section 4(b) and section 4(c) of the Indian Self-Determination and Education Assistance Act); governmental units within political subdivisions of a State such as a county, city, or town; the District of Columbia government; and the government of the territories of Guam, Commonwealth of Puerto Rico, Northern Mariana Islands, Virgin Islands, American Samoa, and Trust Territory of the Pacific Islands (now Palau, Micronesia, and the Marshall Islands). Additional eligibility requirements are listed in the full announcement.

Due Date for Applications: August 5, 2003, for FY 2003; October 15, 2003, for FY 2004.

Estimated Funding Available/Number of Awards: It is expected that approximately $5 million will be available for about 5 awards in FY 2003 and $5 million for about 5 awards in FY 2004. The maximum amount available in total direct and indirect costs for each year of the award will be as follows:

Year 1: $1 million
Year 2: $1.5 million
Year 3: $2.5 million
Year 4: $2 million
Year 5: $1.5 million
Year 6: $1 million

Actual funding levels will depend on the availability of funds. Applications with proposed budgets that exceed the maximum allowed in any year will be returned without review.

Is Cost Sharing Required: Yes. By statutory mandate, this program requires that the applicant entity will provide, directly or through donations from public or private entities, non-Federal contributions:

- For the first, second and third fiscal years of the cooperative agreement, the awardee must provide at least $1 for each $3 of Federal funds;
- For the fourth fiscal year, the awardee must provide at least $1 for each $1 of Federal funds; and
- For the fifth and sixth fiscal year, the awardee must provide at least $2 for each $1 of Federal funds.

Matching resources may be in cash or in-kind, including facilities, equipment, or services, and must be derived from non-Federal sources (*e.g.*, State or sub-State non-Federal revenues, foundation grants). Additional cost sharing information is provided in the full announcement.

Period of Support: Up to 6 years, with annual continuations depending on availability of funds and progress achieved.

How to Get Full Announcement and Application Materials: Complete application kits may be obtained from the National Mental Health Information Center, PO Box 42557, Washington, DC 20015, 800–789–2647. The PHS 5161–1 application form and the full text of the funding announcement are also available electronically via SAMHSA's World Wide Web home page: *http://www.samhsa.gov* (click on 'Grant Opportunities').

When requesting an application kit, the applicant must specify the funding opportunity title and number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Contact for Additional Information: Rolando L. Santiago, Ph.D., or Diane Sondheimer, M.S., M.P.H., Substance Abuse and Mental Health Services Administration, Center for Mental Health Services, Child, Adolescent, and Family Branch, 5600 Fishers Lane, Room 11C–16, Rockville, MD 20857, (301) 443–1333, E-mail: *rsantiag@samsha.gov* or *dsondhei@samhsa.gov.*

Dated: May 27, 2003.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–13759 Filed 6–2–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Replacement of SAMHSA Appeals Policy With an Applicant Inquiry Process.

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Replacement of SAMHSA Appeals Policy with an Applicant Inquiry Process.

SUMMARY: The SAMHSA Appeals System Policy was published in the **Federal Register** on June 23, 1993. Essentially, that policy provided a two-level appeals process for unsuccessful grant/cooperative agreement applicants to bring to the attention of the Agency a possible error in the grant review process.

The purpose of this notification is to inform potential applicants that effective immediately, SAMHSA is replacing the appeals process as set forth in the June 23, 1993 **Federal Register** with an inquiry policy for grant or cooperative agreement applications. This notice clarifies the previous policy and provides for technical changes as to the process and to whom inquiries, referred to in the previous policy as ''appeals,'' are to be addressed as a result of the reorganization of the agency.

Discussion

SAMHSA is committed to the maintenance of a high quality review system that promotes fairness to applicants. Toward that end, SAMHSA believes applicants should be provided an opportunity to express concerns regarding the review of their applications. Under this policy, applicants will continue to be allowed to submit a written inquiry regarding possible errors in the review process. Inquiries will be taken seriously and SAMHSA will seek to provide a fair review of the inquiry.

The inquiry process allows applicants to communicate and discuss issues which arise from perceived shortcomings or errors in the substance or procedures of peer review. In general, inquiries under this policy may address such issues as the following: perceived factual errors, oversights, or bias in the peer review; or perceived conflict of interest on the part of one or more review members. The applicant should provide specific documentation to support the issues under inquiry.

Please note that applicants are expected to provide complete and clear applications and, accordingly, this inquiry process is not intended to permit applicants to supplement their applications, nor is it meant to be used to contest the judgment of the peer reviewers. Specifically, applicants should note that the written inquiry process under this policy is NOT intended to:

- Address differences of opinion between peer reviewers and the applicant;
- Provide a mechanism for allowing applicants to submit information that was not presented in the application;
- Provide a forum for pointing out information, requested in a particular section and deemed as missing by reviewers, that was included in the wrong section or in the Appendices of the application;
- Provide a forum for review of allegations that the documentation requested of applicants could be surmised from various pieces of information provided throughout the application; nor
- Provide a forum for disputing priority score determinations in the absence of specific and substantive evidence pointing to a flawed review.

Prior to the submission of a written inquiry, applicants are strongly urged to discuss via telephone the issues regarding their peer review results with designated staff in the review office and in the Center for Mental Health Services, Center for Substance Abuse Prevention, or Center for Substance Abuse Treatment, as appropriate. SAMHSA believes that most issues will be clarified best via a verbal discussion, during which both the applicant and SAMHSA staff may ask questions and further explain the comments provided by peer review. Nevertheless, if applicants still have concerns, a written inquiry may be sent to the Director of Grant Review, Office of Program Services, SAMHSA, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

Any questions regarding the new inquiry policy may be directed to Ms. Sandra Stephens, Extramural Policy Team Leader, Office of Policy, Planning, and Budget, SAMHSA, Room 12–05, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: May 27, 2003.

Charles G. Curie,

Administrator, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–13832 Filed 6–2–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4819–N–02]

Notice of Proposed Information Collection: Tracking Clearance Examination in Association With the Lead Safe Housing Rule

AGENCY: Office of Healthy Homes and Lead Hazard Control, 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: *Comments Due Date:* August 4, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Number and should be sent to: Gail N. Ward, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room P3206, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Joey Y. Zhou, (202) 755–1785 ext. 153 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 spend; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Title of Proposal: Tracking Clearance Examinations in Association with the Lead Safe Housing Rule.

OMB Control Number: None.

Need for the Information and Proposed Use: The objective of the proposal survey is to determine the

number of units that pass a lead clearance examination as a result of the Lead Safe Housing Rule (Lead-Based Paint Hazards in Federally Owned Housing and Housing Receiving Federal Assistance; 24 CFR 35, subparts B–R). This information will aid the HUD in assessing its implementation of the Rule with the goal of eliminating assisted housing with lead-based paint hazards by 2010.

Agency Form Numbers: None.

Members of Affected Public: Recipients of HUD housing assistance funds.

Total Burden Estimate (First Year):

Task	Number of respondents	Frequency of responses	Total hours of responses
Respondents 17,000	1	2	34,000
Total Estimated Burden Hours			34,000

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 19, 2003.

David E. Jacobs,

Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 03–13745 Filed 6–2–03; 8:45 am]

BILLING CODE 4210–70–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4819–N–03]

Notice of Proposed Information Collection: Survey of HUD Grantees To Assess Implementation of the Lead Safe Housing Rule

AGENCY: Office of Healthy Homes and Lead Hazard Control, 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: *Comments Due Date:* August 4, 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: Gail N. Ward, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room P3206, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Joey Y. Zhou, (202) 755–1785 ext. 153 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, amended).

The notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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.

Title of Proposal: Survey of HUD Grantees to Assess Implementation of the Lead Safe Housing Rule.

OMB Control Number: None.

Need for the Information and Proposed Use: Lead is a highly toxic heavy metal that adversely affects virtually every organ system in the body. Young children are particularly susceptible to the effects of lead. Childhood lead poisoning is linked to reduced intelligence, low attention span, reading and learning disabilities, juvenile delinquency, behavioral problems, and other adverse health effects. Nearly 430,000 children have excessive levels of lead in their blood, making lead poisoning a leading childhood environmental disease. A larger body of evidence shows that the most common source of lead exposure for children today is lead-based paint (LBP) in older housing and the contaminated dust and soil it generates.

In an effort to alleviate the problem of lead poisoning, Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992, often referred to as title X. It authorized EPA, HUD, and OSHA to develop LBP regulations and conduct extensive lead hazard control work. The Final New HUD Regulation on Lead-Based Paint Hazards in Federally Owned Housing and Housing Receiving Federal Assistance, 24 CFR 35, subparts B–R, *et al.* (the ''Lead Safe Housing Rule'') was published September 15, 1999, and was fully in effect January 10, 2002. This rule established performance standards for protecting children in federally assisted housing from lead poisoning, including clearance standards that must be met to ensure that dwellings are lead-safe for their occupants.

The objective of the proposed survey is to assess the level of compliance of the Rule by recipients of HUD housing assistance funds. The information is valuable for HUD to provide compliance assistance and enforcement functions regarding the Lead-Safe Housing Rule.

Agency Form Numbers: None.

Members of Affected Public: HUD Grantees.

Total Burden Estimate (First Year):

Task	Number of respondents	Frequency of responses	Total hours of responses
Respondents 1,000	1	2	2,000
Total Estimated Burden Hours			2,000

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: May 19, 2003.

David E. Jacobs,

Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 03–13746 Filed 6–2–03; 8:45 am]

BILLING CODE 4210–70–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4491–N–11]

Notice of Intent To Prepare an Environmental Impact Statement for the Ridge Hill Village Center Development Project in the City of Yonkers, NY

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

NOTICE: Notice of intent.

SUMMARY: In accordance with Section 102(2)(C) of the National Environmental Policy Act (NEPA) and implementing regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), the City of Yonkers, New York, acting by Lee J. Ellman, AICP, its Planning Director, has identified a need to prepare an Environmental Impact Statement (EIS) and therefore issue this Notice of Intent in accordance with the provisions and requirements of 40 CFR 1501.7. The EIS will evaluate the impacts of the Proposed Action which consists of the development of 1 Ridge Hill (the Property), an approximately 81.4-acre parcel of real property located to the east of the New York State Thruway (I–87), west of Sprain Brook Parkway, and immediately south of Sprain Ridge Park, in the City of Yonkers.

The EIS will be prepared as a joint NEPA and New York State Environmental Quality Review Act (SEQRA) document intended to satisfy the requirements of both federal and state environmental statutes. In accordance with specific statutory authority and HUD's regulations under 24 CFR part 58 (Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities), HUD has authorized the City of Yonkers, New York to assume authority as the NEPA Responsible Entity. The City Council of the City of Yonkers is the SEQRA Lead Agency. Federal agencies with jurisdiction by law, special expertise, or other special interest should report their interests and indicate their willingness to participate in the EIS process as a Cooperating Agency. The EIS will cover the following areas: Land use and zoning; topography, soils and geology; vegetation, wildlife and wetlands; surface water resources; utilities; traffic and parking; noise; air quality; and visual/aesthetics/neighborhood character, and others.

FOR FURTHER INFORMATION CONTACT: For a copy of the Scoping Document contact: Lee J. Ellman, AICP, Planning Director, City of Yonkers, Department of Planning and Development, 87 Nepperhan Avenue, Yonkers, NY 10701–3874. Telephone: (914) 377–6558. E-mail: *lee.ellman@cityofyonkers.com*.

SUPPLEMENTARY INFORMATION: The Proposed Action consists of amendments to the Yonkers Zoning Ordinance, site plan approval from the Yonkers Planning Board, and related permits and approvals, to permit the development, construction, and use, of the Ridge Hill Village Center in the City of Yonkers, New York. The 81.4-acre Property is currently improved with a single office building of 240,000 square feet which is partially occupied for general office use; ten smaller buildings aggregating 120,000 square feet, which are unoccupied; and approximately 1,000 parking spaces. The Property is intended to be developed by FC Yonkers Associates, LLC, the project sponsor, as a planned, integrated, multi-use development to include retail, commercial, multi-family residential and hotel uses along with accessory parking.

The project is currently proposed to include approximately 1.3 million square feet of retail stores set along a traditional Main Street that will include shopping, dining and entertainment; a 350-room hotel and 40,000 square foot conference center; up to 800 residential units, a portion of which will be developed in accordance with the City of Yonkers Affordable Housing Ordinance (Article XV of the City of Yonkers Code), and approximately 150,000 square feet of office and research facilities. Approximately 5,000 parking spaces will be located appropriately throughout the site.

Vehicular access to the Property is proposed to be provided from Exit 6A of the New York State Thruway (I–87) and a new connector to the Sprain Brook Parkway to, or in the vicinity of, Tuckahoe Road. The project sponsor proposes improvements to Exit 6A, including reconstruction of the Bates Bridge, extension of the Thruway southbound service road from Stew Leonard Drive to the bridge, closure of the existing southbound Thruway entrance ramp at Stew Leonard Drive, and construction of a new southbound thruway entrance ramp at the Bates Bridge. All of these activities are included in the Proposed Action, and will be examined in the EIS.

A. Alternatives

The alternatives to be considered by the Lead Agency include a no-action alternative limited to the continued use of the existing, partially occupied office building on the Property; the development of the Property under existing zoning; alternative site access configurations; and alternative offsite highway configurations.

B. Need for the EIS

Insofar as the Proposed Action includes a residential component, it is subject to the Yonkers Affordable Housing Ordinance, Article XV of the Code of the City of Yonkers. The Decision of the United States District Court in *D'Agnillo* v. *United States Department of Housing and Urban Development*, 1999 WL 350870 (S.D.N.Y. 1999), requires environmental review, under NEPA, of all housing projects which are subject to the Affordable Housing Ordinance. The City of Yonkers has determined that the Proposed Action constitutes an action which has the potential to significantly affect the quality of the human environment and therefore requires the preparation of an EIS in accordance with NEPA.

C. Scoping

A public EIS scoping meeting will be held at 7 p.m. on June 10, 2003, at the Yonkers City Hall, Council Chamber, 40 South Broadway, Yonkers, NY 10701. In accordance with the provisions of 40 CFR 1500.2(c) the scoping meeting will be held jointly with the Yonkers City Council, which is acting as Lead Agency with respect to the Proposed Action under the New York State Environmental Quality Review Act (SEQRA), Article VIII of the New York Environmental Conservation Law and the Regulations promulgated pursuant thereto at 6 N.Y.C.R.R. Part 617. The public is invited to attend and identify the issues that should be addressed in the EIS. The public will have the opportunity to comment on the scope of the EIS orally and in writing. A written comment period during which additional written comments will be accepted by the Lead Agency will be extended through and including June 25, 2003. A scoping document that explains in greater detail the Proposed Action and alternatives identified at this time will be sent to known interested parties in advance of the public scoping meeting. The scoping document can

also be viewed at *http://www.cityofyonkers.com/*.

Questions may be directed to the individual named in this notice under the heading **FOR FURTHER INFORMATION CONTACT.**

Dated: May 27 2003.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 03–13743 Filed 6–2–03; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–42]

Delegation of Authority—Apportionments/Reapportionment Schedules and Advice of Allotments Revocation of Any Prior Delegations of Authority

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority. Notice of revocation of any prior delegation of authority.

SUMMARY: On July 30, 1997, HUD transferred the Office of Budget and its functions form the Office of Administration to the Office of the Chief Financial Officer. In implementing the transfer of budget functions, on August 21, 1997, HUD's then Deputy Secretary delegated the authority to sign Apportionments/Reapportionment Schedules (SF–132), and Advice of Allotments (HUD–158) to the Director of Budget. As a result of the transfer of budget functions to the Office of the CFO, the Director of Budget is now the Assistant Chief Financial Officer (ACFO) for Budget. The ACFO for Budget has the responsibility for the Department-wide budget, including signature authority for apportionments/reapportionments for HUD. The budget office prepares and submits the Department's requested apportionments to the Office of Management and Budget (OMB) and after receiving OMB approval, provides allocations of funds to Assistant Secretaries and other officials as appropriate. Under this delegation, the Secretary is delegating the authority to sign Apportionments/Reapportionments Schedules and Advice of Allotments to the Chief Financial Officer. This delegation will more clearly define the existing chain of command and more accurately reflect the Department's current organizational responsibilities for budget functions.

EFFECTIVE DATE: April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Roger L. Williams; Office of the Chief Financial Officer, Management Staff; 451 7th St. Southwest Room 3126, Washington, DC 20410; 202–708–0313. This is not a toll-free number. This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

Accordingly, the Secretary delegates as follows:

Section A. Authority Delegated

The Chief Financial Officer is hereby delegated the authority to sign Apportionments/Reapportionment Schedules and Advice of Allotments.

Section B. Delegation Revoked

This document revokes the Deputy Secretary's August 21, 1997 delegation. All other previous delegations or re-delegations inconsistent with this delegation are hereby revoked.

Section C. Authority to Re-Delegate

The Chief Financial Officer is authorized to re-delegate to qualified employees of the Department any of the authority delegated under Section A.

Authority: Sec. 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)).

Dated: April 1, 2003.

Mel Martinez,

Secretary of Housing and Urban Development.

[FR Doc. 03–13744 Filed 6–2–03; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by July 3, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Sherwin N. Scott, Phoenix, AZ, PRT–069527

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: William E. Rypkema, Montvale, NJ, PRT–071450

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Museum of Zoology, University of Michigan, Ann Harbor, Michigan, PRT–693112

The applicant requests renewal of their permit to export and re-import non-living museum/herbarium specimens of endangered and threatened species (excluding bald eagles) previously legally accessioned into the permittee's collection for scientific research. This notification covers activities conducted by the applicant for a five year period.

Applicant: Duke University Primate Center, Durham, North Carolina, PRT–679043

The applicant requests renewal of their permit to take and sell in interstate and foreign commerce, export, or re-export blood and tissue, whole cadavers, and parts from species in the families Lemuridae, Indriidae, Cheirogaleidae, Daubentoniidae, Tarsiidae, and Lorisidae for scientific research and for enhancement of the propagation and survival of the species.

This notification covers activities conducted by the applicant for a five year period.

Applicant: Tim P. Matzinger, Belgrade, MT, PRT–070830

The applicant requests a permit for the import of a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Namibia for the purpose of enhancement of the survival of the species.

Applicant: Omaha's Henry Doorly Zoo, Omaha, SC, PRT–067574

The applicant requests a permit to import three male and three female captive held Indochinese tigers (*Panthera tigris corbetti*) from Zoo Malaka, Department of Wildlife and National Parks, Malaka, Malaysia for the purpose of enhancement of the species through captive propagation.

Applicant: U.S. Geological Survey, College Station, TX, PRT–050834

The applicant requests renewal of their permit to import non-viable eggs/egg shells of Aplomado falcons (*Falco femoralis septentrionalis*) from Mexico for the purpose of scientific research. This notification covers activities conducted by the applicant for a five year period.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The application(s) was/were submitted to satisfy requirements of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and/or marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Dennis B. Callender, Sand Coulee, MT, PRT–055331

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Gulf of Boothia polar bear population in Canada prior to April 30, 1994, for personal use.

Applicant: Leonard Bernstein, New Milford, NJ, PRT–071569

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Applicant: Harry Brickley, Indianapolis, IN, PRT–071584

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: May 9, 2003.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–13775 Filed 6–2–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Incidental Take of Threatened Species for the City and County of Denver, Acting by and Through Its Board of Water Commissioners, Denver, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for incidental take of threatened species.

SUMMARY: On February 11, 2003, notice was published in the **Federal Register** (68 FR 6756) that an application had been filed with the Fish and Wildlife Service (Service) by the City and County of Denver, acting by and through its Board of Water Commissioners for a permit to incidentally take Preble's meadow jumping mouse (*Zapus hudsonius preblei*), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act) (16 U.S.C. 1539), as amended. The ''Environmental Assessment/Habitat Conservation Plan for the Issuance of an Endangered Species Act Section 10(a)(1)(B) Permit for the Incidental Take of the Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*) for the City and County of Denver's Board of Water Commissioners in Boulder, Jefferson, and Douglas Counties, Colorado,'' accompanied the permit application.

Notice is hereby given that on May 2, 2003, as authorized by the provisions of the Act, the Service issued a permit (TE–068418–0) to the above named party subject to certain conditions set forth therein. The permit was granted only after the Service determined that it was applied for in good faith, that granting the permit will not be to the disadvantage of the threatened species, and that it will be consistent with the purposes and policy set forth in the Act.

Additional information on this permit action may be requested by contacting the Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215, telephone (303) 275–2370, between the hours of 7 a.m. and 4:30 p.m. weekdays.

Dated: April 30, 2003.

John A. Blankenship,

Regional Director, Region 6.

[FR Doc. 03–13783 Filed 6–2–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZAR 010997]

Public Land Order No. 7568; Partial Revocation of Pubic Land Order No. 3263; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a public land order insofar as it affects approximately 720 acres of National Forest System lands withdrawn for the Clay-Gravel Plots, Pinal Mountain Plot, and Summit Watersheds Research Areas. The Forest Service has determined that the withdrawal is no longer needed on these areas. This action will open the lands to mining.

EFFECTIVE DATE: July 3, 2003.

FOR FURTHER INFORMATION CONTACT: Cliff Yardley, BLM Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, 602–417–9437.

SUPPLEMENTARY INFORMATION: The Forest Service has determined that the withdrawal is no longer needed on these research areas and has requested the revocation.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 3263, which withdrew National Forest System lands in aid of various Forest System programs, is hereby revoked insofar as it affects the following described lands:

Tonto National Forest

Clay-Gravel Plots Research Area

Gila and Salt River Meridian

T. 5 N., R. 12 E.,
Sec. 17, SE¼;
Sec. 28, NE¼NW¼ and NW¼NE¼.

Pinal Mountain Plot Research Area

T. 1 S., R. 15 E.,
Sec. 27, NE¼.

Summit Watersheds Research Area

T. 2 N., R. 14 E.(unsurveyed),
Sec. 3, SW¼NW¼;
Sec. 4, NE¼NW¼ and NE¼.
T. 3 N., R. 14 E.,
Sec. 33, SE¼SW¼ and SW¼SE¼.
The areas described aggregate approximately 720 acres in Gila County.

2. At 10 a.m. on July 3, 2003, the lands will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: May 2, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–13773 Filed 6–2–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZAR 08106]

Public Land Order No. 7569; Partial Revocation of Public Land Order No. 1349; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a public land order insofar as it affects 40 acres of National Forest System land. The withdrawal is no longer needed for the Old Pinal CCC Camp. The land will be opened to mining and to such forms of disposition as may by law be made of National Forest System lands.

EFFECTIVE DATE: July 3, 2003.

FOR FURTHER INFORMATION CONTACT: Cliff Yardley, BLM Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, 602–417–9437.

SUPPLEMENTARY INFORMATION: The Forest Service has determined that the Old Pinal CCC Camp land no longer needs to be withdrawn and has requested the revocation.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 1349, which withdrew National Forest System land for administrative sites, is hereby revoked insofar as it affects the following described land:

Tonto National Forest

Gila and Salt River Meridian

Old Pinal CCC Camp

T. 1 S., R. 14 E.,
Sec. 22, SW¼SE¼.
The area described contains 40 acres.

2. At 10 a.m. on July 3, 2003, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: May 2, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–13774 Filed 6–2–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Revision of a currently approved collection; Application for Explosives License or Permit.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 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. Comments are encouraged and will be accepted for ''sixty days'' until August 4, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Megan Morehouse, Public Safety Branch, 800 K Street NW., Suite 710, Washington, DC 20001.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. 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 collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Explosives License or Permit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 5400.13/5400.16. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* Individual or households. The purpose of this collection is to enable ATF to ensure that persons seeking to obtain a license or permit under 18 U.S.C. Chapter 40 and responsible persons of such companies are not prohibited form shipping, transporting, receiving, or possessing explosives.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 10,000 respondents will complete a 1 hour and 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection;* There are an estimated 15,000 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: May 29, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–13903 Filed 6–2–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: extension of a currently approved collection; report of multiple sale or other disposition of pistols and revolvers.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 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. Comments are encouraged and will be accepted for ''sixty days'' until August 4, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Forest G. Webb, Bureau of Alcohol, Tobacco, Firearms and Explosives, National Tracing Center, Falling Waters, WV 25419. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. 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 collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Report of multiple Sale or Other Disposition of Pistols and Revolvers.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 3310.4. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* business or other for-profit. *Other:* Federal government, State, local or tribal government. The form is used by ATF to develop investigative leads of criminal activity. It identifies possible handgun traffickers in the illegal market. It's use along the border identifies possible international traffickers.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 10,000 respondents will complete a 12 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 8,000 annual total burden hours associated with this collection.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda E. Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: May 29, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–13904 Filed 6–2–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

Action: 60-day notice of information collection under review: Revision of a currently approved collection; Interstate Firearms Shipment Report of Theft/Loss.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 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. Comments are encouraged and will be accepted for ''sixty days'' until August 4, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ben Hayes, ATF National Tracing Center, 244 Needy Road, Martinsburg, WV 25401.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. 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.

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Interstate Firearms Shipment Report of Theft/Loss.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 3310.6. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The form is part of a voluntary program in which the common carrier and/or shipper report losses or thefts of firearms from interstate shipments. ATF uses this information to ensure that the firearms are entered into the National Crime Information Center to initiate investigations and to perfect criminal cases.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 550 respondents will complete a 20-minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 182 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: May 29, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–13905 Filed 6–2–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Salutation Consortium, Inc.

Notice is hereby given that, on May 6, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Salutation Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Nicolae Borota (individual member), Baia Mare, ROMANIA has been added as a party to this venture. In addition, Salutation Consortium, Inc. has changed its address from Harker Heights, TX to Matsudo-shi, JAPAN.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Salutation Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On March 30, 1995, Salutation Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 27, 1995 [60 FR 33233].

The last notification was filed with the Department on December 10, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 13, 2003 [68 FR 1642].

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–13763 Filed 6–2–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 27, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or E-Mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316 / this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Benzene.

OMB Number: 1218–0129.

Frequency: On occasion.

Type of Response: Recordkeeping and third party disclosure.

Affected Public: Business or other for-profit; Federal government; and State, local or tribal government.

Number of Respondents: 13,498.

Information collection requirement	Annual responses	Average response time (hours)	Annual burden hours
Exposure Monitoring:			
Initial, Periodic, and Additional Monitoring	0	0.00	0
Initial Exposure-Monitoring Results	0	0.00	0
Periodic Exposure-Monitoring Results	20,247	0.08	1,620
Additional Exposure-Monitoring Results	1,350	0.08	108
Written Compliance Plan	6,749	0.50	3,375
Respiratory Protection (Fit Testing)	0	0.00	0
Medical Surveillance:			
Medical Examinations:			
Initial Medical Examinations	10,800	2.00	21,600
Periodic Examinations	41,647	2.00	83,294
Additional Examinations and Referrals	109	4.00	436
Information Provided to Physician	52,556	0.08	4,204
Provide Physician's Written Opinion to employee	52,556	0.08	4,204
Communication of Benzene Hazards:			
Signs and Labels	0	0.00	0
Material Safety Data Sheets	0	0.00	0
Employee Information and Training	0	0.00	0
Record keeping:			
Exposure Monitoring Results:			
Periodic Monitoring Records	20,247	0.08	1,620
Additional Monitoring Records	1,350	0.08	108
Medical Records	52,556	0.08	4,204
Records Availability	5,256	0.08	420
Federal Access	4	0.08	1
Records Transfer	3	1.00	3
Totals	265,428	.....	125,197

Total Annualized capital/startup: $0.

Total annual costs (operating/maintaining systems or purchasing services): $8,179,958.

Description: OSHA is proposing to extend the information-collection requirements specified in the Benzene Standard (29 CFR 1910.1028). The information-collection requirements specified in the Benzene Standard protect employees from the adverse health effects that may result from occupational exposure to benzene. The major information-collection requirements in the Standard include conducting employee exposure monitoring, notifying employees of their benzene exposures, implementing a written compliance program, implementing medical surveillance of employees, providing examining physicians with specific information, ensuring that employees receive a copy of their medical-surveillance results, maintaining employees' exposure-monitoring and medical-surveillance records for specific periods, and providing access to these records by OSHA, the National Institute for Occupational Safety and Health, the employee who is the subject of the records, the employee's representative, and other designated parties.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–13801 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Labor Research Advisory Council; Reestablishment

In accordance with the provisions of the Federal Advisory Committee Act, and after consultation with General Services Administration, I have determined that reestablishment of the Labor Research Advisory Council is in the public interest in connection with the performance of duties imposed on the Department of Labor.

The Council will advise the Commissioner of Labor Statistics regarding the statistical and analytical work of the Bureau of Labor Statistics, providing perspectives on these programs in relation to the needs of the labor unions and their members.

Council membership and participation in the Council and its subcommittees are broadly representative of union organizations of all sizes of membership, with national coverage that reflects the geographical, industrial, and occupational sectors of the economy.

The Council will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. The Charter will be filed with the Library of Congress and the appropriate congressional committees.

Interested persons are invited to submit comments regarding reestablishment of the Labor Research Advisory Council. Such comments should be addressed to: Deborah P. Klein, Associate Commissioner, Office of Publications and Special Studies, Bureau of Labor Statistics, Department of Labor, Postal Square Building, 2 Massachusetts Avenue, NE.,

Washington, DC, 20212, telephone: 202–691–5900.

Signed in Washington, DC this 23rd day of May, 2003.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 03–13800 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Number D–10659]

Proposed Class Exemption for Acquisition and Sale of REIT Shares by Individual Account Plans Sponsored by Trust REITS

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice of proposed class exemption.

SUMMARY: This document contains a notice of a proposed class exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code). If granted, the proposed exemption would permit the acquisition, holding or sale of publicly traded shares of beneficial interest in a real estate investment trust (REIT), that is structured under state law as a business trust (Trust REIT), by individual account plans sponsored by the REIT or its affiliates. The proposed exemption, if granted, would affect participants and beneficiaries of employee benefit plans involved in such transactions, as well as the REITs and their affiliates that sponsor such plans.

DATES: Written comments and requests for a public hearing shall be submitted to the Department before August 4, 2003.

ADDRESSES: All written comments and requests for a public hearing (preferably 3 copies) should be sent to: Employee Benefits Security Administration, Room N–5649, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: REIT Class Exemption Proposal. Comments may be sent by fax to (202) 219–0204 or by e-mail to *moffittb@ebsa.dol.gov.* The application for exemption (Application Number D–10659), as well as all comments received, will be available for public inspection in the Public Documents Room, Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Andrea W. Selvaggio, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Washington DC 20210 (202) 693–8540 (not a toll-free number).

SUPPLEMENTARY INFORMATION: This document contains a notice that the Department is proposing a class exemption from the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and from 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. Relief for the transactions was requested in an application (Application No. D–10659) submitted by the National Association of Real Estate Investment Trusts (NAREIT or the Applicant) pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).[1] Pursuant to its authority, the Department is proposing additional conditions with respect to the relief requested by the Applicant.

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether the regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This proposed class exemption has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this proposed amendment is not a ''significant regulatory action'' under Executive Order 12866, section 3(f).

Accordingly, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that order.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, EBSA is soliciting comments concerning the information collection request (ICR) included in this Notice of a Proposed Class Exemption for Acquisition and Sale of REIT Shares by Individual Account Plans Sponsored by Trust REITs (referred to for the purpose of the ICR as Disclosures for Transactions with Trust REIT Shares). A copy of the ICR may be obtained by contacting Joseph S. Piacentini, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5618, Washington, DC 20210. Telephone (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security Administration. Although comments may be submitted through August 4, 2003 OMB requests that comments be received within 30 days of publication of the Notice of Proposed Exemption to ensure their consideration.

The Department has submitted a copy of the Notice of Proposed Exemption to OMB in accordance with 44 U.S.C. 3507(d) for review of its information

[1] Section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

collections. The Department and OMB are particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriated automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

NAREIT has requested this class exemption in order to provide Plans established by Trust REITS with the option of offering a beneficial interest in the Trust REIT in the form of Qualifying REIT Shares (as defined in III(j)) to participants in plans sponsored by the REIT or its Employer Affiliates. Further, NAREIT has requested retroactive relief from sections 406(a), 406(b)(1), and (b)(2) and 407(a) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, for certain transactions relating to the prior acquisition, holding, or sale of shares of beneficial interest in Trust REITS. The Department has proposed prospective relief for transactions occurring on or after the date of publication of the grant of the final exemption in the **Federal Register** and limited retroactive relief for transactions that occurred within six years of the publication of the final exemption in the **Federal Register**. Only Section II(b), Prospective Conditions, constitutes a collection of information under PRA 95.

Under section 408(a) of ERISA, prior to granting an exemption, the Secretary must make a finding that the exemption is: (1) Administratively feasible, (2) in the interests of the plan and its participants and beneficiaries, and (3) protective of the rights of participants and beneficiaries of such plan. In order for the Department and others to determine that the conditions of this exemption have been met, the Department proposes to require the disclosure of certain information by administrators of Plans that acquire, hold, or sell Trust REIT shares to participants.

In its application, NAREIT has indicated that among all REITS, 228 are publicly traded, with 52 of these structured as business trusts under state law (Trust REITS). NAREIT has also indicated that of the 52 publicly traded Trust REITS, approximately 80%, or 42, offer individual account pension plans with individual investment direction of participant contributions, and that nearly all of the 42 Plans provide for some form of employer match. Finally, NAREIT has indicated that approximately 14 plans would be considered small, in that they have fewer than 100 participants (such that there are 28 large plans). NAREIT believes that nearly all of the 42 plans will make use of the exemption when it is granted.

The Department has estimated that about 5,300 participants may be affected by the proposed exemption. While the Department does not know the number of participants in plans that may include the option to purchase Trust REIT shares, it bases its estimate on information provided by NAREIT indicating that, of the 42 Trust REITS that sponsor 401(k) plans, 28 are large and 14 are small. Estimating that the 14 small plans have 80 employees each (1,120 employees), and that the remaining larger plans have 150 employees (4,200 employees), approximately 5,300 employees may be offered the option to purchase Trust REIT Shares or may have Trust REIT shares contributed to their individual accounts under the proposed exemption. The Department welcomes comments and relevant data on the estimated number of employees that might take advantage of the proposed exemption.

The information collection provisions of the proposed exemption are found in Sections II(b)(4) (pertaining to the prospectus and reports), II(b)(5) (records and statements regarding confidentiality), II(b)(10) (specific information about REIT share transactions), II(b)(11) (recordkeeping), and III(e)(5) (independent fiduciary acknowledgement). These requirements are summarized below for purposes of the submission for approval under PRA 95. The actual terms of the proposed exemption should be consulted for purposes of relief from ERISA prohibitions otherwise applicable to the purchase of Trust REIT shares.

Prospectus and Periodic Reports. In order to obtain prospective relief from statutory prohibitions, a Trust REIT traded on a national securities exchange or market system, or an agent or affiliate thereof, must furnish the person directing an investment (*i.e.*, the participant or independent fiduciary) the most recent prospectus and quarterly and annual reports concerning the Trust REIT both prior to, or immediately after, the initial investment and regularly thereafter as updated prospectuses and quarterly and annual reports are published.

NAREIT has indicated that issuers of REIT Trust shares currently provide prospectuses and annual reports to investors; therefore, this condition can be satisfied by usual business practices. However, under the proposed exemption, quarterly reports that are filed with the SEC under Rule 15d–13 of the Securities Exchange Act of 1934 must also be distributed to investors in Trust REIT Shares. Because the quarterly report is required for SEC registrants, no preparation burden arises from this requirement. The Department believes that quarterly reports will be distributed to employees in the same manner that prospectuses and annual reports are distributed, either electronically, provided that the requirements for electronic distribution under ERISA are satisfied, or through regular mail. The cost of regular mail at $.40 per mailing would be about $6,400 for the distribution of three quarterly reports. The fourth quarter report is assumed to be incorporated in the annual report. Electronic distribution would represent an annual cost savings of $6,400.

Disclosures. The Trust REIT or Employer Affiliate is required to disclose specific information about the operation of the Trust REIT. Under Section II(b)(5), the Plan must provide participants, when they become eligible to participate in the Plan, with a statement describing the procedures established for maintaining confidentiality with regard to the purchase, sale, holding, and share voting rights of Trust REIT Shares, as well as information identifying the fiduciary responsible for monitoring compliance with the confidentiality procedures.

In addition, under Section II(b)(10), the Trust REIT or the Employer Affiliate must furnish to the person that is directing the investment, prior to an initial investment transaction, information about fees or transaction costs, the role of the Trust REIT, if any, as a principal in the transaction, the name of the exchange or market system on which the Qualifying REIT Shares are traded, and the fact that copies of the proposed and final exemption are available upon request. While the Department believes that all of the

information required to be disclosed is readily available, each of the Trust REITS making use of the exemption is expected to expend time and resources to compile the required information and conform it with the other materials customarily used in communicating information that is either required to be provided to plan participants (such as Summary Plan Descriptions, or disclosures required to meet conditions of ERISA section 404(c) and related regulations at 29 CFR 2550.404c–1), or that the employer otherwise provides to assist plan participants in understanding and making use of their benefits. The Department estimates that compiling these disclosures will require a one-time preparation investment of about 4 hours per plan, and that they will be distributed along with other plan materials. It is expected that this work will be completed by outside professionals at a cost of $75 per hour. The resulting cost burden is estimated to be about $12,600.

Recordkeeping. Although Section II(b)(11) requires that records be maintained to demonstrate compliance with the terms of the exemption, this requirement is consistent with statutory recordkeeping requirements under ERISA, and with requirements pertaining to maintenance of tax records. As such, the provision imposes no additional burden.

Acknowledgement. Finally, based on the terms of the definition found in Section III(e)(5), where an Independent Fiduciary is involved in a Trust REIT transaction, the Independent Fiduciary must acknowledge in writing that he or she is a fiduciary and has the appropriate training and experience to perform the services contemplated by the exemption. It is anticipated that the applicable plan fiduciary will incorporate this acknowledgement in the written investment management or trustee agreement outlining the terms and conditions of its retention as a plan service provider that already exists as part of usual and customary business practice. As such, a written acknowledgement is not expected to impose any measurable additional burden.

Type of Collection: New.

Agency: Department of Labor, Employee Benefits Security Administration.

Title: Disclosures for Transactions with Trust REIT Shares (Prohibited Transaction Exemption xx–xx (number to be assigned when granted).

OMB Control Number: 1210-New.

Affected Public: Business or other for profit; Individuals or households; Not-for-profit institutions.

Respondents: 42.

Responses: 42.

Frequency of Response: On occasion; quarterly; annually.

Estimated Burden Hours: 0.

Estimated Capital/Startup Costs: $12,600.

Estimated Annual Costs (Operating & Maintenance): $6,400.

Estimated Total Annual Cost: $19,000.

I. Discussion of the Application

The application contains facts and representations with regard to the requested exemption that are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the Applicant.

The Applicant, NAREIT, is a Washington, DC-based trade association that supports the legislative, capital formation, and educational needs of the real estate investment trust (REIT) industry. REITs are entities that combine the capital of investors to acquire, or provide financing for, real estate investment. According to the Applicant, NAREIT represents nearly all of the 228 REITs in the United States whose shares are publicly traded.[2] NAREIT requests this exemption on behalf of publicly traded REITs that are structured under state law as business trusts and which issue equity interests in the form of shares of beneficial interest (Trust REITs).

The Applicant represents that REITs are customarily structured for state law purposes either as corporations or trusts. Corporate REITs issue equity interests in the form of stock. Trust REITs, under state law, issue equity interests in the form of shares of beneficial interest (shares). According to the Applicant, the use of a trust as a REIT business form is becoming more common and, of the 228 publicly traded REITs operating in the United States that are closely followed by NAREIT, 52 are structured as business trusts.

The Applicant explains that, in connection with the management of a Trust REIT's business, either the Trust REIT, or a corporation or a partnership owned by the Trust REIT, employs the individuals who engage in real estate and trust management services (an employer). The Trust REIT owns the real estate either directly or through another entity. The term ''Employer Affiliate'' as used herein, refers to an entity that sponsors an individual account plan and which is owned 50 percent or more by a Trust REIT. The Applicant explains that because the REIT's ownership interest in the Employer Affiliate is 50 percent or more, that entity may be deemed to be an affiliate of the REIT under section 407(d)(7) of the Act[3] and, accordingly, the REIT's shares may be considered ''employer securities'' for purposes of section 407(d)(1) of the Act, in connection with any plan sponsored by such Employer Affiliate.[4]

The Applicant states that many Trust REITs, or their Employer Affiliates, sponsor or have adopted tax-qualified ''individual account plans,'' as that term is defined in section 3(34) of the Act, in which employees of the Trust REIT and/or its Employer Affiliates participate. Typically, these Plans (as defined in section III (f)) contain qualified cash or deferred arrangements within the meaning of Code section 401(k), and may provide for employer matching contributions, profit-sharing contributions, or both. The Applicant represents that in some Plans the participant's account is separated into two parts. The plan administrator may account for a participant's elective deferrals, and earnings thereon, separately from the company's contributions—*i.e.*, the company's matching or profit-sharing contributions. This separate accounting usually occurs in situations in which the participant has the right to direct investment of his or her elective salary deferral amounts and their earnings, but does not direct the investment of contributions made on his or her behalf.

The Applicant asserts that it is common for employers, including employers that are publicly traded REITs formed as corporations, to offer

[2] The Applicant has limited its request to REITs whose shares of beneficial interest are publicly traded on the following national exchanges or market systems: the New York Stock Exchange, the American Stock Exchange, and the National Association of Securities Dealers Automated Quotation National Market System (NASDAQ National Market). Accordingly, the term ''publicly traded'' as used below refers only to shares traded on these exchanges or market systems.

[3] Section 407(d)(7) of the Act provides that ''a corporation is an affiliate of an employer if it is a member of any controlled group of corporations (as defined in section 1563(a) of Title 26, except that ''applicable percentage'' shall be substituted for ''80 percent'' wherever the latter percentage appears in each section) of which the employer who maintains the plan is a member. For purposes of the preceding sentence, the term ''applicable percentage'' means 50 percent, or such lower percentage as the Secretary may prescribe by regulation. A person other than a corporation shall be treated as an affiliate of an employer to the extent provided by regulations of the Secretary. An employer which is a person other than a corporation shall be treated as affiliated with another person to the extent provided by regulations of the Secretary * * *.''

[4] No regulations have been issued under 407(d)(7) of the Act. In the absence of regulations, the Department is providing no opinion herein as to whether non-corporate entities may be deemed an affiliate of a REIT.

employer securities as an investment or investment option under the individual account plans that they sponsor. The stock of a corporate REIT may constitute ''qualifying employer securities'' for purposes of section 407(d)(5) of the Act,[5] and, if so, the individual account plans sponsored by corporate REITs may invest in and hold such stock without engaging in a prohibited transaction.[6] The Applicant notes that statutory provisions under the Act specifically allow plan investments in qualifying employer securities, and Department regulations specifically reference the acquisition of qualifying employer securities with respect to participant-directed individual account plans.[7]

The Applicant believes that shares issued by a publicly traded Trust REIT constitute ''securities'' within the meaning of section 2(1) of the Securities Act of 1933. The Applicant argues that because shares of beneficial interest issued by a Trust REIT are securities, they also constitute ''employer securities'' in connection with Plans covering employees of such Trust REIT and its Employer Affiliates.[8] The Applicant asserts that, while it is clear that shares issued by Trust REITs do not constitute ''marketable obligations'' (as defined under section 407(e) of the Act) or interests in a ''publicly traded partnership,'' as defined under the Code, it is unclear whether such shares would constitute ''stock'' and, thus, satisfy the definition of ''qualifying employer security'' in section 407(d)(5) of the Act. In this regard, section 407(a)(1) of the Act provides that a plan may not acquire or hold any employer security, which is not a qualifying employer security. If the shares are not qualifying employer securities, the Plans sponsored by the Trust REITs and their Employer Affiliates cannot rely on sections 407[9] and 408(e)[10] of the Act to obtain relief from the prohibitions of sections 406 and 407 of the Act for the acquisition, holding or sale of Trust REIT shares.[11]

The Applicant believes that REITs structured as business trusts are virtually indistinguishable from REITs structured as corporations. The Applicant notes that under the Code, all tax-qualified REITs are treated as corporations for federal income tax purposes, notwithstanding their business structure.[12] According to the Applicant, Treasury Reg. section 1.856–1(d)(1) requires that a Trust REIT's trustees have the rights and powers ''to meet the requirement of centralization of management,'' meaning that REIT trustees must have the ''continued exclusive authority'' to manage the affairs of the Trust REIT. The Applicant further notes that: the shareholders of Trust REITs possess the same limited liability protection as do stockholders of corporate REITs; Trust REITs are managed by trustees in much the same way as corporations are managed by directors; and shareholders of Trust REITs elect trustees just as stockholders of corporate REITs elect directors. According to the Applicant, in many states, Trust REITs may issue more than one class of shares, or may issue preferred or convertible classes of shares.[13] Further, in many states, the rules that govern procedures for amending a Trust REIT's declaration of trust conform to the rules that govern amending a corporate charter, and the rules governing the amendment of a Trust REIT's bylaws conform to the rules governing the amendment of a corporation's bylaws.[14] The Applicant argues that the marketplace makes no distinction between publicly traded Trust REITs and publicly traded corporate REITs. In addition, Trust REIT shareholders and corporate REIT stockholders receive the same type of disclosure documents required by the Securities and Exchange Commission, and the trading rules of the stock exchanges apply in the same manner. The Applicant concludes that the ownership and legal operation of Trust REITs and corporate REITs are virtually the same and that the hallmark of corporate status, limited liability to equity investors, is provided under state law to shareholders of Trust REITs just as it is to stockholders of corporations.[15]

The Applicant represents that, despite these similarities and uniform treatment for federal income tax purposes, the distinction in REIT business form for state law purposes creates an anomaly for those Trust REITs that sponsor individual account plans. Thus, in the absence of an administrative exemption, the Applicant asserts that a Trust REIT which has roughly the same capitalization as a corporate REIT, whose shares bear the same indicia of ownership and offer the same investor protection against liability as shares issued by a corporate REIT, whose business is managed by shareholder-appointed trustees just as a corporate REIT's business is managed by shareholder-appointed directors, whose shares are traded on the same national exchange as a corporate REIT, and whose shares are traded at nearly the same daily volume as a corporate REIT, may be prohibited from allowing its employees to share in the growth of the business through the company's individual account plan, even though it may be permissible for the corporate REIT to do so.

The Applicant requests a class exemption to permit Trust REITs whose shares are publicly traded the same opportunity as corporate REITs by allowing their employees to share in the growth of the business through their

[5] Section 407(d)(5) provides, in part: ''The term qualifying 'employer security' means an employer security which is:

(A) Stock,

(B) a marketable obligation (as defined in subsection (e) of this section), or

(C) an interest in a publicly traded partnership (as defined in section 7704(b) of title 26), but only if such partnership is an existing partnership as defined in section 10211(c)(2)(A) of the Revenue Act of 1987 (Pub. L. 100–203).''

[6] Section 407(b)(1) provides that the percentage limitations of ''subsection (a) of this section shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property by an eligible individual account plan.'' The Department notes that, for plan years beginning on or after 1/1/99, plans may not require that more than 10 percent of an elective deferral account be invested in qualifying employer securities, subject to certain exceptions. Section 407(b)(2), as amended by Pub. L. 105–34 section 1524(a) (August 8, 1997).

[7] 29 CFR 2550.404c–1(d)(2)(ii)(E)(4).

[8] Under ERISA section 3(20), the term ''security'' has the same meaning as such term has under section 2(1) of the Securities Act of 1933. ERISA section 407(d)(1) defines an employer security as ''a security issued by an employer of employees covered by the plan, or by an affiliate of such employer.''

[9] *See* note 5, Supra.

[10] Section 408(e) provides that: ''sections 406 and 407 [29 U.S.C. 1106 and 1107] shall not apply to the acquisition or sale by a plan of qualifying employer securities (as defined in section 407(d)(5) [29 U.S.C. 1107(d)(5)]) or acquisition, sale or lease by a plan of qualifying employer real property (as defined in section 407(d)(4) [29 U.S.C. 1107(d)(4)])—

(1) if such acquisition, sale, or lease is for adequate consideration (or in the case of a marketable obligation, at a price not less favorable to the plan than the price determined under section 407(e)(1) [29 U.S.C. 1107(e)(1)]),

(2) if no commission is charged with respect thereto, and (3) if (A) the plan is an eligible individual account plan (as defined in section 407(d)(3) [29 U.S.C. 1107(d)(3)]), or (B) in the case of an acquisition or lease of qualifying employer real property by a plan which is not an eligible individual account plan, or of an acquisition of qualifying employer securities by such a plan, the lease or acquisition is not prohibited by section 407(a) [29 U.S.C. 1107(a)].''

[11] In proposing this exemption, the Department is providing no opinion herein as to whether shares of a Trust REIT constitute ''stock'' for purposes of section 407(d)(5).

[12] *See* Code section 856(a)(3).

[13] The Applicant provides the following citation in support of its assertion: Tex. Civ. Stat 3.1.

[14] The Applicant provides the following citations in support of its assertion: Md. Corps. & Assns. Ann. 8–501; Tex. Corps. & Assns. Ann 9.1, 23.1.

[15] The Applicant provides the following citations in support of its assertion: Md. Corps. & Assns. Ann 8–601; 3 Cal. Corp. Code 23001; Del. Code Ann. Tit. 12, 3803; Ill. Rev. Stat. Ch. 745, para. 60.2.; Tex. Corps. & Assns. Ann. 6138A–9.1, 6.138A–9.1.

individual account plans. The Applicant believes that employees of Trust REITs are disadvantaged compared with employees of REITs structured as corporations under state law, even though all REITs are treated as corporations for federal income tax purposes.

The requested exemption is limited to Plans sponsored by a Trust REIT or its affiliates in which the Plan's investment was in Qualifying REIT Shares (as defined in section III(j)) which are not subject to any restrictions on transfer other than restrictions required under applicable securities and exchange rules or to maintain REIT status under the Code. The Applicant represents that, in order to maintain REIT status, it is routine for the REIT's trust instruments to restrict shareholders from transferring shares of beneficial interest if such transfer would result in shareholders violating the Code's closely-held ownership test, or if such transfer otherwise would cause the REIT to fail to qualify as a REIT under the Code.[16] The Applicant believes that, particularly in the context of publicly traded REITs, these customary restrictions would not impair in any way the ability of Plans to quickly sell or dispose of Trust REIT shares previously acquired. According to the Applicant, no Trust REIT would contribute to, or allow the acquisition by, an individual account plan of REIT shares not subject to these customary restrictions.

The Applicant asserts that this exemption is in the interest of participants and beneficiaries because it will afford employees of publicly traded Trust REITs, or their Employer Affiliates, the opportunity to invest in shares of beneficial interest issued by their employers through individual account plans, thus enabling such persons to share in the growth of each respective employer's business. Further, the Applicant believes this investment option will generally afford participants and beneficiaries an efficient and inexpensive means to participate in the growth and profitability of the real estate sector of the economy.

The Applicant asserts that the requested exemption is protective of the rights of participants and beneficiaries because the participant determines whether or not his or her elective deferrals will be invested in shares of beneficial interest. In addition, only those Trust REITs with publicly traded shares are included in the exemption, thus providing sufficient liquidity and pricing protections. Finally, the Applicant proposes that, with respect to the participant directed portion of an Account (as defined in section III(a)), no more than 25 percent of the account balance may be invested in Trust REIT shares.

The Applicant requests prospective and retroactive relief for the contribution, purchase, holding or sale of Trust REIT shares by plans sponsored by the Trust REIT and/or its affiliates. The Applicant submits that the requested exemption meets the standards of section 408(a) for granting exemptive relief from the prohibited transaction provisions.

II. Description of the Proposed Retroactive Exemption

On the basis of the representations made by the Applicant, the Department is proposing limited retroactive relief from the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code for the following transactions for the period beginning six years prior to the date of publication of the final exemption in the **Federal Register** and ending on the date of publication of the final exemption: (1) The purchase or sale of Qualifying REIT Shares where the decision to purchase or sell these securities was made by a participant, or by a fiduciary that was independent of the Trust REIT and its affiliates; (2) the contribution of Qualifying REIT Shares to the Plan by an employer; and (3) the holding of Qualifying REIT Shares; provided that the conditions of the exemption were met at the time of the transaction.

The Applicant has requested that the period of retroactive relief be sufficient to encompass transactions for which the applicable statute of limitations under the Act has not yet run.[17] Specifically, the Applicant has requested that the relief look back six years, nine months from the date of publication of the exemption, based on its belief that a court might find that the beginning of the statutory period was the date that the transaction was reported on the Form 5500,[18] rather than the date on which the transaction occurred. Because the six-year statute of limitations, unlike the three-year statute of limitations, does not require actual knowledge of the transaction, the statute of limitations runs from the date of the transaction, absent fraudulent concealment.[19] The Department has determined that it is appropriate to provide retroactive relief for a period of six years prior to the date the final exemption is published in the **Federal Register**.

The Applicant initially requested retroactive relief for all Trust REIT Share contributions, purchases, holdings, and sales. The Applicant explained that because Trust REIT plans believed that the employers' shares were covered by the statutory exemption under ERISA section 408(e) for ''qualifying employer securities,'' some of the shares contributed by the employer were subject to a lockup, *i.e.* participants could not sell the shares contributed to their account for some period of time. The Applicant is unaware whether any shares purchased by participants or independent fiduciaries were also subject to a lockup. Therefore, the Department has determined to limit proposed retroactive relief to employer contributed shares, including those subject to a lockup. The Department is also providing relief where either the participant or an independent fiduciary had investment discretion to sell such shares. Where participants exercised their discretion to invest in Trust REIT shares for their own account they must have been permitted to give instructions to sell such shares at least quarterly. In the case of Trust REIT shares purchased by the independent fiduciary, that independent fiduciary must have had the authority to divest the Account of

[16] According to the Applicant, in order for an entity to qualify as a REIT under the Code, no more than 50 percent in value of outstanding shares of beneficial ownership may be owned, actually or constructively, by five or fewer individuals during the last half of a taxable year or during a proportionate part of a shorter taxable year. See Code section 856(h). In addition, if a REIT or an owner of 10% or more of a REIT actually or constructively own 10% or more of a tenant of that REIT (or a tenant of a partnership in which the REIT is a partner), the rent received by the REIT (either directly or indirectly) from such tenant will not be qualifying income for purposes of the REIT gross income tests of the Code unless such tenant is a taxable REIT subsidiary of the REIT and certain other requirements are met. See Code section 856(d)(2)(B). A REIT's shares also must be beneficially owned by 100 or more persons. See Code section 856(a)(5).

[17] Section 413 of the Act provides, ''No action may be commenced under this subchapter with respect to a fiduciary's breach of any responsibility, duty, or obligation under this part, or with respect to a violation of this part, after the earlier of—

(1) six years after (A) the date of the last action which constituted a part of the breach or violation, or (B) in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation, or

(2) three years after the earliest date on which the plaintiff had actual knowledge of the breach or violation; except that in the case of fraud or concealment, such action may be commenced not later than six years after the date of discovery of such breach or violation.''

[18] Section 104(a)(1) provides ''The administrator of any employee benefit plan subject to this part shall file with the Secretary the annual report for a plan year within 210 days after the close of such year * * *.''

[19] *Id.*

the Qualifying REIT Shares without restriction. The Department, however, specifically solicits comments from interested persons on whether the scope of the exemption should be modified to include additional retroactive relief for other transactions involving Trust REIT Shares that were subject to a lockup.

Where the participant or the independent fiduciary had discretion to purchase or sell Qualifying REIT Shares, the proposed exemption requires that the participant or a fiduciary independent of the Trust REIT had the authority to vote, tender and exercise similar ownership rights with respect to those such shares.

The Applicant suggested that any person or entity independent of the Plan Sponsor (as defined in section III(g)) or its affiliates should qualify as an independent fiduciary for purposes of the exemption. The Department has clarified the Applicant's suggestion to make it clear that the independent fiduciary must also be independent of any affiliates of the Trust REIT or its Employer Affiliates.

The Department has adopted the Applicant's suggestion that the price at which shares must have been contributed, purchased and sold must be the prevailing market price on the Primary Exchange on which these shares were traded. In addition, no commissions or other fees could be charged if share transactions were directly with the Trust REIT or the shares were contributed by the Plan Sponsor.

The Department believes that it is appropriate to narrow the Trust REIT class of shares covered by this exemption by limiting the definition of the term ''Primary Exchange.'' Accordingly, for purposes of this proposed exemption, relief is limited to Trust REIT shares traded on: The New York Stock Exchange (NYSE), the American Stock Exchange (AMEX), or the National Association of Securities Dealers Automated Quotation System National Market (NASDAQ National Market). In this regard, the Applicant has represented that the opening and closing prices for REIT shares listed on the exchanges or the NASDAQ National Market are published daily in numerous newspapers throughout the country, and trading prices for such listed securities are readily available on the Internet. Therefore, by limiting the proposed exemption to Trust REIT shares traded on the NYSE, AMEX or the NASDAQ National Market, the Department believes that participants and beneficiaries will have easy access to the current trading prices of the Trust REIT shares held in their Accounts.

In response to the Department's concern as to whether there would be sufficient trading liquidity to ensure that Plans could readily dispose of REIT shares, the Applicant provided the following information: The NYSE, AMEX, and the NASDAQ National Market each impose requirements relating to minimum capitalization, minimum number of publicly-held shares eligible for trading, and minimum number of shareholders in order for a public company to be listed, or in the case of the NASDAQ National Market, designated, on such exchange or system.[20]

The Department adopted the Applicant's suggestion that transactions between Accounts, initiated at the direction of the participants or an independent fiduciary, be permitted in order to save brokerage costs. Under the proposed exemption, where investment decisions are implemented through the netting of purchases and sales between Accounts, the transactions would be valued at the closing market price for that day on the Primary Exchange on which the shares are traded. The Department cautions that, in order for transactions to satisfy this condition, such trades must be done in an objective and a mechanical fashion, so that neither the buying nor the selling participant is favored in the transaction.

Under the Department's proposed exemption, the covered transactions must meet an arm's-length test. Under this test, at the time of the transaction, the terms of the transaction must be at least as favorable to the Plan or the Account as the terms generally available between unrelated parties.

The Applicant had originally requested retroactive relief for all Accounts, including those whose assets were invested up to 100 percent in REIT Shares. After careful consideration of the issue, the Department has determined that it would not be practical to develop a single percentage limitation that would apply to investment in Qualifying REIT Shares by all individual account plans maintained by Trust REITs or their Employer Affiliates, in view of the variety of REITs that would be subject to the proposal and the different types of real estate activities engaged in by such entities. In this regard, the Department notes that section 404(a) of the Act requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and in a prudent fashion. Section 404(a)(1)(C) further requires that a fiduciary diversify the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. Section 404(a)(2) provides that, in the case of an eligible individual account plan, the diversification requirement of section 404(a)(1)(C) and the prudence requirement (only to the extent that it requires diversification) of section 404(a)(1)(B) are not violated by acquisition or holding of qualifying employer real property or qualifying employer securities. To the extent that the Qualifying REIT Shares do not constitute stock for purposes of section 407(d)(5) of the Act, the exception contained in section 404(a)(2) from the diversification requirements of the Act would not apply to a Plan's investment in Qualifying REIT Shares. Accordingly, it is the responsibility of a fiduciary of each Plan intending to take advantage of the relief provided by this proposed exemption to determine the appropriate

[20] According to the Applicant, the NYSE listing rules include, *inter alia,* a requirement of 2,200 public shareholders together with average monthly trading volume of 100,000 shares, or 500 public shareholders together with average monthly trading volume of 1,000,000 shares, or 2,000 shareholders holding at least 100 shares. *See* NYSE Rule 102.01A (NYSE Listed Company Manual, 2002). Rule 102.01B generally requires companies to demonstrate an aggregate market value of publicly-held shares (*i.e.*, shares held by persons other than directors, officers, their immediate families or 10% stockholders) of not less than $60 million, in the case of companies applying for listing in connection with their initial public offerings or a spin-off, or $100 million for other companies. *See* NYSE Rule 102.01B (NYSE Listed Company Manual, 2002).

The rules of the AMEX require that a listed company have (1) at least 500,000 shares publicly held and eligible for trading and a minimum of 800 public shareholders or (2) 1,000,000 shares publicly held and eligible for trading together with a minimum of 400 public shareholders. AMEX may also consider listing the equity securities of companies with at least 500,000 shares publicly held and eligible for trading, a minimum of 400 public shareholders, and an average daily trading volume of 2,000 shares for the six months prior to the date application is made for the listing. For purposes of satisfying the requirement of 400 or 800 minimum public shareholders, shares held by officers, directors and persons with a 10% interest or more are not taken into account. The AMEX also generally requires a minimum market price of $3 per share, and at least $3 million aggregate market value for publicly held shares ''for a reasonable period of time prior to the filing of the listing application.'' See American Stock Exchange Rule 102 (The American Stock Exchange Company Guide, CCH, 2000).

The NASDAQ National Market imposes alternative criteria in order to be designated on the system, but in general an equity issuer may not be designated unless (1) at least 1,100,000 shares are held by the public and eligible for trading (shares held by officers, directors, or beneficial owners of more than 10 percent of the outstanding shares are not counted toward the 1,100,000 share requirement); (2) the market value of the publicly held shares eligible for trading are at least $8 million, $18 million, or $20 million (depending on length of operating history and number of market makers); (3) the minimum bid price is $5 or more; and (4) the issuer has a minimum of 400 shareholders who own 100 shares or more. See NASD Manual, Rule 4420 (CCH, 1998).

level of investment in Qualifying REIT Shares, based on the particular facts and circumstances, consistent with its responsibilities under section 404 of the Act.

III. Description of the Proposed Prospective Exemption

On the basis of the representations made by the Applicant, the Department is proposing prospective relief from the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code for the following transactions occurring after the date of publication of the final exemption in the **Federal Register:** (1) The purchase or sale of Qualifying REIT Shares where the decision to purchase or sell these securities is made by a participant, or by an Independent Fiduciary; (2) the contribution of Qualifying REIT Shares to the Plan by an employer; and (3) the holding of Qualifying REIT Shares; provided that the conditions of the exemption are met at the time of the transaction.

Prospectively, contributed shares may not be subject to a lockup. In addition, to help ensure that participants are not subject to pressure to invest in, or to continue to hold, employer securities, the confidentiality of their investment and voting decisions with respect to all such shares are protected under the exemption. In this regard, the proposed exemption requires the appointment of a fiduciary that is responsible for confidentiality. It also requires that the Plan provide participants, in writing, the procedures established to protect confidentiality of information relating to the purchase, holding, and sale of Qualifying REIT Shares and the exercise of voting, tender and other similar rights with respect to such shares. Further, should any situation arise where the fiduciary determines that there is a potential for undue influence upon participants and beneficiaries with respect to the exercise of shareholder rights, the Plan shall appoint an independent fiduciary (who may, but need not be, the Independent Fiduciary (as defined in section III (e)) to carry out activities related to this particular situation.[21]

If the Employer Affiliate, or the Trust REIT exerts undue influence over the shareholder decisions of the participants and beneficiaries in Plans covered by this proposed exemption, this proposed exemption shall not apply to any transactions involving shares subject to such influence. For example, tender offers, mergers and acquisitions are likely to generate the need for an independent fiduciary to provide additional safeguards for participant confidentiality.[22]

Section III(e) of the proposal defines the term ''Independent Fiduciary'' as a trustee or investment manager who had equity capital of at least $1 million and has assets under management of over $50 million. This fiduciary must be independent of the Trust REIT, the Employer Affiliate, and any of their affiliates. In this regard, the Trust REIT, the Employer Affiliate, or any of their affiliates, may not own any interest in the Independent Fiduciary and the Independent Fiduciary may not own more than 5 percent of the Trust REIT, the Employer Affiliate or any of their affiliates. The Independent Fiduciary must acknowledge in writing that it is a fiduciary and that it has the appropriate technical training or expertise to perform the services contemplated by this proposed exemption. The Independent Fiduciary may not receive more than one percent (1%) of its current gross income for federal tax purposes, (as measured by the prior year's taxable income) from the Trust REIT, the Employer Affiliate and their affiliates. Lastly, while serving as an Independent Fiduciary and for 6 months after it ceases to serve in this capacity, the Independent Fiduciary may not acquire property from, sell property to, or borrow any funds from the Trust REIT, the Employer Affiliate, or any affiliates thereof.

Where Qualifying REIT Shares are purchased or sold on the Primary Exchange, the broker executing the transactions must be independent of the Trust REIT, any Employer Affiliate, the Independent Fiduciary and any affiliates thereof.

Certain information must be disclosed to the participant or the Independent Fiduciary prior to the initial covered transaction that occurs after publication of the final exemption in the **Federal Register.** The disclosures must describe, among other things, any fees or transaction costs, the role, if any, of the Trust REIT as a principal in the transaction, and the exchange or market system where Qualifying REIT Shares are traded. Finally, the participant or Independent Fiduciary must be informed that copies of the proposed and final exemption are available upon request.

Consistent with the practice followed in other prohibited transaction class exemptions granted by the Department, the proposal contains a condition requiring the Trust REIT or its Employer Affiliates utilizing the exemption on a prospective basis to maintain, for a period of six years from the date of each covered transaction, subject to limited exceptions, the records necessary to enable certain persons to determine whether the applicable conditions of the exemption have been met. Such persons include any duly authorized employee or representative of the Department or the Internal Revenue Service, any plan fiduciary, any participant or beneficiary of the plan whose Account is invested in Qualifying REIT Shares, any employer of employees covered by the Plan, and any employee organizations whose members are covered by the Plan. All records must be unconditionally available at their customary location for examination during normal business hours by the above-described persons. However, the Trust REIT or its Employer Affiliates may refuse to disclose to a person, other than a duly authorized employee or representative of the Department or the Internal Revenue Service, commercial or financial information that is privileged or confidential.

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 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 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 require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests 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 section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible,

[21] This requirement was modeled after the regulations on ''independent exercise of control'' under section 404(c) of the Act. 29 CFR 2550.404c–1 (d)(2)(ii)(E)(4)(viii) & (ix).

[22] In the preamble to the 404(c) regulations cited above, the Department stated that it agreed with the commentators that ''situations where the potential for undue employer influence may exist include tender offers, exchange offers and contested board elections.'' 57 FR 46906, 46927 (October 13,1992).

in the interests of plans and their participants and beneficiaries and protective of the rights of the participants and beneficiaries of plans;

(3) If granted, the proposed class exemption will be applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and 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.

Written Comments

All interested persons are invited to submit written comments or requests for a public hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

IV. Proposed Exemption

The Department has under consideration the grant of the following class exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847 August 10, 1990.)

Section I. Covered Transactions

(a) For the period from six years prior to the date of publication of the final class exemption in the **Federal Register** to the date of publication of the final class exemption in the **Federal Register** the restrictions of sections 406(a), 406(b)(1), 406(b)(2), and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the following transactions, if the relevant conditions set forth in section II(a) below are met at the time of the transaction:

(1) The purchase or sale of Qualifying REIT Shares (as defined in section III(j)) on behalf of an Account (as defined in section III(a)) at the direction of the participant;

(2) The purchase or sale of Qualifying REIT Shares on behalf of the Plan (as defined in section III(f)) at the direction of an independent fiduciary (as defined in section II(a)(2));

(3) The contribution in-kind of Qualifying REIT Shares to a Plan by an employer; and

(4) The holding of the Qualifying REIT Shares by the Plan. (b) Effective after the date of publication of the final class exemption in the **Federal Register,** the restrictions of sections 406(a), 406(b)(1), 406(b)(2), and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the following transactions, if the relevant conditions set forth in section II(b) below are met at the time of the transaction:

(1) The purchase or sale of Qualifying REIT Shares on behalf of an Account in a Plan at the direction of the participant;

(2) The purchase or sale of Qualifying REIT Shares on behalf of the Plan at the direction of the Independent Fiduciary (as defined in section III(e));

(3) The contribution in-kind of Qualifying REIT Shares to a Plan by an employer; and

(4) The holding of the Qualifying REIT Shares by the Plan.

Section II. Conditions

(a) Retroactive Conditions

(1) The participant has discretionary authority to direct the trustee to:

(A) Sell the Qualifying REIT Shares purchased by the participant for his own Account no less frequently than quarterly; and

(B) Vote, tender and exercise similar rights with respect to those Qualifying REIT Shares in the Account over which the participant has discretion; or

(2) An independent fiduciary has discretionary authority to sell the Qualifying REIT Shares purchased at the direction of the independent fiduciary and such independent fiduciary:

(A) Is a trustee, named fiduciary or investment manager with respect to the Qualifying REIT Shares;

(B) Is neither the Trust REIT (as defined in section III(i)) an Employer Affiliate (as defined in section III(d)) nor an affiliate thereof; and

(C) Has the discretionary authority to exercise the voting, tender and similar rights with respect to the Qualifying REIT Shares purchased on behalf of a Plan. Notwithstanding the foregoing, this paragraph (2)(C) shall be deemed met if another fiduciary that is independent of the Trust REIT had the right to exercise the voting, tender and similar rights with respect to the Trust REIT Shares.

(3) Purchases and sales of Qualifying REIT Shares by the Plan are executed:

(A) For cash;

(B) On the Primary Exchange (as defined in section III(h)) or directly with the Trust REIT; and

(C) At the market price for the Trust REIT shares on the Primary Exchange at the time of the transaction.

(4) Notwithstanding paragraph (3) above, the exemption shall apply to purchases and sales of Qualifying REIT Shares between Accounts within a Plan in order to avoid brokerage commissions and other transaction costs, provided that the price received by each Account is equal to the closing price for the Trust REIT shares on the Primary Exchange on the date of the transaction.

(5) At the time the transaction is entered into, the terms of the transaction are at least as favorable to the Plan or the Account as the terms generally available in comparable arm's-length transactions between unrelated parties.

(6) Qualifying REIT Shares contributed to, or purchased by, the Plan from the Trust REIT:

(A) Are conveyed to the Plan at or below the market price for the Trust REIT shares on the Primary Exchange at the time of the transaction; and

(B) Are conveyed to the Plan without the payment of any commission or other fee in connection with the transaction.

(7) Where a participant has discretionary authority to purchase or sell Qualifying REIT Shares, neither the Trust REIT, an Employer Affiliate, the independent fiduciary, nor any affiliates thereof exerts any undue influence over the decisions of the participants to acquire or sell Qualifying REIT Shares.

(b) Prospective Conditions

(1) The participant has discretionary authority to direct the trustee:

(A) To sell Qualifying REIT Shares purchased by, or contributed to, an Account no less frequently than monthly; and

(B) To vote, tender and exercise similar rights with respect to those Qualifying REIT Shares in the Account over which the participant has discretion; or

(2) An Independent Fiduciary, as defined in section III (e), has discretionary authority to purchase, hold or sell the Qualifying REIT Shares and has the discretionary authority to exercise the voting, tender and similar rights with respect to the Qualifying REIT Shares. Notwithstanding the foregoing, this paragraph (2) shall be deemed met if another fiduciary that is independent of the Trust REIT, the Employer Affiliate and any affiliates thereof; has the right to exercise the

voting, tender and similar rights with respect to the Trust REIT shares.

(3) Where a participant has discretionary authority to purchase or sell Qualifying REIT Shares, neither the Trust REIT, an Employer Affiliate, the Independent Fiduciary, nor any affiliates thereof:

(A) Has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction;

(B) Renders any investment advice [within the meaning of 29 CFR 2510.3–21(c)] with respect to those assets; or

(C) Exerts any undue influence over the decisions of the participants to acquire or sell Qualifying REIT Shares.

(4) Prior to or immediately after an initial investment in Qualifying REIT Shares, either the Trust REIT, or an agent or affiliate thereof provides the person who is directing the investment (*i.e.,* the participant or the Independent Fiduciary) with the most recent prospectus, quarterly report, and annual report concerning the REIT, and thereafter, either the Trust REIT, or an agent or affiliate thereof, provides such participants and/or Independent Fiduciary with updated prospectuses, quarterly statements and annual reports as published.

(5) Information relating to the purchase, holding, and sale of Qualifying REIT Shares, and the exercise of voting, tender and similar rights with respect to such Qualifying REIT Shares by participants is maintained in accordance with procedures designed to safeguard the confidentiality of such information except to the extent necessary to comply with Federal or state laws not preempted by ERISA. To safeguard confidentiality, the Plan shall:

(A) Designate a fiduciary responsible for safeguarding confidentiality;

(B) Provide participants, when they become eligible to participate in the Plan, with a statement describing the procedures established to provide for the confidentiality of information relating to the purchase, holding and sale of Trust REIT shares, and the exercise of voting, tender and similar rights, by participants and beneficiaries and the name, address and telephone number of the fiduciary responsible for monitoring compliance with the procedures; and

(C) Appoint, if the fiduciary responsible for safeguarding participant confidentiality determines that a situation involves a potential for undue employer influence upon participants and beneficiaries with regard to the direct or indirect exercise of shareholder rights, an independent fiduciary (who may, but need not be, the Independent Fiduciary), to take appropriate action to protect the confidentiality of the participants' votes. For purposes of this subparagraph (C), a fiduciary is not independent if the fiduciary is affiliated with the Trust REIT, an Employer Affiliate, or any affiliate thereof.

(6) All purchases and sales of Qualifying REIT Shares by the Plan are executed:

(A) For cash;

(B) On the Primary Exchange (as defined in section III (h)) by a broker that is independent of the Trust REIT, the Employer Affiliate, the Independent Fiduciary, and any affiliates thereof, or directly with the Trust REIT; and

(C) At the market price for the Trust REIT shares on the Primary Exchange at the time of the transaction.

(7) Notwithstanding paragraph (6) above, the exemption shall apply to purchases and sales of Qualifying REIT Shares between Accounts within a Plan in order to avoid brokerage commissions and other transaction costs, provided that the transaction is executed at the closing price for the Trust REIT shares on the Primary Exchange on the date of the transaction. All such transactions will take place at the closing price on the business day on which the participant instruction is received, or at the closing price on the next business day if the instruction is received after noon or such later deadline as designated by the trustee or named fiduciary.

(8) At the time the transaction is entered into, the terms of the transaction are at least as favorable to the Plan or the Account as the terms generally available in comparable arm's-length transactions between unrelated parties.

(9) Qualifying REIT Shares that are contributed to, or purchased by, the Plan from the Trust REIT:

(A) Are conveyed to the Plan at or below the market price for the Trust REIT shares on the Primary Exchange at the time of the transaction;

(B) Can be immediately sold on the Primary Exchange; and

(C) Are conveyed to the Plan without the payment of any commission or other fee in connection with the transaction.

(10) Prior to a participant, Plan Sponsor (as defined in section III (g) or an Independent Fiduciary engaging in an initial transaction under this exemption, after the date of publication of the final class exemption in the **Federal Register**, the Trust REIT or its Employer Affiliate provides the following disclosures to the person who exercises discretionary authority with respect to the Qualifying REIT Shares (*i.e.,* the participant or the Independent Fiduciary). The disclosure must contain the following information regarding the transactions and a supplemental disclosure must be made to the person directing the covered investments if material changes occur subsequent to the initial disclosure. This disclosure must include:

(A) Disclosure of any fees for brokerage services or transaction costs that will be incurred as a result of the transactions;

(B) Disclosure of the role of the Trust REIT, if any, as a principal in the transactions;

(C) The exchange or market system where the Qualifying REIT Shares are traded; and

(D) A statement that a copy of the proposed and final exemption shall be provided to participants and the Independent Fiduciary upon request.

(11) The plan fiduciary for a period of six years maintains the records necessary to enable the persons described below in paragraph (12) to determine whether the conditions of this exemption have been met, except that:

(A) If the records necessary to enable the persons described in paragraph (12) to determine whether the conditions of the exemption have been met are lost or destroyed, due to circumstances beyond the control of the plan fiduciary, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(B) No party in interest other than the plan fiduciary shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (12) below.

(12) (A) Except as provided below in paragraph (12)(B) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (11) are unconditionally available at their customary location for examination during normal business hours by —

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the Plan or any duly authorized employee or representative of such fiduciary,

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by the Plan, or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of the Plan who's Account is invested in Qualifying REIT Shares or the duly authorized employee or representative of such participant or beneficiary;

(B) None of the persons described in paragraph (12)(A)(ii)–(iv) shall be authorized to examine trade secrets of the Trust REIT, or an Employer Affiliate or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption,

(a) Account—The term ''Account'' means the individual account of a participant in a defined contribution pension plan in which benefits are based solely upon the amount contributed to the participant's account, and any income, expenses, gains or losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account.

(b) Affiliate—The term ''affiliate'' of a person means:

(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, employee, or relative (as defined in section 3(15) of the Act) of such person or partner in such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) Control—The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) Employer Affiliate—The term ''Employer Affiliate'' means any corporation, limited liability company (LLC), or partnership 50 percent or more owned by a Trust REIT.

(e) Independent Fiduciary—The term ''Independent Fiduciary'' means a person who:

(1) Is a trustee or an investment manager (as defined in 3(38) of the Act) who had equity capital of at least $1 million as of the last day of its most recent fiscal year and has client assets under management or control of over $50 million;

(2) Is not an affiliate of the Trust REIT, the Employer Affiliate or an affiliate thereof;

(3) Is not a corporation, partnership or trust in which the Trust REIT, its Employer Affiliate or an affiliate thereof has a one percent or more ownership interest or is a partner;

(4) Does not have more than a five percent ownership interest in the Trust REIT, its Employer Affiliate or an affiliate thereof;

(5) Has acknowledged in writing that:

(i) It is a fiduciary; and

(ii) It has appropriate technical training or experience to perform the services contemplated by the exemption;

(6) For purposes of this definition, no organization or individual may serve as Independent Fiduciary for any fiscal year in which the gross income received by such organization or individual (or partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder) from the Trust REIT, its Employer Affiliate and affiliates thereof, (including amounts received for services as an independent fiduciary under any prohibited transaction exemption granted by the Department) exceeds 1 percent of such fiduciary's gross income for federal tax purposes in its prior tax year; and

(7) In addition, no organization or individual which is an Independent Fiduciary and no partnership or corporation of which such organization or individual is an officer, director or 10 percent or more partner or shareholder may acquire any property from, sell any property to or borrow any funds from the Trust REIT, its Employer Affiliate or their affiliates, during the period that such organization or individual serves as an Independent Fiduciary and continuing for a period of six months after such organization or individual ceases to be an Independent Fiduciary or negotiates any such transaction during the period that such organization or individual serves as an Independent Fiduciary.

(f) Plan—The term ''Plan'' means an individual account plan sponsored by the issuer of Qualifying REIT Shares or an Employer Affiliate thereof.

(g) Plan Sponsor—The term ''Plan Sponsor'' means the Trust REIT or the Employer Affiliate that is the employer of the employees covered by the Plan.

(h) Primary Exchange—The term ''Primary Exchange'' means the national securities exchange or market system on which the Trust REIT shares are primarily traded, and which is either the New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers Automated Quotation System National Market.

(i) Trust REIT—The term ''Trust REIT'' means a ''real estate investment trust'' within the meaning of section 856 of the Code that is organized as a trust under applicable law.

(j) Qualifying REIT Shares—The term ''Qualifying REIT Shares'' means shares of beneficial interest in a Trust REIT that:

(1) Are publicly traded (as defined in section III(k); and

(2) Have no trading restrictions other than those necessary to qualify for REIT status or otherwise to satisfy securities law or applicable exchange or market system trading rules.

(k) Publicly Traded—The term ''publicly traded,'' for purposes of this exemption, means Trust REIT shares of beneficial interest which are traded on the New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers Automated Quotation System National Market System.

(l) Participant—the term ''participant'' includes beneficiaries.

Signed at Washington, DC this 28th day of May, 2003.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Employee Benefits Security Administration, Department of Labor.

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DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of May 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

None.

In the following case, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) and (a)(2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–51,366; Georgia-Pacific Corp., Operating as James River Paper Co., Inc., Consumer Products Div., Old Town, ME

TA–W–51,736; Safeharbor Technology Corp., Satsop, WA

TA–W–51,551; Comp-U-Solve International, Inc., Elgin, IL

TA–W–51,691; Coastal Apparel, LLC, Tabor City, NC

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–51,687 & A,B; Oshkosh B'Gosh, Inc., Oshkosh, WI, Oshkosh B'Gosh Retail, Inc., Oshkosh, WI and OBG Product Development and Sales, Inc., Oshkosh, WI

TA–W–51,625; Motorola, Inc., iDEN Radio Support Center, Elgin, IL

TA–W–51,744; Gateway Industrial Services, Inc., Jonesboro, AR

TA–W–51,680; Siemens Information and Communications Network, Inc., Boca Raton, FL

The investigation revealed that criterion (a)(2)(A) (I.A) (no employment declines) have not been met.

TA–W–51,241D, E,F; Bethlehem Steel Corp. Currently Known as International Steel Group, Piedmont, NC, Columbus, OH and Jackson, MS

TA–W–50,981; Southeastern Paper Products, a subsidiary of The Siman Group, Miami, FL

TA–W–51,724; Moonlight Harbor Fisheries, Kodiak, AK

TA–W–51,796; Fishing Vessel (F/V) Northern Flyer, Ketchikan, AK

TA–W–51,767; Fishing Vessel (F/V) (Imperial, Funter Bay, AK

TA–W–51,764; Fishing Vessel (F/V) Resolute, Ketchikan, AK

The investigation revealed that criteria (a) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–51,336; Manufacturers Pattern and Foundry Corp., Springfield, MA

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–51,152; Asco Valve Manufacturing, Fort Mill, SC: March 1, 2002.

TA–W–51,546; Farley's and Sathers Candy Co., New Orleans, LA: April 18, 2002.

TA–W–51,542; Ametek, Inc., Lamb Electric Div., Racine, WI: April 7, 2002.

TA–W–51,432; Marlock, Inc., Plant #1 and Plant #2, Including Leased Workers of Protemp/Office Team, Maynardville, TN: April 1, 2002.

TA–W–51,428; Knoll, Inc., East Greenville, PA: April 4, 2002

TA–W–51,161; Allura Corp., Lorane-Reading, PA: March 4, 2002.

TA–W–51,241 & A,B,C,G,H,I; Bethlehem Steel Corp., Currently Known as International Steel Group, Sparrows Point, MD, Lackawanna, NY, Coatesville, PA, Conshohocken, PA, Corp. Headquarters, Bethlehem, PA, Government Affairs Office, Washington, DC and Chicago Cold Rolling, a subsidiary of Bethlehem Steel Corp., currently known as International Steel Group, Chicago, IL: March 19, 2002.

TA–W–50,738; Alcoa, Inc., Massena, NY: January 17, 2002

TA–W–51,810; Borregaard Lignotech, Lignotech USA, Inc., Mt. Vernon, WA: May 16, 2002.

TA–W–51,804; Link-Belt Construction Equipment, Lexington, KY: May 8, 2002.

TA–W–51,743; Sychip, Inc., Murray Hill, NJ: March 13, 2002.

TA–W–51,686; Coats American, Inc., Industrial Div., Toccoa, GA: May 5, 2002.

TA–W–51,661; Preco Electronics, Inc., Boise, ID: April 30, 2002.

TA–W–51,567; BGF Industries, Inc., Heavyweight Electrical Fabrics Div., South Hill, VA: April 22, 2002.

TA–W–51,558; Lexington Fabrics, Inc., Finishing Plant, Florence, AL: May 30, 2003

TA–W–51,558A, B,C; Lexington Fabrics, Inc., Sewing Plant, Rogersville, AL, Sewing Plant, Florence, AL and Knitting, Cutting, Packing Plant, Lexington, AL: April 15, 2002.

TA–W–51,532 & A,B; Sony Technology Center, Display Device Div., San Diego, CA, Including Leased Workers of Adecco Staffing, Onsite Staffing and Remedy Staffing, San Diego, CA, Information Technologies Div., Including Leased Workers of Remedy Intelligent Staffing and Onsite Co., San Diego, CA: April 16, 2002.

TA–W–51,503; Fullarton Computer Industries, Ltd, Winterville, NC: April 14, 2002.

TA–W–51,490; Saint-Gobain Vetrotex America, Wichita Falls, TX: April 10, 2002.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–51,602; Sara Lee Intimate Apparel, Liberty Fabrics Div., Liberty Fabrics, Inc., Woolwine, VA: March 28, 2002.

TA–W–51,500; EMC Technologies, Inc., a Part of Smiths Interconnect, a div. of The Smiths Industrial Group, a div. of Smiths Group PLC, Cherry Hill, NJ: April 15, 2002.

TA–W–51,384; Honeywell Sensor Systems, Thermal Business Div., a subsidiary of Honeywell, Inc., Pawtucket, RI: March 31, 2002.

TA–W–51,264; Multilayer Technology, Inc., d/b/a Multek, a subsidiary of Flextronics International, Inc., Irvine, CA: March 13, 2002.

TA–W–51,130; Tyler Refrigeration, Waxahachie, TX: March 7, 2002.

TA–W–51,081; Plexus Corp., Plexus Electronic Assembly Group, Bothell, WA: February 24, 2002.

TA–W–50,936; International Mill Service, Inc., employed at Oregon Steel Mills, Inc./Portland Steel Works, Portland, OR: February 19, 2002.

TA–W–50,931; Mead Westvaco Corp., Consumer and Office Div., St. Joseph, MO: February 19, 2002.

TA–W–51,646; Wire Harness Industries, Inc., d/b/a Viasystems Harness Div., a subsidiary of Viasystems Group, Inc., Including Leased Workers of Aloche Staffing, Bucyrus, OH: April 30, 2002.

TA–W–51,156; Pacific Precision Metals, Inc., d/b/a La Verne Metal Products, La Verne, CA: March 11, 2002.

TA–W–51,717; Sandvik Materials Technology, Tubular Products Div., Clarks Summit, PA: May 7, 2002.

TA–W–51,673; Suntron Corp., Southwest Operations, Including Leased Workers of Manpower International, Phoenix, AZ: May 1, 2002.

TA–W–51,665; Cord Master Engineering Co., Inc., North Adams, MA: May 1, 2002.

TA–W–51,613; Autoliv ASP, Inc., Cushion Manufacturing Div., Including Leased workers of Adecco Staffing Agency, Ogden, UT: April 28, 2002.

TA–W–51,605; Daws Manufacturing Co., Inc., Parsons, TN: April 23, 2002.

TA–W–51,518; Skyworks Solutions, Inc., Former Alpha Industries, Inc., Woburn, MA: April 14, 2002.

The following certification has been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–50,957; Compass Aerospace Northwest, Inc., Shelton, WA: February 18, 2002.

TA–W–51,683; Quadco Industrial Services, Tigard, OR: April 29, 2002.

TA–W–50,364; Reactive Metals and Alloys Corp., West Pittsburg, PA: December 12, 2001.

TA–W–51,740; Fishing Vessel (F/V) Lucy Lewis, Kepnuk, AK: April 28, 2002

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), subchaper D, chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of May 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof (including workers in any agricultural firm or appropriate subdivision thereof), have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increased imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

None.

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

None.

Affirmative Determinations NAFTA–TAA

None.

I hereby certify that the aforementioned determinations were issued during the month of May 2003. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 23, 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–13812 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of May 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

None.

In the following case, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) and (a) (2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–50,828; Radisys Corp., Hillsboro, OR

TA–W–51,438; Commonwealth Sprague Capacitor, Power Systems Div., North Adams, MA

TA–W–51,538; Agrium U.S., Inc., Kenai Nitrogen Operations Div., a subsidiary of Agrium, Inc., Kenai, AK

TA–W–51,220; Wellington Leisure Products, Crivitz, WI

TA–W–51,284; ADC Telecommunications, Systems Integration Div., including leased workers of TPS Staffing and Apple One, Chickamauga, GA

TA–W–51,369; Bombardier Aerospace, Inc., Learjet, Inc., Wichita, KS

TA–W–50,721; CPM Electronic Industries, Roseville, MI

TA–W–51,198 & A; Oregon Log Homes, Sisters, OR and Maupin, OR

TA–W–51,199; Dura Automotive Systems, Stockton, IL

TA–W–51,188; Thunderbird Mining Co., a subsidiary of Eveleth Mines, LLC, Eveleth, MN

TA–W–51,731; Fishing Vessel (F/V) Verna-C, Sitka, AK

TA–W–51,049; Raytheon Aircraft Co., Wichita, KS

TA–W–51,579; Peavy Electronics Corp., Leakesville, MS

TA–W–51386; Avaya, Inc., Connectivity Solutions Div., Omaha, NE

TA–W–51468; Alliant Tech Systems, Inc., Twin Cities Army Ammunition Plant, Arden Hills, MN

TA–W–50,988; Indiana Steel and Wire LLC, Muncie, IN

TA–W–50,771; Spartech Corp., Spartech Plastics—Conneaut, Conneaut, OH

TA–W–50,852; Micro Instrument Co., Escondido, CA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–50,970; On Semiconductor, Phoenix, AZ

TA–W–51,415; Washington Group, Manassas, VA

TA–W–51,449; IBM Global Services, a div. of IBM Corp., New York, NY

TA–W–51,469; Nortel Networks, Research Triangle Park, NC

TA–W–51,624; Stream International, Inc., a subsidiary of Solectron Corp., Silver City, NM

TA–W–51,721; Fishing Vessel (F/V) Towego, Ketchikan, AK

TA–W–51,689; Horace Mann Service Corp., Information Technology Div., Springfield, IL

TA–W–51,732; Union Tank Car Co., Longview, TX

TA–W–51,588; Zachry Construction Corp., formerly H.B. Zachry Co., Natchez, MO

TA–W–51,606; Descartes Systems (USA) LLC, an affiliate of The Descartes Systems Group, Inc., Pittsburgh, PA

TA–W–51,612; Gillette, Boston, MA

TA–W–51489; Alteon Training LLC, including Aviant Group, Long Beach, CA

TA–W–51,578; Earthlink, Inc., Pasadena, CA

TA–W–51,269A; Hamilton Beach/ Proctor-Silex, Inc., a subsidiary of Nacco Industries, Inc., Washington, NC

The investigation revealed that criterion (a)(2)(A) (I.A) (no employment declines) have not been met.

TA–W–51,145; Halliburton Energy Services, Security DBS Manufacturing Div., Dallas, TX

TA–W–50,619 & A; Neenah Paper Co., a div. of Kimberly-Clark Corp., Neenah, WI and Stevens Point, WI

TA–W–51,515; Sanmina-SCI Corp., Wilmington, MA

The investigation revealed that criteria (a) has not been met. The workers, firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–51,336; Manufacturers Pattern and Foundry Corp., Springfield, MA

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–51,278; Stanley Furniture Co., Lexington, NC: March 24, 2002

TA–W–51,650; Markwins Beauty Products, Inc., North Arlington, NJ: April 10, 2002.

TA–W–51,713; Markwins Beauty Products, Inc., Brooklyn, NY: April 10, 2002.

TA–W–51,642; Sweet-Orr, Anniston, AL: April 24, 2002.

TA–W–51,417; Leading Technologies, Inc., a wholly owned subsidiary of Composide, Inc., Leechburg, PA: March 21, 2002.

TA–W–51,379; Printed Fabrics Corp., Carrollton, GA: March 26, 2002.

TA–W–51,372; Enfield Industries, Conway, NH: March 29, 2002.

TA–W–51,592 & A; Woodard, LLC, Salisbury, NC and Maxton, NC: April 24, 2002.

TA–W–50,916; Miller Brewing Co., Tumwater Brewery, Tumwater, WA: February 18, 2002.

TA–W–50,921; NVF Hartwell, Container Div., Hartwell, GA: February 10, 2002.

TA–W–51,222; Parker Specialty Products, Engineered Seal Div., Waukesha, WI: March 17, 2002.

TA–W–50,781; Certifying Service Express (C.S.E.), Janesville, WI: January 31, 2002.

TA–W–50,659; Ametek, U.S. Gauge Div., Sellersville, PA: October 27, 2002.

TA–W–51,408; Motorola, Global Telecom Solutions Sector, CSMA Systems div., Arlington Heights, IL: April 1, 2002.

TA–W–51,702; Marion County Shirt Co., Springfield, MO: May 5, 2002.

TA–W–51,688; Nortech systems, Inc., Bemidji Operations, Bemidji, MN: March 13, 2002.

TA–W–51,582; Jagger Brothers, Springvale, ME: April 14, 2002.

TA–W–51,591; Fayscott LLC, Dexter, ME: April 16, 2002.

TA–W–51,529; Mistequay Group, Ltd, Katmai Manufacturing, Saginaw, MI: April 8, 2002.

TA–W–51,594; Jacobs Textiles, Irvington, NJ: April 23, 2002.

TA–W–51,383; American Video Glass Co., a div. of Sony Electronics, Inc., and Corning Asahi Video Products Co., Mount Pleasant, PA: March 25, 2002.

TA–W–51,393; Stillwater, Inc., Augusta Springs, VA: March 18, 2002.

TA–W–51,474; Seneca Sawmill Co., Eugene, OR: April 8, 2002.

TA–W–51,637; Sitka Sound Seafoods, North Pacific Processors, Inc., a wholly owned by Marubeni Corp., Yakutat, AK: January 21, 2002.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–51,110; Moll Industries, Inc., Newberg, OR: March 5, 2002.

TA–W–51,550; Square D Co. including leased workers of Adecco Personnel, Ashville, NC: April 21, 2002.

TA–W–51,064; Dynamet, Inc., Arden Div., Washington, PA: February 17, 2002.

TA–W–51,631; Teleflex Automotive, Hillsdale, MI: April 24, 2002.

TA–W–51,501; Goodrich corp., Goodrich Landing Gear Div., Cleveland, OH: March 23, 2002.

TA–W–51,342; Hytek Finishes, Everett, WA: March 23, 2002.

TA–W–51,314; Tyco Healthcare Group, LP, a/k/a Mallinckrodt, Inc., Respiratory Div., including leased workers of Kelly Services, Inc., Irvine, CA: March 14, 2002.

TA–W–50,682; Sanborn Colorado LLC, Colorado Springs, CO: January 23, 2002.

TA–W–50,706; Oregon Steel Mills, Inc., Portland Steel Works, Portland, OR: January 27, 2002.

TA–W–50,819; Yarway Corp., a div. of Tyco International, Blue Bell, PA: January 22, 2002.

TA–W–51,695; Fishing Vessel (F/V) Vagabond Queen, Hoonah, AK: May 2, 2002.

TA–W–51,709; Nitrous Oxide Systems, Inc., a div. of Holly Performance Products, Bowling Green, KY: April 15, 2002.

TA–W–51,722; Fishing Vessel (F/V) Lisa III, Aleknagik, AK: May 6, 2002.

TA–W–51,725; Fishing Vessel (F/V) Glacier Point, Haines, AK: May 1, 2002.

TA–W–51,530; Photronics, Inc., Phoenix, AZ: April 11, 2002.

TA–W–51,573 & A; Agilent Technologies, Basic Electronic Systems & Test Unit, Loveland, CO and WBU Order Fulfillment, Loveland, CO: May 26, 2003.

TA–W–51,676; Fishing Vessel (F/V) Eileen J. II, Bethel, AK: April 24, 2002.

TA–W–51,401; SV Microwave Components Group, a div. of HCG

Technologies, Inc., Largo, FL: March 31, 2002.

TA–W–51,462; Woodburn Diamond Die, Inc., Charlevoix, MI: April 4, 2002.

TA–W–51,504; Newport Corp., ISTD Div., Plymouth, MN: April 1, 2002.

TA–W–51,521; EMCO Flow Systems, Longmont, CO: April 16, 2002.

TA–W–50,434; Sanmina-SCI Corp., Watsonville, CA: December 19, 2001.

The following certification has been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–51,712; Fishing Vessel (F/V) Miss Molly, Dillingham, AK: May 6, 2002.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), subchaper D, chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of May 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

None.

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

None.

Affirmative Determinations NAFTA–TAA

None.

I hereby certify that the aforementioned determinations were issued during the month of May 2003. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 19, 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–13811 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,741]

Apone's T-Shirt Cache, Anchorage, AK; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 14, 2003, in response to a petition filed by a company official on behalf of workers at Apone's T-Shirt Cache, Anchorage, Alaska.

All workers were separated from the subject firm more than one year before the date of the petition. Section 223 (b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 16th day of May, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13808 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,167]

Bike Athletic Company, a Division of Russell Corporation, Knoxville, TN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 4, 2002, applicable to workers of Bike Athletic Company, Knoxville, Tennessee. The notice was published in the **Federal Register** on December 23, 2002 (67 FR 78256). The certification was amended January 14, 2003 to include all workers of the subject firm. The notice was published in the **Federal Register** on February 6, 2003 (68 FR 6213).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of (cut fabric) men's and women's athletic team apparel. New information received from the State shows that Bike Athletic Company was purchased by Russell Corporation in February 2003 and became known as Bike Athletic Company, a division of Russell Corporation. Information also shows that workers separated from employment at Bike Athletic Company had their wages reported under a separate unemployment insurance (UI) tax account for Bike Athletic Company, a division of Russell Corporation.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–50,167 is hereby issued as follows:

All workers of Bike Athletic Company, a Division of Russell Corporation, Knoxville, Tennessee who became totally or partially separated from employment on or after November 21, 2001, through December 4, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 13th day of March, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13821 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,976]

Black and Decker, North American Power Tools, Including Leased Workers of Employment Control, Inc., Barrett Business Services, Inc. and Pro-Temps Staffing, Easton, MD; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 10, 2002, applicable to workers of Black and Decker, North American Power Tools, Easton, Maryland engaged in the production of corded power tools. The notice was published in the **Federal Register** on November 5, 2002 (67 FR 67422). The certification was amended on January 8, 2003 by the request of the State agency to include all leased workers of Employment Control, Inc. working at Black and Decker, North American Power Tools, Easton, Maryland. The notice was published in the **Federal Register** on January 15, 2003 (68 FR 2076).

Recently it has come to the Department's attention that the workers are not separately identifiable by product line (corded and cordless power tools).

Also, at the request of the petitioners and the company, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that leased workers of Barrett Business Services, Inc. and Pro-Temps Staffing were employed at Black and Decker, North American Power Tools to produce corded and cordless power tools.

Based on these findings, the Department is amending the certification to include leased workers of Barrett Business Services, Inc. and Pro-Temps Staffing employed at Black and Decker, North American Power Tools, Easton, Maryland.

Therefore, it is the intent of the Department's certification to include all workers of Black and Decker, North American Power Tools and all leased workers engaged in the production of corded and cordless power tools who were adversely affected by increased imports.

The amended notice applicable to TA–W–41,976 is hereby issued as follows:

All workers of Black and Decker, North American Power Tools, Easton, Maryland, and leased workers of Employment Control, Inc., Barrett Business Services, Inc. and Pro-Temps Staffing engaged in employment related to the production of corded and cordless power tools and administrative support workers of Employment Control, Inc. working at Black and Decker, North American Power Tools, Easton, Maryland who became totally or partially separated from employment on or after August 1, 2001, through October 10, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of February, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13819 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,204]

Fisher-Rosemount Systems, Inc., Emerson Process Management, Austin, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the U.S. Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 3, 2002, applicable to workers of Fisher-Rosemount, Austin, Texas. The notice was published in the **Federal Register** on January 11, 2002 (67 FR 1511).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers assemble computer process control systems.

Company information shows that Emerson Process Management is the parent firm of Fisher-Rosemount Systems, Inc. located in Austin, Texas. Workers separations have occurred at Emerson Process Management. Those workers provide support services for the assembly of computer process control systems at Fisher Rosemount Systems's production facilities including the Austin, Texas location of the subject firm.

Accordingly, the Department is amending the certification to include workers of Emerson Process Management, Austin, Texas.

The intent of the Department's certification is to include all workers of Fisher-Rosemount who were adversely affected by increased imports.

The amended notice applicable to TA–W–40,204 is hereby issued as follows:

All workers of Fisher-Rosemount Systems, Inc., Emerson Process Management, Austin, Texas, engaged in employment related to the assembly of computer process control systems, who became totally or partially separated from employment on or after September 28, 2000, through January 3, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC, this 10th day of February, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13817 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,080]

H & L Tool Company, Erie, Pennsylvania; Notice of Revised Determination on Reconsideration

By letter dated April 17, 2003, a company official requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on March 31, 2003, based on the finding that workers of Burelbach Industries, Inc., Rickreal, Oregon did not meet the ''upstream supplier'' group eligibility requirement of section 222(b) of the Trade Act of 1974. The denial notice was published in the **Federal Register** on April 11, 2003 (68 FR 17830).

On review of the request for reconsideration and further review and analysis of the investigation it has become apparent that the major declining customer of the subject firm increased their reliance on imports of like or directly competitive injection molds during the relevant period. The imports accounted for a meaningful

portion of the subject plant's lost sales and production.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at H & L Tool Company, Erie, Pennsylvania, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of H & L Tool Company, Erie, Pennsylvania, who became totally or partially separated from employment on or after March 5, 2002 through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 22nd day of May 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13822 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,727]

Harriet & Henderson Yarns, Inc., Harriet #1 Plant, Henderson, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 9, 2003, in response to a worker petition filed by a company official on behalf of workers at Harriet & Henderson Yarns, Inc., Harriet #1 Plant, Henderson, North Carolina.

The petitioning group of workers is covered by an earlier petition filed on March 10, 2003 (TA–W–51,470), that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed in Washington, DC, this 15th day of May, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13807 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,636]

Hess-Armaclad, Inc., Quincy, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 30, 2003, in response to a worker petition filed by a company official on behalf of workers at Hess-Armaclad, Inc., Quincy, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 14th day of May, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13810 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,615]

Honeywell Airframe Systems, Torrance, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 28, 2003, in response to a worker petition filed by a company official on behalf of workers at Honeywell Airframe Systems, Torrance, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 16th day of May, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13806 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,227]

Jabil Circuit, Inc., Including Leased Workers of Manpower Temporary Services, Meridian, ID; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on December 10, 2002, applicable to workers of applicable to all workers of Jabil Circuit, Inc. located in Meridian, Idaho. The notice was published in the **Federal Register** on December 26, 2002 (67 FR 78817).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the State agency shows that workers leased from Manpower Temporary Services were engaged in the production of printed circuit boards at Jabil Circuit in Meridian, Idaho.

Based on this information, the Department is amending the certification to include leased workers of Manpower Temporary Services engaged in the production of printed circuit boards at the subject firm.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by an increase in imports.

The amended notice applicable to TA–W–42,227 is hereby issued as follows:

All workers of Jabil Circuit, Inc., Meridian, Idaho, and leased workers of Manpower Temporary Services engaged in the production of printed circuit boards at Jabil Circuit, Inc., Meridian, Idaho, who became totally or partially separated from employment on or after September 23, 2001, through December 10, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 6th day of March 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13820 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,581]

Keykert USA, Inc., Webberville, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 24, 2003, in response to a worker petition filed by a company official on behalf of workers at Keykert USA Inc., Webberville, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 16th day of May, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13805 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 13, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 13, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed in Washington, DC, this 19th day of May, 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 05/05/2003 and 05/09/2003.]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
51,677	McKittrick and Assoc., Inc. (Comp)	Charlotte, NC	05/05/2003	04/28/2003
51,678	D and W International, Inc. (Comp)	Charlotte, NC	05/05/2003	04/28/2003
51,679	Progress Lighting Company (IBEW)	Philadelphia, PA	05/05/2003	04/10/2003
51,680	Siemen Information and Communications (FL)	Boca Raton, FL	05/05/2003	04/25/2003
51,681	Sony Ericsson Mobile Communications (Wkrs)	RTP, NC	05/05/2003	05/02/2003
51,682	Little Tikes Commercial (Wkrs)	Farmington, MO	05/05/2003	04/22/2003
51,683	Quadco Industrial Service (OR)	Tigard, OR	05/05/2003	04/29/2003
51,684	Arimon Technologies, Inc. (Comp)	Manitowoc, WI	05/05/2003	05/02/2003
51,685	ABB, Inc. (OR)	The Dalles, OR	05/06/2003	05/06/2003
51,686	Coats North America (Comp)	Toccoa, GA	05/06/2003	05/05/2003
51,687	Oshkosh B'Gosh Corp. (Wkrs)	Oshkosh, WI	05/06/2003	05/05/2003
51,687A	Oshkosh B'Gosh, Inc. (Wrks)	Oshkosh, WI	05/06/2003	05/05/2003
51,687B	Oshkosh B'Gosh, Inc. (Wrks)	Oshkosh, WI	05/06/2003	05/05/2003
51,688	Nortech Systems (Wkrs)	Bemidji, MN	05/06/2003	03/13/2003
51,689	Horace Mann Service Company (Wkrs)	Springfield, IL	05/06/2003	05/05/2003
51,690	Tyson Foods, Inc. (Comp)	Berlin, MD	05/06/2003	05/05/2003
51,691	Coastal Apparel LLC (Comp)	Tabor City, NC	05/06/2003	05/06/2003
51,692	Dana Corporation (Comp)	Pelahatchie, MS	05/06/2003	05/06/2003
51,693	International Comfort Products (IBB)	La Vergne, TN	05/06/2003	04/25/2003
51,694	Component Concepts, Inc. (Comp)	Thomasville, NC	05/06/2003	05/06/2003
51,695	Fishing Vessel (F/V) Vagabond Queen (Comp)	Hoonah, AK	05/06/2003	05/02/2003
51,696	Sanmina-SCI (Comp)	Lewisburg, PA	05/07/2003	05/07/2003
51,697	Lyall Technologies, Inc. (Comp)	Murray, IA	05/07/2003	05/05/2003
51,698	C and B, LLC (Wkrs)	Tennille, GA	05/07/2003	05/07/2003
51,699	Meadwestvaco (GCIU)	Cleveland, TN	05/07/2003	05/07/2003
51,700	Boeing (Wrks)	Salt Lake City, UT	05/07/2003	05/05/2003
51,701	Kelly's Kids (Comp)	Natchez, MS	05/07/2003	04/30/2003
51,702	Marion County Shirt Company (AR)	Springfield, MO	05/07/2003	05/05/2003
51,703	Meadwestvaco (PACE)	Escanab, MI	05/07/2003	04/28/2003
51,704	T. Raymond Forest Products, Inc. (Wkrs)	Lee, ME	05/07/2003	04/23/2003
51,705	Utica Cutlery Co. (Comp)	Utica, NY	05/07/2003	04/28/2003
51,706	Midland Steel Products (Wrks)	Cleveland, OH	05/07/2003	04/30/2003
51,707	Lucent Technologies (Wkrs)	Spokane, WA	05/07/2003	05/06/2003
51,708	Bethlehem Steel Corp. (Wkrs)	Bethlehem, PA	05/07/2003	05/06/2003
51,709	Nitrous Oxide Systems, Inc. (Comp)	Bowling Green, KY	05/07/2003	04/15/2003
51,710	Rayovac Corporation (Comp)	Fennimore, WI	05/07/2003	05/06/2003
51,711	Northern Southwest Alaska (Comp)	Sitka, AK	05/07/2003	05/01/2003

APPENDIX—Continued

[Petitions instituted between 05/05/2003 and 05/09/2003.]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
51,712	Fishing Vessel (F/V) Miss Molly (Comp)	Dillingham, AK	05/07/2003	05/06/2003
51,713	Markwins Beauty Products (UFCW)	Brooklyn, NY	05/08/2003	04/10/2003
51,714	A&M Thermometer Corp. (Comp)	Asheville, NC	05/08/2003	05/07/2003
51,715	Johnson Hosiery Mills, Inc. (Comp)	Hickory, NC	05/08/2003	05/02/2003
51,716	FCI Automotive (Comp)	Brecksville, OH	05/08/2003	04/27/2003
51,717	Sandvik Materials Technology (Comp)	Scranton, PA	05/08/2003	05/07/2003
51,718	LeCroy (OR)	Beaverton, OR	05/08/2003	05/07/2003
51,719	Farmer's Insurance (Wkrs)	Los Angeles, CA	05/08/2003	05/07/2003
51,720	Kidder, Inc. (Wkrs)	Agawam, MA	05/08/2003	04/22/2003
51,721	Fishing Vessel (F/V) Towego (Wkrs)	Ketchikan, AK	05/08/2003	05/05/2003
51,722	Fishing Vessel (F/V) Lisa III (Comp)	Aleknagik, AK	05/08/2003	05/06/2003
51,723	F/V Sylvia Star (Comp)	Kodiak, AK	05/08/2003	05/01/2003
51,724	Moonlight Harbor Fisheries (Comp)	Kodiak, AK	05/08/2003	04/24/2003
51,725	Fishing Vessel (F/V) Glacier Point (Comp)	Haines, AK	05/08/2003	05/01/2003
51,726	Columbia Falls Aluminum Co. (AWTC)	Columbia Falls, MT	05/09/2003	05/08/2003
51,727	Harriet and Henderson Yarns, Inc. (Comp)	Henderson, NC	05/09/2003	03/10/2003
51,728	Inland Paperboard and Packaging Inc. (Comp)	Elizabethton, TN	05/09/2003	05/08/2003
51,729	Fun-Tees, Inc. (Comp)	Concord, NC	05/09/2003	05/06/2003
51,730	Bethlehem Lukens Plate (USWA)	Coatesville, PA	05/09/2003	05/07/2003
51,731	Fishing Vessel (F/V) Verna-C (Comp)	Sitka, AK	05/09/2003	05/08/2003

[FR Doc. 03–13803 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,327]

MeadWestvaco, Including Leased Workers of Bancroft Contracting, Denali Fire Protection, WF Porter, Mechanical Services, Cinbro Contracting, Es Boulos, CP Technologies, Arbon Equipment and Siemens Business Systems, Rumford, ME; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 21, 2002, applicable to workers of MeadWestvaco, Rumford, Maine. The notice was published in the **Federal Register** on July 9, 2002 (67 FR 45544). The certification was amended on July 9, 2002 to include leased workers of the above-mentioned firms employed at the Rumford, Maine location of the subject firm.

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information shows that some employees of MeadWestvaco were leased from Siemens Business Systems to produce coated groundwood paper, freesheet paper and market pulp at the Rumford, Maine location of the subject firm.

Based on these findings, the Department is again amending the certification to include leased workers of Siemens Business Systems producing coated groundwood paper and freesheet paper and market pulp at the Rumford, Maine location of the subject firm.

The intent of the Department's certification is to include all workers of MeadWestvaco adversely affected by imports.

The amended notice applicable to TA–W–41,327 is hereby issued as follows:

All workers of MeadWestvaco, Rumford, Maine, and leased workers of Bancroft Contracting, Denali Fire Protection, WF Porter, Mechanical Services, Cinbro Contracting, ES Boulos, CP Technologies, Arbon Equipment and Siemens Business Systems, Rumford, Maine, engaged in employment related to the production of coated groundwood and freesheet paper and market pulp at MeadWestvaco, Rumford, Maine, who became totally or partially separated from employment on or after March 22, 2001, through June 21, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 11th day of February, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13818 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,218]

Oregon Screw Machine Products, Inc., Portland, OR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 19, 2003, in response to a worker petition filed on behalf of workers at Oregon Screw Machine Products, Inc., Portland, Oregon.

The company has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 16th day of May, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13804 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,361]

P.C. Cutting & Apparel, Hialeah, FL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 10, 2003, in response to a petition filed on behalf of workers

at P.C. Cutting & Apparel, Hialeah, Florida.

The petition regarding the investigation has been deemed invalid. The three petitioners are in separately identifiable worker groups within the departments at the subject firm. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 16th day of May, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13809 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,279]

Sterling Diagnostic Imaging, Inc., Currently Known as AGFA, Including Workers of EDS, Brevard, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 22, 2002, applicable to workers of Sterling Diagnostic Imaging, Inc., Brevard, North Carolina. The notice was published in the **Federal Register** on April 21, 2000 (65 FR 21472).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers produce medical X-ray film and the polyester based chemicals used in its manufacture. Sterling Diagnostic Imaging, Inc. was purchased by Agfa Corporation in May 1999. New information shows that some employees of EDS, Charlotte, North Carolina, working at Sterling Diagnostic Imaging, Inc., Brevard, North Carolina were separated from employment.

The intent of the Department's certification is to provide coverage to all workers at the firm adversely affected by increased imports of x-ray film and chemicals. Therefore, the Department is amending the certification to include employees of EDS engaged in employment related to the production of x-ray film and chemicals at Sterling Diagnostic Imaging, Inc., currently known as Agfa Corporation, Brevard, North Carolina.

The amended notice applicable to TA–W–37,279 is hereby issued as follows:

All workers of Sterling Diagnostic Imaging, Inc., currently known as Agfa Corporation, Brevard, North Carolina, and workers of EDS engaged in employment related to the production of x-ray film and chemicals at Sterling Diagnostic Imaging, Inc., currently known as Agfa Corporation, Brevard, North Carolina, who became totally or partially separated from employment on or after January 6, 1999 through March 22, 2002, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 13th day of February, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13815 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,592 and TA–W–39,592A]

Viceroy Gold, Castle Mountain Mine, Searchlight, NV and Viceroy Gold, Castle Mountain Mine, Ivanpah, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 7, 2002, applicable to workers of Viceroy Gold Corporation, Castle Mountain Mine, Searchlight, Nevada. The notice was published in the **Federal Register** on August 23, 2001 (66 FR 44378). The certification was amended on April 23, 2002, to include workers of MK Gold Company, Searchlight, Nevada, engaged in employment related to the production of gold and silver doré at the Castle Mountain mine.

At the request of a company official, the Department reviewed the certification for workers of the subject firm. Information contained in the record and noted in the decision document shows that the mine expands into San Bernardino County, California. The company reports that workers of the mine in California, specifically Ivanpah, are being separated from employment.

It is the Department's intent to include all workers of Viceroy Gold Corporation, Castle Mountain Mine, affected by increased imports of gold and silver in doré bar form. Accordingly, the Department is amending the certification to include all workers of Viceroy Gold Corporation, Castle Mountain Mine, Ivanpah, California.

The amended notice applicable to TA–W–39,592 is hereby issued as follows:

All workers of Viceroy Gold Corporation, Castle Mountain Mine, Searchlight, Nevada, and workers of MK Gold Company engaged in employment related to the production of gold and silver in doré bar form at Viceroy Gold Corporation, Castle Mountain Mine, Searchlight, Nevada (TA–W–39,592); and all workers of Viceroy Gold Corporation, Castle Mountain Mine, Ivanpah, California (TA–W–39,592A), who became totally or partially separated from employment on or after June 20, 2000, through August 7, 2003, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 27th day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13816 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act; Indian and Native American Programs under Section 166 Notice of Reestablishment of Native American Employment and Training Council

In accordance with the provisions of the Federal Advisory Committee Act, the Secretary of Labor has determined that the reestablishment of the Native American Employment and Training Council is in the public interest consistent with the requirements of title I, section 166(h)(4) of the Workforce Investment Act (WIA).

The Council will provide advice to the Secretary of Labor regarding the overall operation and administration of the Native American employment and training programs authorized under WIA title I, section 166, as well as the implementation of other programs providing services to Native American youth and adults under this Act. The Secretary and the Assistant Secretary of Labor for Employment and Training view the Council as the primary vehicle to accomplish the Department's commitment to work closely with the Indian and Native American community on employment and training issues.

The Council shall be composed of approximately 21 members representing Indians, Alaska Natives, and Native Hawaiians. These members shall be

appointed by the Secretary from among individuals nominated by Indian tribes or Indian, Alaska Native, or Native Hawaiian organizations. An equitable geographic distribution will be sought, including representation of both tribes and non-tribal Native American organizations. Council members shall not be compensated and shall not be deemed to be employees of the United States.

The Council shall function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act 15 days from the date of this publication.

Interested persons are invited to submit comments regarding the renewal of the Native American Employment and Training Council. Such comments should be addressed to: Mr. James C. DeLuca, Chief, Division of Indian and Native American Programs, U.S. Department of Labor, Employment and Training Administration, Room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210. The voice telephone number is (202) 693–3754 (this is not a toll-free number). Mr. DeLuca's E-Mail address is: *DeLuca.James@dol.gov*. DINAP's fax number is (202) 693–3818.

Signed in Washington, DC, this 22nd day of May, 2003.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 03–13802 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7590]

Jabil Circuit, Inc., Including Leased Workers of Manpower Temporary Services, Meridian, ID; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA-Transitional Adjustment Assistance on December 10, 2002, applicable to all workers of Jabil Circuit, Inc. located in Meridian, Idaho. The notice was published in the **Federal Register** on December 26, 2002 (67 FR 78817).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the State agency shows that workers leased from Manpower Temporary Services were engaged in the production of printed circuit boards at Jabil Circuit in Meridian, Idaho.

Based on this information, the Department is amending the certification to include leased workers of Manpower Temporary Services engaged in the production of printed circuit boards at the subject firm.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by the shift in production of printed circuit boards to Mexico.

The amended notice applicable to NAFTA–7590 is hereby issued as follows:

''All workers of Jabil Circuit, Inc., Meridian, Idaho, and leased workers of Manpower Temporary Services engaged in the production of printed circuit boards at Jabil Circuit, Inc., Meridian, Idaho, who became totally or partially separated from employment on or after September 23, 2001, through December 10, 2004, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.''

Signed at Washington, DC, this 6th day of March, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–13813 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Canyon Fuel Company, LLC

[Docket No. M–2003–032–C]

Canyon Fuel Company, LLC, HC 35 Box 380, Helper, Utah 84526 has filed a petition to modify the application of 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility) to its Skyline Mine No. 3 (MSHA I.D. No. 42–01566) located in Carbon County, Utah. The petitioner requests a modification of the standard to permit the use of low voltage or battery powered non-permissible electronic testing and diagnostic equipment within 150 feet of pillar workings under controlled conditions. The petitioner requests a modification of the existing standard to permit the following non-permissible equipment to be used within 150 feet from pillar workings (longwall gob): laptop computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices, insulation testers (meggers), voltage, current and power measurement devices and recorders, pressure and flow measurement devices, signal analyzer device, ultrasonic thickness gauges, electronic component testers, and electronic tachometers, other testing and diagnostic equipment that may be approved by the MSHA District Office. The petitioner states that non-permissible electronic testing and diagnostic equipment shall only be used when equivalent permissible equipment does not exist. The petitioner further states that a qualified person shall continuously monitor for methane immediately before and during the use of non-permissible electronic test and diagnostic equipment in or inby the last open crosscut as defined in existing standard 30 CFR 75.151. The petitioner has listed in this petition for modification specific procedures that would be followed when using this equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. R & D Coal Company

[Docket No. M–2003–033–C]

R & D Coal Company, 214 Vaux Avenue, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1002 now 75.1002 (Installation of electric equipment and conductors; permissibility) to its Buck Mountain Slope (MSHA I.D. No. 36–02053) located in Schuylkill County, Pennsylvania. The petitioner requests a modification in the application of the existing standard to then permit the use of non-permissible electric equipment within 150 feet of the pillar line. The petitioner states that the non-permissible equipment would include drags and battery locomotives due in part to the method of mining used in pitching anthracite mines and the alternative evaluation of the mine air quality for methane on an hourly basis during operation. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Consol Pennsylvania Coal Company

[Docket No. M–2003–034–C]

Consol Pennsylvania Coal Company, 1800 Washington Road, Pittsburgh,

Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35 (Portable (trailing) cables and cords) to its Bailey Mine (MSHA I.D. No. 36–07230) located in Greene County, Pennsylvania. The petitioner proposes to increase the maximum length of trailing cables supplying power to continuous mining machines to 950 feet and other section equipment to 900 feet during longwall panel development. The petitioner states that this alternative method will only apply to trailing cables supplying three-phase, 950-volt power to continuous mining machines and trailing cables supplying three-phase, 480-volt power to loading machines, shuttle cars, roof bolters, and section ventilation fans. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Jim Walter Resources, Inc.

[Docket No. M–2003–035–C]

Jim Walter Resources, Inc., P.O. Box 133, Brookwood, Alabama 35444 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) to its No. 7 Mine (MSHA I.D. No. 01–01401) located in Tuscaloosa County, Alabama. The petitioner proposes to extend the length of the cable not to exceed 1200 feet for continuous mining machines, loading machines, roof bolting machines, shuttle cars, and section auxiliary ventilation fans during longwall panel development conditioned upon the specific terms and conditions listed in this petition for modification. The petitioner states that it proposed alternative method would apply only to trailing cables that supply 2400-volt, three-phase, alternating current to continuous mining machines, and that all miners will receive training prior to implementation of this proposed alternative method. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. I O Coal Company, Inc.

[Docket No. M–2003–036–C]

I O Coal Company, Inc., 430 Harper Park Dr., Suite A, Beckley, West Virginia 25801 has filed a petition to modify the application of 30 CFR 75.503 (503 (Permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (Plug and receptacle-type connectors) to its Europa Mine (MSHA I.D. No. 46–08798) located in Boone County, West Virginia. The petitioner proposes to replace a padlock on battery plug connectors on mobile battery-powered machines with a threaded ring and a spring-loaded locking device to prevent the plug connector from accidentally disengaging while under load. The petitioner asserts that the application of the existing standard will result in a diminution of safety to the miners.

6. Consolidation Coal Company

[Docket No. M–2003–037–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (Non-permissible diesel-powered equipment; design and performance requirements) to its Emery Mine (MSHA I.D. No. 42–00079) located in Emery County, Utah. The petitioner requests a modification of the existing standard to permit the use of a diesel grader without individual service brakes on all of the grader wheels. The petitioner proposes to equip the Grader with: (i) Service brakes on each of the Drive Wheels; (ii) stationary emergency brakes; and (iii) brakes on the Directional Wheels. The petitioner states that the tramming speed of the Grader will be restricted to 10 miles per hour, the grader operators will be trained to check brake function during pre-operational checks, and to lower the Grader blade to the ground as an additional braking mechanism. The petitioner further states that grader operators will receive task training and annual refresher training on the provisions of its alternative method. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

7. FMC Corporation

[Docket No. M–2003–001–M]

FMC Corporation, Box 872, Green River, Wyoming 82935 has filed a petition to modify the application of 30 CFR 57.22305 (Approved equipment (III Mines)) to its FMC Trona Mine (MSHA I.D. No. 48–00152) located in Sweetwater County, Wyoming. The petitioner requests a modification of the existing standard to permit the use of a portable Leica DISTO laser distance meter inby the last open break. The petitioner states that this equipment has minimal output power that is considerably less than the 12-watt threshold for intrinsically safe electrical equipment. The petitioner has listed specific terms and conditions in this petition for modification that would be followed when using this equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov,* or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before July 3, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 28th day of May 2003.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 03–13760 Filed 6–2–03; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–055)]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: James McGroary, Patent Counsel, Marshall Space Flight Center, Code LS01, Huntsville, AL 35812; telephone (256) 544–0013; fax (256) 544–0258.

NASA Case No. MFS–31408–1–CIP: Photon Momentum Transfer Plane For Asteroid, Meteoroid, And Comet Orbit Shaping;

NASA Case No. MFS–31559–1–DIV: Phase/Matrix Transformation Weld Process And Apparatus;

NASA Case No. MFS–31689–1: Axisymmetric, Throttleable Non-Gimballed Rocket Engine;

NASA Case No. MFS–31707–1: Entertainment And Pacification System For Car Seat;

NASA Case No. MFS–31708–1: Video Monitoring System For Car Seat;

NASA Case No. MFS–31714–1: Health Monitoring System For Car Seat;

NASA Case No. MFS–31780–1: Radio Frequency Trap For Containment Of Plasmas In Antimatter Propulsion Systems Using Rotating Wall Electric Fields.

Dated: May 28, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–13906 Filed 6–2–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–056)]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Linda Blackburn, Patent Counsel, NASA Langley Research Center, Mail Code 212, Hampton, VA 23681–2199; telephone (757) 864–9260, fax (757) 864–9190.

NASA Case No. LAR–16289–1: Electro-Active Transducer Using Radial Electric Field To Produce/Sense Out-of-Plane Transducer Motion;

NASA Case No. LAR–16363–1: Electro-Active Device Using Radial Electric Field Piezo-Diaphragm For Control Of Fluid Movement;

NASA Case No. LAR–16390–1–SB: Ruthenium Stabilization For Improved Oxidation/Reduction Catalyst Systems;

NASA Case No. LAR–16393–1: Electro-Active Device Using Radial Electric Field Piezo-Diaphragm For Sonic Applications.

Dated: May 28, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–13907 Filed 6–2–03; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–057)]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The invention listed below is assigned to the National Aeronautics and Space Administration, has been filed in the United States Patent and Trademark Office, and is available for licensing.

DATES: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Randy Heald, Patent Counsel, Kennedy Space Center, Mail Code CC–A, Kennedy Space Flight Center, FL 32899; telephone (321) 867–7214, fax (321) 867–1817.

NASA Case No. KSC–11937–2: Communication System With Adaptive Noise Suppression.

Dated: May 28, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–13908 Filed 6–2–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–058)]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Edward Fein, Patent Counsel, Johnson Space Center, Mail Code HA, Houston, TX 77058–3696, telephone (281) 483–4871; fax (281) 244–8452.

NASA Case No. MSC–23444–1: Motion Sickness Treatment Apparatus And Method;

NASA Case No. MSC–23449–1: System For The Diagnosis And Monitoring Of Coronary Artery Disease, Acute Coronary Syndromes, Cardiomyopathy And Other Cardiac Conditions;

NASA Case No. MSC–23472–1: Heat Treatment Of Friction Stir Welded 7050 Aluminum Plate.

Dated: May 28, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–13909 Filed 6–2–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–059)]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The invention listed below is assigned to the National Aeronautics and Space Administration, has been filed in the United States Patent and Trademark Office, and is available for licensing.

DATES: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Diana Cox, Patent Counsel, Goddard Space Flight Center, Mail Code 503, Greenbelt, MD 20771; telephone (301) 286–7351; fax (301) 286–9502.

NASA Case No. GSC–14393–1: Light Weight Optical Mirrors Formed In Single Crystal Substrate.

Dated: May 28, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–13910 Filed 6–2–03; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–060)]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The invention listed below is assigned to the National Aeronautics and Space Administration, has been filed in the United States Patent and Trademark Office, and is available for licensing.

DATES: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Rob Padilla, Patent Counsel, Ames Research Center, Mail Code 202A–4, Moffett Field, CA 94035–1000; telephone (650) 604–5104, fax (650) 604–2767.

NASA Case No. ARC–15042–1: Carbon Nanotube Interconnect.

Dated: May 28, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–13911 Filed 6–2–03; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–061)]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Counsel, Glenn Research Center at Lewis Field, Mail Code 500–118, Cleveland, OH 44135; telephone (216) 433–8855, fax (216) 433–6790.

NASA Case No. LEW–17129–1: Improved Non-Contacting Finger Seal;

NASA Case No. LEW–17175–1: High Speed Electromechanical Shutter For Imaging Spectrographs;

NASA Case No. LEW–17187–1: Method For Growth Of Bulk Crystals By Vapor Phase Epitaxy;

NASA Case No. LEW–17293–1: System For Controlling A Magnetically Levitated Rotor;

NASA Case No. LEW–17300–1: Method For Fabrication Of Improved Gas Sensors Using SiC Semiconductors.

Dated: May 28, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–13912 Filed 6–2–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collections described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before July 3, 2003, to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Brooke Dickson, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for these information collections on January 16, 2003 (68 FR 2368). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (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 the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: National Archives and Records Administration Class Evaluation Form.

OMB number: 3095–0023.

Agency form number: NA Form 2019.

Type of review: Regular.

Affected public: Individuals or households, business or other for-profit, nonprofit organizations and institutions, Federal, state, local, or tribal government agencies.

Estimated number of respondents: 4,340.

Estimated time per response: 5 minutes.

Frequency of response: On occasion (when respondent takes NARA sponsored training classes).

Estimated total annual burden hours: 362 hours.

Abstract: The information collection allows uniform measurement of customer satisfaction with NARA training. NARA makes the approved form available to the course coordinators as a Word template for customization of selected elements, shown as shaded areas on the form submitted for clearance.

Dated: May 28, 2003.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 03–13796 Filed 6–2–03; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

Amergen Energy Company, LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of AmerGen Energy Company, LLC (the licensee), to withdraw its August 14, 2001, application, as supplemented September 11, 2002, for a proposed amendment to Facility Operating License No. DPR–50 for the Three Mile Island Nuclear Station, Unit 1, located in Dauphin County, Pennsylvania.

The proposed amendment would have revised the Technical Specifications to eliminate the requirements associated with the independent onsite safety review group.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 5, 2002, (67 FR 10009). However, by letter dated April 30, 2003, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 14, 2001, as supplemented September 11, 2002, and the licensee's letter dated April 30, 2003, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 28th day of May 2003.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–13867 Filed 6–2–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 and 50–323]

Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2); Order Approving Transfer of Licenses and Conforming Amendments

Pacific Gas and Electric Company (PG&E or the licensee) is the holder of Facility Operating Licenses Nos. DPR–80 and DPR–82, which authorize the operation of the Diablo Canyon Nuclear Power Plant, Units 1 and 2 (DCNPP or the facility) at steady-state power levels not in excess of 3411 megawatts thermal. The facility is located at the licensee's site in San Luis Obispo County, California. The licenses authorize PG&E to possess, use, and operate the facility.

Under cover of a letter dated November 30, 2001, PG&E submitted an application requesting approval of the transfer of Facility Operating Licenses Nos. DPR–80 and DPR–82 for DCNPP from PG&E to Electric Generation LLC and Diablo Canyon LLC. The licensee also requested approval of conforming license amendments to reflect the transfer. The application was supplemented by submittals dated January 18 and May 1, 2002, collectively referred to as the ''application'' herein unless otherwise indicated.

Diablo Canyon LLC, a California limited liability company, is a wholly-owned subsidiary of Electric Generation LLC, also a California limited liability company. Electric Generation LLC is an indirect wholly-owned subsidiary of PG&E Corporation, the current parent of the licensee. According to the application, Diablo Canyon LLC will become the owner of the facility, while Electric Generation LLC will operate and maintain DCNPP under the terms of a lease that will make Electric Generation LLC responsible for all costs of operation. Diablo Canyon LLC will be responsible for providing decommissioning funding assurance for DCNPP. With respect to authority to possess, use, and operate the facility, the conforming license amendments would remove references to PG&E from the licenses and add references to Electric Generation LLC and Diablo Canyon LLC, as appropriate, and make other administrative changes to reflect the proposed transfer. The application also proposed certain changes to the antitrust conditions attached to the licenses, which are discussed in more detail below.

PG&E requested approval of the transfer of the licenses and conforming license amendments pursuant to 10 CFR 50.80 and 50.90. Notice of the request for approval and an opportunity to request a hearing or submit written comments was published in the **Federal Register** on January 17, 2002 (67 FR 2455). The Commission received petitions to intervene and requests for hearing from the following: the Northern California Power Agency (NCPA); the Official Committee of Unsecured Creditors of Pacific Gas and Electric Company (Committee); the California Public Utilities Commission (CPUC); the Transmission Agency of Northern California, M–S–R Public Power Agency, Modesto Irrigation District, the California Cities of Santa Clara, Redding, and Palo Alto, and the Trinity Public Utility District, in a joint filing (collectively, TANC); and the County of San Luis Obispo (County). In a Memorandum and Order, dated June 25, 2002 (CLI–02–16), the Commission denied several of the petitioners' requests for intervention and referred the petitions of the County and CPUC to the NRC staff as comments for appropriate consideration. On February 14, 2003, the Commission denied the remaining petitioners' requests for hearing and terminated the proceeding. Pacific Gas and Elec. Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI–03–02, 57 NRC 19 (2003).

In CLI–03–02, the Commission addressed, among other things, the changes proposed in the application to the antitrust conditions appended to the licenses, which PG&E assumed would be carried forward if the licenses were transferred. These proposed changes would have retained PG&E as a licensee in the antitrust conditions, would have added a new transmission company (ETrans LLC) to the antitrust conditions, and would have added Electric Generation LLC (but not Diablo Canyon LLC) to the conditions, for the purpose of implementing the conditions. The Commission ruled that if the proposed license transfers are approved, the antitrust license conditions should not be included in (*i.e.*, not remain part of) the transferred licenses. 57 NRC at 36. Accordingly, the conforming license amendments approved by this Order reflect the Commission's ruling in this regard.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. After reviewing the information submitted in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Electric Generation LLC and Diablo Canyon LLC are qualified to be the holders of the licenses to the extent proposed in the application, and that the transfer of the licenses to Electric Generation LLC and Diablo Canyon LLC is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments that reflect the transfer of authority to possess, use, and operate the facility and the transfer of authority concerning the receipt, possession, or use of nuclear material from PG&E to Electric Generation LLC and Diablo Canyon LLC complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments concerning the possession, use, and operation of the facility and concerning the receipt, possession, or use of nuclear material can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments concerning the possession, use, and operation of the facility and concerning the receipt, possession, or use of nuclear material will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed license amendments concerning the possession, use, and operation of the facility and concerning the receipt, possession, or use of nuclear material will be in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied. The findings set forth above

are supported by the NRC staff's safety evaluation dated May 27, 2003.

Accordingly, pursuant to sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It is hereby ordered* that the transfer of the licenses as described herein to Electric Generation LLC and Diablo Canyon LLC is approved, subject to the following conditions:

(1) Before the completion of the transfer of DCNPP, Electric Generation LLC and Diablo Canyon LLC shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that Electric Generation LLC and Diablo Canyon LLC have obtained the appropriate amount of insurance required of licensees under 10 CFR part 140 of the Commission's regulations.

(2) Prior to the closing of the license transfers, all necessary regulatory and/or judicial approvals of the bilateral power sales agreement (PSA) referenced in Enclosure 7 to the November 30, 2001, submittal must be obtained without any material changes to the PSA that would adversely impact the five-year financial projections proffered in the application such that indicated sources of funds would not be sufficient to cover projected costs of operation of the facility.

(3) On the closing date of the transfer of DCNPP, Diablo Canyon LLC shall obtain from PG&E all of the accumulated decommissioning trust funds associated with the facility, and ensure the deposit of the funds into a decommissioning trust(s) for DCNPP established by Diablo Canyon LLC. The amount of the funds must meet or exceed the minimum amount required for the facility pursuant to 10 CFR 50.75. In the event that the transfer of DCNPP occurs prior to December 24, 2003, the decommissioning trust agreement(s) shall be consistent with the provisions contained in 10 CFR 50.75(h)(1) (67 FR 78350, published December 24, 2002), as if such provisions are in effect at the time of transfer. Notwithstanding the date of the transfer, the decommissioning trust agreement(s) must be acceptable to the NRC.

(4) Diablo Canyon LLC shall take all necessary steps to ensure that the decommissioning trust(s) is maintained in accordance with the application and the requirements of this Order, and consistent with the safety evaluation supporting this Order.

(5) Notwithstanding the transfer of ownership of DCNPP to Diablo Canyon LLC, Electric Generation LLC shall at all times following the transfer of the DCNPP licenses to Diablo Canyon LLC and Electric Generation LLC be fully responsible for all costs associated with the possession, use, operation, maintenance, and decommissioning of DCNPP (including costs associated with the receipt, possession, and use of byproduct, source, and special nuclear material), except for decommissioning costs covered by the decommissioning trust funds transferred to Diablo Canyon LLC at the time of the license transfers. Diablo Canyon LLC shall be responsible for the payment of decommissioning costs for DCNPP at least to the extent of the accumulated decommissioning trust funds transferred to Diablo Canyon LLC and earnings associated with such funds.

(6) Electric Generation LLC shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Electric Generation LLC to its direct or indirect parent, or to any other affiliated company, facilities for the production of electric energy having a depreciated book value exceeding ten percent (10%) of Electric Generation LLC's consolidated net utility plant, as recorded on Electric Generation LLC's books of account.

(7) After receipt of all required regulatory and judicial approvals of the transfer of DCNPP, PG&E shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt within 5 business days, and of the closing date of the transfer of DCNPP no later than 7 business days prior to the date of closing. If the transfer of the licenses is not completed by May 31, 2004, this Order shall become null and void, provided, however, on written application and for good cause shown, this date may be extended in writing.

It is further ordered that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the licenses to reflect the subject license transfers are approved. The amendments shall be issued and made effective at the time the proposed license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated November 30, 2001, and supplements thereto dated January 18 and May 1, 2002, and the safety evaluation dated May 27, 2003, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and are accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland, this 27th day of May 2003.

For the Nuclear Regulatory Commission.

R. William Borchardt,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 03–13866 Filed 6–2–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Intent To Prepare an Environmental Impact Statement for the License Renewal of Nuclear Power Plants and To Conduct Scoping Process

In 1996 and 1999, the Commission amended its environmental protection regulations in 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' to improve the efficiency of the environmental review process for applicants seeking to renew a nuclear power plant operating license for up to an additional 20 years. The final rules were published in the **Federal Register** on December 18, 1996 (61 FR 66546), and September 3, 1999 (64 FR 48507). The amendments are based on the analyses reported in NUREG–1437, ''Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants'' (May 1996) and its Addendum 1 (August 1999).

The GEIS, prepared by the U.S. Nuclear Regulatory Commission (NRC) staff and its contractors, summarizes the findings of a systematic inquiry into the environmental impacts of refurbishment activities associated with license renewal and the environmental impacts of continued operation during the renewal period (up to 20 years for each licensing action). The significance of environmental impacts were analyzed for each of nearly 100 issues. Thereafter, the NRC categorized which of these analyses could be applied to all plants and whether additional mitigation measures would be warranted for each environmental issue. Of the 92 issues analyzed, 69 issues were resolved generically, 21 require a further site-specific analysis that applicants are required to address, and 2 require a site-specific assessment by the NRC. As part of its application to renew its operating license, an applicant submits a supplemental Environmental Report

and the NRC staff develops a site-specific supplement to the GEIS and includes a recommendation for each license renewal application. The environmental protection regulations for any NRC licensing action is contained in 10 CFR Part 51 and may be viewed on the Internet at *http://www.nrc.gov/reading-rm/doc-collections/cfr/part051/index.html.* The license renewal process also includes a safety review and inspections prior to issuance of a renewed license.

In the introductory remarks to Appendix B to Subpart A of Part 51, ''Environmental Effects of Renewing the Operating License of a Nuclear Power Plant,'' the Commission stated that, on a 10-year cycle, it intends to review the material in Table B–1 and update it, if necessary. The first 10-year cycle will end in 2006; the goal of the NRC staff is to complete this GEIS Update Project by the end of 2006.

The purpose of this notice is to inform the public that the NRC is planning to prepare an environmental impact statement (EIS), in this case it is an update to the GEIS, and to provide the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29. This step is the initial opportunity for stakeholder participation in the GEIS update and it occurs before the NRC has determined results or recommendations for the update. The environmental review process for license renewal will continue under the current regulatory framework throughout the course of this effort. If, as a result of this scoping process, it is determined that an update is not necessary, then that result will be published in the **Federal Register** as well.

The GEIS and Addendum 1 to the GEIS were prepared pursuant to 10 CFR part 51 and are available for public inspection at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html,* which provides access through the NRC's Public Electronic Reading Room (PERR) link. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *PDR@NRC.GOV.* The GEIS, its Addendum 1, and its Supplements may also be viewed on the Internet at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1437/.* As indicated, the NRC prepares site-specific supplements to the GEIS for each license renewal application assessing the environmental impacts specific to that power plant location; these reports may be useful to scoping participants to understand the environmental review process and the environmental issues associated with the review for license renewal. The Supplements to the GEIS can also be viewed on the Internet in the context for each project and are listed by project at: *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html.* The update of the GEIS is a generic activity and, therefore, is not the appropriate forum to consider site-specific issues or concerns.

This notice is being published in accordance with the National Environmental Policy Act (NEPA) and the NRC's regulations found in 10 CFR part 51. As a convenience, the NRC will also issue other communications (for example, press releases and newspaper ads) to notify the public, but this notice is the formal means to inform interested parties of their opportunity to participate in the scoping process.

In keeping with the framework outlined under NEPA, the NRC will first conduct this scoping process for the update to the GEIS and, thereafter, plans to prepare a draft addendum to the GEIS for public comment outlining the results of the NRC review. Participation in the scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the addendum to the GEIS will be used to accomplish the following:

a. Determine whether the purpose and need for the update (the proposed action) is clear.

b. Determine the scope of the addendum to the GEIS and identify whether there are any significant issues that should be analyzed in depth.

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant or which have been covered by prior environmental review.

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to, but are not part of the scope of the addendum to the GEIS being considered.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the addendum to the GEIS to the NRC and any cooperating agencies.

h. Describe how the addendum to the GEIS will be prepared including any contractor assistance to be used.

The NRC invites the following entities to participate in the scoping process:

a. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

b. Any affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

c. Any affected Indian tribe.

d. Any person who requests or has requested an opportunity to participate in the scoping process.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has determined that it is appropriate to conduct public meetings on the GEIS update early in the project to foster public participation. Since this is a generic environmental review activity, the NRC has elected to hold a public meeting in each of the four (4) NRC regions for the GEIS Update Project. The scoping meetings will be held at the following locations: July 8, 2003, DoubleTree-Atlanta Perimeter, 6120 Peachtree Dunwoody Road, Atlanta, GA 30328; July 10, 2003, Hilton-Oak Lawn, 9333 South Cicero Avenue, Oak Lawn, IL 60453; July 15, 2003, Hilton-Anaheim, 777 Convention Way, Anaheim, CA 92802; and July 17, 2003, Executive Conference Center at Bayside (adjacent to the DoubleTree-Bayside), 200 Mount Vernon Street, Boston, MA 02125. Each formal meeting will convene promptly at 7 p.m. with an NRC overview of the role of the GEIS in the license renewal process, the experience gained in its use, and criteria that may be used to consider changes. Each meeting is planned to last for three hours, as necessary, or until all members of the public have had an opportunity to present their views; therefore, the formal meeting may end prior to 10 p.m. Each meeting will be transcribed and will include (1) the overview by the NRC staff of the NEPA environmental review process, the proposed scope of the addendum to the

GEIS, and the proposed schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the addendum to the GEIS. A participant may elect to submit a detailed written statement for the record and provide a brief oral summary. In addition to the formal meeting, the NRC staff will host informal discussions for members of the public one hour before the start of the session at each location; general information on the NRC and related NRC programs will be available for meeting participants as supplies permit. No formal comments on the proposed scope of the addendum to the GEIS will be accepted during the informal discussions. To be considered in the scoping process, comments must be provided either at the transcribed public meetings or in writing, as discussed below.

Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting Mr. Barry Zalcman, by telephone at 1–800–368–5642, extension 2419, or by e-mail to the NRC at *LRGEISUpdate@NRC.GOV* no later than June 30, 2003. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, and at the discretion of the meeting facilitator, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the addendum to the GEIS. Mr. Zalcman will need to be contacted no later than June 30, 2003, if special equipment or accommodations are needed to attend or present information at the public meeting, so that the NRC staff can determine whether the request can be accommodated.

Members of the public, whether or not they participate in the public meetings, may send written comments on the environmental scope of the GEIS Update Project to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6 D 59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be delivered to Room T–6 D 59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. during Federal workdays. To be considered in the scoping process, written comments should be postmarked by September 2, 2003. Electronic comments may be sent by e-mail to the NRC at *LRGEISUpdate@nrc.gov.* Electronic submissions should be sent no later than September 2, 2003, to be considered timely in the scoping process. Comments will be available electronically and accessible through the NRC's PERR link at *http://www.nrc.gov/reading-rm/adams.html.*

At the conclusion of the scoping process, the NRC will prepare a summary of the determinations and conclusions reached, including the significant issues identified, and will send a copy of the summary to participants in the scoping process. The summary will also be available for inspection at the NRC PDR or through the PERR link. If necessary, the staff will then prepare and issue for comment the draft addendum to the GEIS, which will be the subject of a separate **Federal Register** notice, to report the results of the NRC's review. At this time, the NRC plans to conduct separate public meetings, at similar locations as the public scoping meetings, on the draft addendum to the GEIS. Copies of the draft addendum to the GEIS will be available for public inspection at the above-mentioned address, and one copy per request will be provided free of charge. After receipt and consideration of the comments on the draft, the NRC will prepare a final addendum to the GEIS, which will also be available for public inspection. Should the review indicate that one or more environmental issues enumerated in Appendix B to Subpart A of Part 51, ''Environmental Effects of Renewing the Operating License of a Nuclear Power Plant,'' requires change, then the proposed and final rule amendments will accompany the draft and final addendum to the GEIS.

Information about the proposed action, the addendum to the GEIS, and the scoping process may be obtained from Mr. Zalcman at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 27th day of May 2003.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–13868 Filed 6–2–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Notice

AGENCY: Nuclear Regulatory Commission.

DATES: Weeks of June 2, 9, 16, 23, 30, July 7, 2003.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 2, 2003.

Friday, June 6, 2003

10 a.m. Discussion of Security Issues (Closed—Ex. 1).

Week of June 9, 2003—Tentative

Wednesday, June 11, 2003

10:30 a.m. All Employees Meeting (Public Meeting).

1:30 p.m. All Employees Meeting (Public Meeting).

Week of June 16, 2003—Tentative

There are no meetings scheduled for the Week of June 16, 2003.

Week of June 23, 2003—Tentative

There are no meetings scheduled for the Week of June 23, 2003.

Week of June 30, 2003—Tentative

Tuesday, July 1, 2003

10 a.m. Briefing on Status of Office of Nuclear Security and Incident Response (NSIR) Programs, Performance, and Plans (Closed—Ex. 1).

Week of July 7, 2003—Tentative

There are no meetings scheduled for the Week of July 7, 2003.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

SUPPLEMENTARY INFORMATION:

* * * * *

''Discussion of Management Issues (Closed—Ex. 2),'' originally scheduled for May 28, 2003, was not held.

By a vote of 4–0 on May 28, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of Private Fuel Storage (Independent Spent Fuel Storage Installation) Docket No. 72–22–ISFSI; Order Regarding Petition for Review'' be held on May 28, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: May 29, 2003.

D.L. Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–13981 Filed 5–30–03; 11:33 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMMISSION

[Docket No. 50–323]

Diablo Canyon Power Plant, Unit No. 2, Pacific Gas & Electric Company; Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations; Correction

In notice document 03–9026, beginning on page 18284, in the issue of Tuesday, April 15, 2003, make the following correction:

In the first column, beginning on line 13, the words ''would revise Technical Specification (TS) 5.5.9, 'Steam Generator Tube Surveillance Program,' and TS 5.6.10, 'Steam Generator Tube Inspection Report','' should be corrected to read ''would authorize revision of the Final Safety Analysis Report Update,''.

Dated at Rockville, Maryland, this 22nd day of May 2003.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Acting Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–13869 Filed 6–2–03; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Form Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first **Federal Register** on this information collection request on March 26, 2003, in 68 FR 14714, at which time a 60-calendar day comment period was announced. This comment period ended May 27, 2003. No comments were received in response to this notice.

This information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposal form under review is summarized below.

DATES: Comments must be received on or before July 3, 2003.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Bruce I. Campbell, Records Management Officer, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336–8563.

OMB Reviewer: David Rostker, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503; 202\395–3897.

Summary of Form Under Review

Type of Request: Reinstatement, with change, of a previously approved collection for which approval is expiring.

Title: Expedited Screening Questionnaire On-Lending Transactions

Form Number: OPIC–168.

Frequency of Use: One per investor, per project

Type of Respondents: Business or other institutions (except farms): Individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies sponsoring projects overseas.

Reporting Hours: 3.5 hours per project.

Number of Responses: 300 per year.

Federal Cost: $15,750 per year.

Authority for Information Collection: Sections 231 and 234(b) and (c) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The application is the principal document used by OPIC to determine the investor's and project's eligibility, assess the environmental impact and developmental effects of the project, measure the economic effects for the United States and the host country economy, and collect information for underwriting analysis.

Dated: May 28, 2003.

Eli Landy,

Senior Counsel, Administrative Affairs, Departmental of Legal Affairs.

[FR Doc. 03–13862 Filed 6–2–03; 8:45 am]

BILLING CODE 3210–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Form Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first **Federal Register** notice on this information collection request on March 26, 2003, in vol. 68 No. 58 FR 14714, at which time a 60-calendar day comment period was announced. This comment period ended May 27, 2003. No comments were received in response to this notice.

This information collection submission has not been submitted to OMB for review. Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received on or before July 3, 2003.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Bruce I. Campbell, Records Management Officer, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336–8563.

OMB Reviewer: David Rostker, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, 202/395–3897.

Summary of Form Under Review

Type of Request: Reinstatement, with change, of a previously approved collection for which approval is pending emergency extension.

Title: Application for Financing.

Form Number: OPIC–115.

Frequency of Use: One year investor, per project.

Type of Respondents: Business or other institutions (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 3.5 hours per project.

Number of Responses: 300 per year.

Federal Cost: $15,750 per year.

Authority for Information Collection: Sections 231 and 234 (b) and (c) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The OPIC 129 form is the principal document used by OPIC to determine the investor's and project's eligibility, assess the environmental impact and developmental effects of the project, measure the economic effects for the United States and the host country economy, and collect information for underwriting analysis.

Dated: May 29, 2003.

Eli Landy,

Senior Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 03–13863 Filed 6–2–03; 8:45 am]

BILLING CODE 3210–01–M

PRESIDIO TRUST

Notice of Public Meeting

AGENCY: The Presidio Trust.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section (c)(6) of the Presidio Trust Act, 16 U.S.C. 460bb note, Title I of Pub. L. 104–333, 110 Stat. 4097, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Presidio Trust Board of Directors will be held from 6 p.m. to 8:30 p.m. on Tuesday, June 17, 2003, at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base known as the Presidio, in San Francisco, California.

The purposes of this meeting are to: (1) Provide the Executive Director's report regarding the status of the Public Health Service Hospital, the status of the Main Parade Ground, and the status of the environmental remediation program; (2) consider staff's recommendation for revisions to the Presidio Trails Plan in response to public comment and a finding of no significant impact (action item); and (3) provide a report on the status of Crissy Field.

TIME: The meeting will be held from 6 p.m. to 8:30 p.m. on Tuesday, June 17, 2003.

ADDRESSES: The meeting will be held at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco.

FOR FURTHER INFORMATION CONTACT: Karen Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, California 94129–0052, Telephone: (415) 561–5300.

Dated: May 29, 2003.

Karen A. Cook,

General Counsel.

[FR Doc. 03–13972 Filed 5–30–03; 10:55 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26058; 812–12858]

Diamond Hill Funds, et al.; Notice of Application

May 28, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under sections 6(c), 12(d)(1)(J), and 17(b) of the Investment Company Act of 1940 (''Act'') for exemptions from sections 12(d)(1)(A) and (B) and 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 thereunder to permit certain joint transactions.

Summary of Application: Applicants request an order to permit certain registered open-end management investment companies to invest uninvested cash and cash collateral in one or more affiliated money market funds and/or short-term bond funds.

Applicants: Diamond Hill Funds (the ''Trust''), Diamond Hill Capital Management, Inc. (''Diamond Hill''), and Diamond Hill Securities, Inc. (''DHS'').

Filing Dates: The application was filed on July 25, 2002 and amended on May 21, 2003.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 23, 2003, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: James F. Laird, President, Diamond Hill Funds, 375 North Front Street, Suite 300, Columbus, Ohio 43215.

FOR FURTHER INFORMATION CONTACT: Keith A. Gregory, Senior Counsel, at (202) 942–0611, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Trust is organized as an Ohio business trust and registered under the Act as an open-end management investment company. The Trust currently consists of six investment portfolios (''Funds''), including Diamond Hill Short Term Fixed Income

Fund (''Short Term Fund'').[1] Diamond Hill, a wholly owned subsidiary of Diamond Hill Investment Group, Inc., serves as investment adviser to five of the Funds. DHS, a wholly owned subsidiary of Diamond Hill, serves as investment adviser to the remaining Fund. Diamond Hill and DHS are registered as investment advisers under the Investment Advisers Act of 1940.

2. Each Fund has, and may be expected to have, uninvested cash in an account at its custodian (''Uninvested Cash''). Uninvested Cash may result from a variety of sources, such as dividends or interest received on portfolio securities, unsettled securities transactions, reserves held for investment purposes, scheduled maturity of investments, proceeds from liquidation of investment securities, dividend payments, or money received from investors. Certain of the Funds may also participate in a securities lending program under which the Fund may lend its portfolio securities to registered broker-dealers or other institutional investors (the ''Securities Lending Program''). The loans will be continuously secured by collateral equal at all times to at least the market value of the securities loaned. Collateral for these loans may include cash (''Cash Collateral,'' and together with Uninvested Cash, ''Cash Balances'').

3. Applicants request relief to permit certain of the Funds (the ''Investing Funds'') to use Cash Balances to purchase shares of the Short Term Fund, as well as any future Fund that operates as a money market fund in accordance with rule 2a–7 under the Act (each, a ''Money Market Fund'' and together with the Short Term Fund, the ''Cash Management Funds''), and the Cash Management Funds to sell their shares to, and redeem their shares from, each of the Investing Funds. The Short Term Fund seeks to provide total return consistent with current income and preservation of capital by investing in short- and intermediate-term debt securities and generally will maintain a dollar-weighted average maturity of three years or less. Investment of Cash Balances in shares of the Cash Management Funds will be made only to the extent consistent with such Investing Fund's investment restrictions and policies as set forth in its prospectus and statement of additional information. Applicants believe that the proposed transactions will result in higher yields, increased investment opportunities, reduced transaction costs, increased returns, reduced administrative burdens, enhanced liquidity, and increased diversification.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act authorizes the Commission to exempt any person, security or transaction (or classes thereof) from any provision of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants request an exemption from the provisions of sections 12(d)(1)(A) and (B) to the extent necessary to permit each Investing Fund to invest Cash Balances in the Cash Management Funds.

3. Applicants state that the proposed arrangement would not result in the abuses that section 12(d)(1)(A) and (B) were intended to prevent. Applicants state that because each Cash Management Fund will maintain a highly liquid portfolio, an Investing Fund will not be in a position to gain undue influence over a Cash Management Fund through threat of redemption. Applicants also represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Cash Management Funds sold to the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers, Inc. (''NASD'') Conduct Rules) or, if such shares are subject to any such fees, the Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such fees incurred by the Investing Fund. Applicants state that if a Cash Management Fund offers more than one class of securities, each Investing Fund will invest only in the class with the lowest expense ratio (taking into account the expected impact of the Investing Fund's investment) at the time of the investment. Before the next meeting of the board of trustees (the ''Board'') of an Investing Fund is held for the purpose of voting on an advisory contract under section 15(a) of the Act, the Adviser to the Investing Fund will provide the Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee attributable to, managing the Uninvested Cash of the Investing Fund that can be expected to be invested in the Cash Management Funds. In connection with approving any advisory contract for an Investing Fund, the Board, including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees'') will consider to what extent, if any, the advisory fees charged to each Investing Fund by the Adviser should be reduced to account for reduced services provided to the Investing Fund by the Adviser as a result of Uninvested Cash being invested in a Cash Management Fund. Applicants represent that no Cash Management Fund whose shares are held by an Investing Fund will acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of an investment company to include the investment adviser, any person that owns 5% or more of the outstanding voting securities of that company, and any person directly or indirectly controlling, controlled by, or under common control with the investment company. Applicants state that each of the Investing Funds and the Cash Management Funds may be deemed to be under common control, and therefore affiliated persons of each other, because

[1] All investment companies that currently intend to rely on the requested relief have been named as applicants and any existing or future registered open-end management investment company that may rely on the requested relief in the future will do so only in accordance with the terms and conditions of the application. The applicants are also seeking relief for any registered open-end management investment company or series thereof that is currently, or in the future may be, advised by the Adviser, as defined below (included in the term ''Funds''). Diamond Hill and DHS and any person controlling, controlled by or under common control with Diamond Hill and/or DHS that currently or in the future serves as investment adviser to a Fund are collectively referred to as the ''Adviser.''

they have a common Board and a common investment adviser or their investment advisers may be under common control. In addition, applicants submit that because an Investing Fund could acquire 5% or more of the outstanding voting shares of a Cash Management Fund, such Investing Fund might be deemed an affiliated person of the Cash Management Fund. Accordingly, applicants state that the sale of shares of the Cash Management Fund to the Investing Funds, and the redemption of such shares by the Investing Funds, may be prohibited under section 17(a).

5. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policies of each registered investment company involved, and with the general purposes of the Act. Section 6(c) of the Act provides, in part, that the Commission may exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act if, and to the extent that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that their request for relief to permit the purchase and redemption of Cash Management Fund shares by the Investing Funds satisfies the standards of sections 17(b) and 6(c) of the Act. Applicants state that the investment by the Investing Funds in shares of the Cash Management Funds will be on the same terms and on the same basis as any other shareholders, and that the consideration paid and received by the Investing Funds on the sale and redemption of shares of a Cash Management Fund will be based on the Cash Management Fund's net asset value per share. In addition, under the proposed transactions, the Investing Funds will retain their ability to invest their Cash Balances directly in money market instruments or short-term instruments as authorized by their respective investment objectives and policies, if they believe they can obtain a higher rate of return, or for any other reason. Applicants also state that each of the Cash Management Funds reserves the right to discontinue selling shares to any of the Investing Funds if the management of the Cash Management Fund determines that such sales would adversely affect its portfolio management and operations.

7. Section 17(d) of the Act and rule 17d–1 thereunder prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates, unless the Commission has issued an order authorizing the arrangement. Applicants state that each Investing Fund (by purchasing shares of the Cash Management Funds), each Adviser of an Investing Fund (by managing the assets of the Investing Funds invested in the Cash Management Funds), and each Cash Management Fund (by selling shares to and redeeming them from the Investing Funds) could be deemed to be participants in a joint enterprise or other joint arrangement within the meaning of section 17(d) of the Act and rule 17d–1 thereunder.

8. Rule 17d–1 permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d) of the Act. In determining whether to approve a transaction, the Commission will consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the proposed transactions meet these standards because the investments by the Investing Funds in shares of the Cash Management Funds will be on the same basis and will be indistinguishable from any other shareholder account maintained by the same class of the Cash Management Funds, and the transactions will be consistent with the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Shares of the Cash Management Funds sold to and redeemed by the Investing Funds will not be subject to a sales load, redemption fee, distribution fee adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules), or if such shares are subject to any such fee, the Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such fees incurred by the Investing Fund.

2. Before the next meeting of the Board of an Investing Fund is held for purposes of voting on an advisory contract under section 15 of the Act, the Adviser to the Investing Fund will provide the Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Investing Fund that can be expected to be invested in the Cash Management Funds. Before approving any advisory contract for an Investing Fund, the Board of the Investing Fund, including a majority of the Independent Trustees, shall consider to what extent, if any, the advisory fees charged to the Investing Fund by the Adviser should be reduced to account for reduced services provided to the Investing Fund by the Adviser as a result of Uninvested Cash being invested in the Cash Management Funds. The minute books of the Investing Fund will record fully the Board's considerations in approving the advisory contract, including the considerations relating to fees referred to above.

3. Each of the Investing Funds will invest Uninvested Cash in, and hold shares of, the Cash Management Funds only to the extent that the Investing Fund's aggregate investment of Uninvested Cash in the Cash Management Funds does not exceed 25 percent of the Investing Fund's total assets. For purposes of this limitation, each Investing Fund or series thereof will be treated as a separate investment company.

4. Investment of Cash Balances in shares of the Cash Management Funds will be in accordance with each Investing Fund's respective investment restrictions, if any, and will be consistent with each Investing Fund's policies as set forth in its prospectus and statement of additional information. No Investing Fund that relies on rule 2a–7 under the Act will invest in a Cash Management Fund that is not a Money Market Fund.

5. No Cash Management Fund shall acquire securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

6. Each Investing Fund and Cash Management Fund that may rely on the order shall be advised by the Adviser.

7. Before a Fund may participate in a Securities Lending Program, a majority of the Board, including a majority of the Independent Trustees, will approve the Fund's participation in the Securities Lending Program. Such trustees also will evaluate the securities lending arrangement and its results no less frequently than annually and determine that any investment of Cash Collateral

in the Cash Management Funds is in the best interests of the shareholders of the Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–13769 Filed 6–2–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47928; File No. SR–Amex–2003–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the American Stock Exchange LLC Relating to ETF and Index Options Subject to an Annual Minimum Guaranteed License Fee

May 27, 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 April 14, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On May 13, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On May 23, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Exchange has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under section 19(b)(3)(A)(ii) of the Act[5] and Rule 19b–4(f)(2) thereunder,[6] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Options Fee Schedule to require specialist units that are allocated exchange-traded fund (''ETF'') and/or index options subject to an annual minimum guaranteed license fee amount to pay the Exchange for non-reimbursed index license fees associated with such options. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has entered into numerous agreements with issuers and owners of indexes for the purpose of trading options on ETFs and securities indexes. This requirement to pay an index license fee to third parties is a condition to the listing and trading of these index-based options. In many cases, the Exchange is required to pay a significant licensing fee to issuers or index owners, which may not be reimbursed. In an effort to recoup the costs associated with index licenses, the Exchange previously established a licensing fee for specialists and registered options traders (''ROTs'') that is collected on every transaction in designated products in which a specialist and ROT is a party.[7] The licensing fee currently imposed on specialists and ROTs is as follows: (1) $0.10 per contract side for options on the Nasdaq-100 Index Tracking Stock (QQQ), the Nasdaq-100 Index (NDX), the Mini-NDX (MNX) and the iShares Goldman Sachs Corporate Bond Fund (LQD); (2) $0.09 per contract side for options on the iShares Cohen & Steers Realty Majors Index Fund (ICF) and (3) $0.05 per contract side for options on the S&P 100 iShares (OEF).

The Exchange represents that several index license providers have recently suggested that an annual guaranteed license fee be considered for the right to use an index regardless of the volume of trading of the particular ETF option or index option. Although the Exchange to date has not entered into a significant guaranteed license fee arrangement, it is expected that this practice will become more common in the future. Accordingly, the Amex represents that the Exchange's current licensing fee (as detailed above) based on the trading volume of the particular ETF option and/or index option may not provide the Exchange with sufficient revenue for it to be able to recoup annual index licensing fees.

As a result, the Exchange proposes to amend its Options Fee Schedule to require specialists allocated ETF and index options to pay, on an annual basis, any non-reimbursed costs of the Exchange resulting from index license agreements that are subject to a recurring annual guaranteed licensing fee. The Exchange represents that any payment made by specialists to the Exchange pursuant to this filing would reflect only actual non-reimbursed costs of the Exchange in connection with the trading of the allocated ETF and/or index option, which are not offset by any other fees imposed by the Exchange (such as the per contract license fee noted above). The Exchange further submits that it will inform specialists that may wish to be allocated ETF options and index options that they may be subject to annual index license fees, and that such fees may be separate and additional from any per contract license fee that may also be charged to the specialist and ROT in connection with the trading of such product.

The Exchange believes that it is reasonable for it to recoup non-reimbursed expenses on an annual basis, that are directly associated with index license agreements that are subject to an annual guaranteed licensing fee. The Exchange submits that the existence of non-reimbursed actual costs associated with guaranteed index license fee arrangements would trigger the requirement that the specialist pay the non-reimbursed index

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to John S. Polise, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated May 9, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange replaced the proposed rule text in its entirety.

[4] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to John S. Polise, Senior Special Counsel, Division, Commission, dated May 22, 2003 (''Amendment No. 2''). In Amendment No. 2, the Exchange replaced Amendment No. 1 in its entirety. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on May 23, 2003, the date the Exchange filed Amendment No. 2. *See* 15 U.S.C. 78s(b)(3)(C).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 C.F.R. 240.19b–4(f)(2).

[7] *See* Securities Exchange Act Release No. 45163 (December 18, 2001), 66 FR 66958 (December 27, 2001).

license fee of the Exchange less any fees imposed by the Exchange that may offset the non-reimbursed license fee.

The Exchange asserts that a guaranteed license fee payment in connection with ETF and index options can be counter-productive in connection with the ability of the Exchange to offer new index products, if such products, do not trade in sufficient volumes to satisfy the Exchange's contractual commitments. Accordingly, the Exchange believes that requiring specialists units that are allocated ETF options and/or index options to pay the non-reimbursed license fee of the Exchange related to such product(s) is justified and consistent with the rules of the Exchange and the Act. In addition, the Exchange believes that the administration of this non-reimbursed license fee by passing it along to the specialist allocated to the particular index-based option is more efficient and consistent with the intent of the Exchange to pass on its non-reimbursed costs to those market participants that benefit.

The Exchange notes that the Amex in recent years has increased a number of member fees to better align Exchange fees with the actual cost of delivering services and reduce Exchange subsidies of such services.[8] The Exchange believes that implementation of this amendment to the Options Fee Schedule is further consistent with such reduced or eliminated subsidies.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[9] in general, and Section 6(b)(4) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become immediately effective pursuant to section 19(b)(3)(A)(ii) of the Act,[11] and subparagraph (f)(2) of Rule 19b–4 thereunder,[12] in that it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2003–26 and should be submitted by June 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–13770 Filed 6–2–03; 8:45 am]

BILLING CODE 8010–01–P

[8] *See* Release Nos. 34–45360 (January 29, 2002), 67 FR 5626 (February 6, 2002); and 34–44286 (May 9, 2001), 66 FR 27187 (May 16, 2001). In addition, the Chicago Board of Options Exchange (''CBOE'') recently made a change to its fee schedule relating to the pass-through of periodic license or royalty fees. *See* Release No. 34–47169 (January 13, 2003), 68 FR 2596 (January 17, 2003). Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Exchange, and Ann E. Leddy, Attorney, Division of Market Regulation, Commission (April 29, 2003).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before July 3, 2003. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Business Information Center Customer Satisfaction Survey.

No: 1916.

Frequency: On occasion.

Description of Respondents: Clients of BIC programs.

Responses: 1,806.

Annual Burden: 68.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–13872 Filed 6–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before July 3, 2003. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: 8(a) Annual Update.

No.: 1450.

Frequency: On occasion.

Description of Respondents: 8(a) business owners.

Responses: 6,942.

Annual Burden: 13,884.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–13875 Filed 6–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before July 3, 2003. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Cost of Litigation to Small Business Executive Interview Questionnaire.

No.: N/A.

Frequency: On occasion.

Description of Respondents: Small businesses.

Responses: 100.

Annual Burden: 50.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–13876 Filed 6–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3500]

State of Alabama (Amendment #2)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective May 23, 2003, the above numbered declaration is hereby amended to include Baldwin, Clarke, Escambia, Mobile, Monroe and Washington Counties in the State of Alabama as disaster areas due to damages caused by severe storms, tornadoes, and flooding occurring on May 5, 2003 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Butler, Choctaw, Conecuh, Covington, Marengo and Wilcox in the State of Alabama; Escambia, Okaloosa and Santa Rosa in the State of Florida; and George, Greene, Jackson and Wayne Counties in the State of Mississippi may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary county have been previously declared.

The economic injury number assigned to Florida is 9V5200.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 11, 2003, and for economic injury the deadline is February 12, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 28, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–13776 Filed 6–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3503]

State of Georgia

Troup County and the contiguous counties of Coweta, Harris, Heard and Meriwether in the State of Georgia; and Chambers and Randolph Counties in the State of Alabama constitute a disaster area due to damages caused by severe storms, tornadoes and flooding that occurred on May 5, 2003 and continues. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 22, 2003 and for economic injury until the close of business on February 23, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.625
Homeowners without credit available elsewhere	2.812
Businesses with credit available elsewhere	5.906
Businesses and non-profit organizations without credit available elsewhere	2.953
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.953

The number assigned to this disaster for physical damage is 350311 for Georgia and 350411 for Alabama. The number assigned to this disaster for economic damage is 9V3500 for Georgia and 9V3600 for Alabama.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: May 23, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–13778 Filed 6–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3505, Amdt. 1]

State of Illinois

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective May 21, 2003, the above numbered declaration is hereby amended to include Greene, McDonough and Pike Counties as disaster areas due to damages caused by severe storms, tornadoes and flooding occurring on May 6 through May 11, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Calhoun, Jersey, Macoupin and Scott in the State of Illinois; and Pike and Ralls Counties in the State of Missouri may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 14, 2003, and for economic injury the deadline is February 17, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 22, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–13767 Filed 6–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3506]

State of Mississippi

As a result of the President's major disaster declaration on May 23, 2003, I find that Calhoun, Clay, Chickasaw, Itawamba, Lee, Lowndes, Monroe, Pontotoc and Webster Counties in the State of Mississippi constitute a disaster area due to damages caused by severe storms, tornadoes and high winds occurring on May 5 through May 8, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 22, 2003 and for economic injury until the close of business on February 23, 2004 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Choctaw, Grenada, Lafayette, Montgomery, Noxubee, Oktibbeha, Prentiss, Tishomingo, Union and Yalobusha in the State of Mississippi; and Franklin, Lamar, Marion and Pickens counties in the State of Alabama.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.625
Homeowners without credit available elsewhere	2.812
Businesses with credit available elsewhere	5.906
Businesses and non-profit organizations without credit available elsewhere	2.953
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.953

The number assigned to this disaster for physical damage is 350612. For economic injury the number is 9V5000 for Mississippi; and 9V5100 for Alabama.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 27, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–13766 Filed 6–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3499]

State of Oklahoma (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective May 22, 2003, the above numbered declaration is hereby amended to include Carter, Delaware, Kay, Muskogee, Okfuskee, Osage, Pontotoc, Roger Mills, Texas and Washington Counties in the State of Oklahoma as disaster areas due to damages caused by severe storms and tornadoes occurring on May 8, 2003 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Adair, Beaver, Beckham, Cherokee, Cimarron, Coal, Craig, Custer, Dewey, Ellis, Grant, Haskell, Hughes, Jefferson, Johnston, Love, Marshall, Mayes, McIntosh, Murray, Nowata, Okmulgee, Ottawa, Pawnee, Rogers, Sequoyah, Tulsa and Wagoner in the State of Oklahoma; Benton County in the State of Arkansas; Baca County in the State of Colorado; Chautauqua, Cowley, Montgomery, Morton, Seward, Stevens and Sumner Counties in the State of Kansas; McDonald County in the State of Missouri; and Hansford, Hemphill, Ochiltree, Sherman and Wheeler Counties in the State of Texas may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

The economic injury number assigned to Arkansas is 9V4500; Colorado is 9V4600; Kansas is 9V4700; Missouri is 9V4800; and Texas is 9V4900.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 9, 2003, and for economic injury the deadline is February 10, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 23, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–13779 Filed 6–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3498]

State of Tennessee; (Amendment #3)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective May 23, 2003, the above numbered declaration is hereby amended to include Benton, Decatur, Fayette, Giles, Hickman, Humphreys, Lawrence, Lewis, Macon, Perry, Shelby, Smith, Tipton and Trousdale Counties in the State of

Tennessee as disaster areas due to damages caused by severe storms, tornadoes and flooding occurring on May 4, 2003 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Clay and Jackson in the State of Tennessee; Crittenden County in the State of Arkansas; Monroe County in the State of Kentucky; and DeSoto and Marshall Counties in the State of Mississippi may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 7, 2003, and for economic injury the deadline is February 6, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 28, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–13777 Filed 6–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region V Regulatory Fairness Board

The Small Business Administration Region V Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Thursday, June 12, 2003, at 1 p.m. at the Minnesota State Capitol, Room 107, 75 Reverend Martin Luther King Jr. Boulevard, St. Paul, Minnesota 55155, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by Federal agencies.

Anyone wishing to attend or to make a presentation must contact Ed Daum in writing or by fax, in order to be put on the agenda. Ed Daum, District Director, U.S. Small Business Administration, Minnesota District Office, 100 North 6th Street, Butler Square, Suite 210–C, Minneapolis, MN 55403, phone (612) 370–2306, fax (612) 370–2303, e-mail *ed.daum@sba.gov*.

For more information, *see* our Web site at *http://www.sba.gov/ombudsman.*

Dated: May 27, 2003.

Michael L. Barrera,

National Ombudsman.

[FR Doc. 03–13873 Filed 6–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region VII Regulatory Fairness Board

The Small Business Administration Region VII Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Monday, June 16, 2003, at 1 p.m. at the University of Iowa Town Center, 221 3rd Avenue, SE., Suite 200, Cedar Rapids, IA 52401 with interactive videos—satellite locations at: Davenport, West Burlington, Dubuque, Des Moines, Sioux City, Spencer, Fort Dodge, Mason City, Council Bluffs, Ottumwa, and Creston, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by Federal agencies.

Anyone wishing to attend or to make a presentation must contact Keith W. McBride in writing or by fax, in order to be put on the agenda. Keith McBride, U.S. Small Business Administration, Cedar Rapids District Office, 215 4th Avenue S.E., the Lattner Building, Suite 200, Cedar Rapids, IA 52401, phone (319) 362–6405 Ext. 221, fax (319) 362–6405, e-mail *keith.mcbride@sba.gov*.

For more information, *see* our Web site at *http://www.sba.gov/ombudsman.*

Dated: May 27, 2003.

Michael L. Barrera,

National Ombudsman.

[FR Doc. 03–13874 Filed 6–2–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for June 17 and 18, 2003, beginning at 8:30 a.m. on June 17. Arrange for oral presentations by June 12.

ADDRESS: Homewood Suites, 6955 Ft. Bent Way, Tukwila, WA 98188.

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075, or e-mail at *effie.upshaw@faa.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held June 17–18 in Renton, WA.

The agenda will include:

June 17

- Opening Remarks
- FAA Report
- Joint Aviation Authorities Report
- Transport Canada Report
- Executive Committee Report
- Harmonization Management Team Report
- ARAC Tasking Priorities Discussion/Moratorium
- Mechanical Systems Harmonization (HWG) Report
- Ice Protection HWG Report
- Powerplant Installation HWG Report
- Human Factors HWG Report
- Design for Security HWG Report

June 18

- General Structures HWG Report and Approval
- Airworthiness Assurance Working Group Report and Approval
- Avionics HWG Report
- Written or verbal reports may be provided for the Continued Airworthiness and Extended Range Operations Working Groups, and the following HWGs: Engine, Electromagnetic Effects, Flight Test, Seat Test, Flight Control, Flight Guidance, System Design and Analysis, and Electrical Systems.

Two working groups will present documents for approval:

1. The General Structures HWG will seek approval of documents addressing fuel tank access and operations test.

2. The Airworthiness Assurance Working Group will seek approval of a multiple Supplemental Type Certificates report.

Attendance is open to the public, but will be limited to the availability of meeting room space and telephone lines. For those participating by telephone, the call-in number is (425)

227–1570, Passcode: 5555. Details are also available on the ARAC calendar at *http://www1.faa.gov/avr/arm/arac/araccalendar.cfm.*

To ensure that sufficient telephone lines are available, please notify the person listed in the **FOR FURTHER INFORMATION CONTACT** section of your intent by June 12. Callers outside the Renton, Washington area will be responsible for paying long distance charges.

The public must make arrangements by June 12 to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine issues or by providing copies at the meeting. Copies of the documents to be presented to ARAC for decision or as recommendations to the FAA may be made available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

If you are in need of assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on May 28, 2003.

Florence L. Hamn,

Acting Director, Office of Rulemaking.

[FR Doc. 03–13901 Filed 6–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Draft Environmental Impact Statement Draft Section 4(f) Evaluation: Montgomery & Prince George's Counties, MD

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Draft Environmental Impact Statement (EIS)/Draft Section 4(f) Evaluation will be prepared for a proposed transportation project in Montgomery and Prince George's Counties, Maryland.

FOR FURTHER INFORMATION CONTACT: Nelson J. Castellanos, Division Administrator, Federal Highway Administration, The Rotunda—Suite 220, 711 West 40th Street, Baltimore, Maryland 21211, Telephone: (410) 962–4440.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Maryland Department of Transportation and the Maryland State Highway Administration is preparing a Draft EIS/Draft Section 4(f) Evaluation for the proposed Intercounty Connector (ICC) transportation improvement project. The U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency will be invited to participate as cooperating agencies. The proposed ICC project is intended to provide a multi-modal highway between I–270 in Montgomery County and I–95/US 1 in Prince George's County, Maryland, a distance of about 18 miles. The project has been designated a high priority project for expedited agency reviews under Executive Order 13274, Environmental Stewardship and Transportation Infrastructure Project Reviews.

Project studies pursuant to the National Environmental Policy Act (NEPA) concerning the ICC project were most recently conducted in the early to late-1990s resulting in the completion of a Draft EIS/Draft Section 4(f) Evaluation in 1997. Study alternatives were presented at four Location/Design Public Hearings in May and June 1997. The State of Maryland put the ICC project on hold shortly after the hearings.

The ICC project will involve the consideration of a reasonable range of alternatives that address the project goals. Consistent with NEPA, a full range of multi-modal highway alternatives will be considered, ranging from a No-Action Alternative to a limited access roadway on new location.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, private organizations and citizens who have previously expressed or are known to have an interest in this project. Public information Meetings are tentatively scheduled for Summer 2003 with a Location/Design Public Hearing tentatively scheduled for late Fall/early Winter 2004. Public notice will be given of the time and place for the Public Information Meetings, Location/Design Public Hearing and other public meetings as they occur.

The Draft EIS/Draft Section 4(f) Evaluation will be available for public and agency review and comment prior to the public hearing. Several scoping meetings for the public, agencies, and Metropolitan Washington Council of Governments will be conducted prior to publication of the Draft EIS/Draft Section 4(f) Evaluation. Informational meetings and public outreach will be conducted throughout the project.

Comments and suggestions are invited from all interested parties to ensure that the full range of issues related to this proposed action are identified and addressed. Comments or questions concerning these proposed actions and the proposed Draft EIS/Draft Section 4(f) Evaluation should be directed to the FHWA at the address provided previously.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal Programs and activities apply to this program)

Issued on: May 27, 2003.

Nelson J. Castellanos,

Division Administrator, Baltimore, Maryland.

[FR Doc. 03–13794 Filed 6–2–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Child Passenger Protection Education Grants

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Announcement of grants for child passenger protection education.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a grant program under Section 2003(b) of the Transportation Equity Act for the 21st Century (TEA–21) to implement child passenger protection programs that are designed to prevent deaths and injuries to children, educate the public concerning the proper installation of child restraints, and train child passenger safety personnel concerning child restraint use. This notice solicits applications from the States, the District of Columbia, Puerto Rico, the U.S. Territories and the Indian Tribes through the Secretary of the Interior.

DATES: Applications must be received by the office designated below on or before July 9, 2003.

ADDRESSES: Applications must be submitted to the appropriate National Highway Traffic Safety Administration Regional Administrator.

FOR FURTHER INFORMATION CONTACT: For program issues contact Ms. Judy A. Hammond, Office of Injury Control Operations and Resources, NTI–200, NHTSA, 400 Seventh Street, SW.,

Washington, DC 20590; telephone (202) 366–2121. For legal issues contact Ms. Dana Sade, Office of the Chief Counsel, NCC–110, NHTSA, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–2580.

SUPPLEMENTARY INFORMATION:

Background

While motor vehicle crashes remain the leading cause of unintentional injury-related deaths among children for every age from 1 to 14 years in the United States, there has been a 16 percent decline in motor vehicle occupant deaths from 1988 to 2001. During the same period, motor vehicle occupant nonfatally injured children under age 15 decreased by 11 percent. The Nation is reaping the benefits of the many years of hard work by State and local advocates promoting correct use of child safety seats, booster seats and safety belts. A valuable cadre of trained and certified child passenger safety technicians has been established in all 50 States, the District of Columbia, and Puerto Rico to promote the correct use of these occupant protection devices. To maintain the gains, it is essential that this child passenger safety infrastructure be sustained.

For this fourth year of the program, States are encouraged to perform a program review and comprehensive evaluation of the existing infrastructure to help them strategically place limited resources to meet their unique needs, and to ensure that the needs of culturally diverse and underserved populations, special needs and booster seat size/age children are appropriately addressed.

Motor vehicle injuries and fatalities occur when children ride unrestrained or are improperly restrained. The Child Passenger Protection Education grant program is intended to help reduce injuries and deaths by educating the public about the importance of correctly installing and using child safety seats, booster seats and safety belts.

1. Children Riding Unrestrained

Approximately 20–25 percent of children ages 1 through 15 years ride unrestrained. Child safety seats reduce the risk of fatal injury in a crash by 71 percent for infants (less than 1 year old) and by 54 percent for toddlers (1–4 years old). In 2001, there were 497 passenger vehicle occupant fatalities among children under 5 years of age. Of those 497 fatalities, where restraint use is known, 242 (49 percent) were totally unrestrained. The problem of riding unrestrained is not limited to infants and young children. From 1975 through 2001, the lives of an estimated 5,085 children were saved by the use of child restraints (child safety seats or adult safety belts). In 2001, among children under age 15 who were killed as occupants of passenger vehicles, where restraint use was known, 55 percent were not using safety restraints at the time of the collision.

Examination of the demographics of children killed in motor vehicle crashes (for which the most complete data available is 1999) shows that safety restraint use differs markedly by race. For example, while somewhat less than half (46.5 percent) of white children up to age 9 riding in passenger motor vehicles were using safety restraints at the time of their deaths, that was true of less than one-third (30.4 percent) of black children. Native American children under age 15 have a motor vehicle occupant death rate twice that of white children. (Injury and fatality data for other minority groups is currently being collected.) Restraint use is also lower in rural areas and low-income communities. Lack of access to affordable child safety seats and booster seats contributes to a lower usage rate among low-income families. However, research shows that 95 percent of low-income families who own a child safety seat use it. Improving access to affordable child restraint systems and educating parents and caregivers about proper installation and use are key components to improving use rates in these communities.

2. Misuse of Child Safety Seats and Improper Seating Positions

According to the National Occupant Protection Use Survey, in 2002, 99 percent of infants (children under age 1) were restrained while riding in motor vehicles, as were 94 percent of toddlers (children ages 1 through 3). The study also revealed that 83 percent of children ages 4 through 7 were restrained. However, it is estimated that approximately 80 percent of children who are placed in child safety seats are improperly restrained. Furthermore, adult safety belts do not adequately protect children ages 4 to 8 (about 40 to 80 pounds) from injury in a crash. Although car booster seats are the best way to protect them, only 6 percent of booster-age children are properly restrained in car booster seats.

In addition, there is a high risk of severe injury or fatality to children riding in the front seat of vehicles equipped with a passenger side air bag, due to the deployment force of the air bag. However, even if the air bag is shut off or there is no air bag, the back seat is the safest place for children to ride. Under no circumstances should a parent place a rear-facing infant seat in front of an air bag. It is estimated that children ages 12 and under are 36 percent less likely to die in a crash if seated in the rear seat of a passenger vehicle.

Furthermore, children are not cargo; they should not ride in the rear of pickup trucks. In 2001, 128 people died as a result of riding in the cargo area of pickup trucks. Nearly half of these were children and teenagers.

Children with special health care needs are another area of growing concern. Approximately 12 million children under 18 are in this category and many have special transportation needs that need to be addressed.

Child passenger safety professionals, educators, emergency personnel and others need to be adequately trained on all aspects of child restraint use in order to help reduce the problems of misuse and encourage the safest seating positions for all children riding in motor vehicles. In addition, parents and caregivers need easily accessible locations where they can receive information on choosing the correct child safety seat for their child, and identifying which child safety seats are compatible with various types of passenger motor vehicles. Parents and caregivers also need to know how to properly install a child safety seat, how to properly secure their child into that seat, and that the safest position in a vehicle is the back seat, away from front passenger air bags and not in the cargo area of pick-up trucks.

With these concerns in mind, the Transportation Equity Act for the 21st Century (TEA–21), which the President signed into law on June 9, 1998, established a grant program under Section 2003(b), to promote child passenger protection education and training and authorized $7.5 million each year for fiscal years 2000 and 2001. In the DOT Appropriation Act of 2002, Congress provided $7.5 million to fund the Child Passenger Protection Education grant program for fiscal year 2002. For FY 2003, Congress again provided $7.5 million to fund the Child Passenger Protection Education Grants.

Grants for Child Passenger Protection

Section 2003(b) provides Federal funds to States for activities that are designed to prevent deaths and injuries to children; educate the public concerning the design, selection, placement, and installation of child restraints; and train and retrain child passenger safety professionals, police officers, fire and emergency medical personnel, and other educators concerning all aspects of child restraint use. A State may expend the funds itself

or elect to distribute some or all of the funds to carry out the public education and training activities as grants to political subdivisions of the State or appropriate private entities.

Prior years funding (FY 2000 and 2001) has resulted in over 16,056 persons becoming certified child passenger safety technicians by the AAA after having completed NHTSA's 32-hour Standardized Child Passenger Safety Training course. In addition, 593 went on to become certified child passenger safety technician instructors. Funding has provided for the establishment of 900 inspection/fitting stations across the country.

Given administrative, programmatic, and funding considerations facing the States, NHTSA is working with the Governors Highway Safety Association (GHSA) to develop a Child Passenger Safety Program Assessment tool designed to help the States strategically plan and locate their child passenger safety trainings, education efforts, and inspection stations to meet the needs of the community.

A ''team'' of peers will review all elements of the State's Child Passenger Safety program and how training strategically fits into their overall program. The assessment will examine many aspects including: Does the child passenger safety program effectively address older children (booster seat and safety belt size/age); special needs; culturally diverse and underserved populations; does it effectively cover all areas of the State with training, public education and information; and, are inspection stations established across the State. The assessment tool should be ready for use in Fall 2003. States are strongly encouraged to use Section 2003(b) funds to pay for conducting the assessment.

States are also encouraged to direct funds obtained through this grant program to organizations that can deliver training and education to ensure positive impact in minority and low-income communities where lack of child passenger protection is especially severe.

Funds could also be used for training on the appropriate methods for restraining children with special needs in motor vehicles.

Section 2003(b) provides that the Federal share of the cost of a program carried out with the grant funds is not to exceed 80 percent. A State that receives a grant must submit a report describing the program activities carried out with the funds.

Application Procedures

1. Use of Funds

To be eligible for funding under Section 2003(b), a State must submit an application that addresses how the State will implement child passenger protection programs that meet each of the three requirements listed below (see checklist below). For the education and training components, the grant application must identify expected program accomplishments, such as the estimated number of public education messages to be distributed (*e.g.* public service announcements or printed materials) and the type of audience to be targeted by these messages (*e.g.* minority or low-income communities); the estimated number and type of training classes conducted and the individuals or groups to be trained (*e.g.* representing minority, rural or low-income communities); the number of child safety seat clinics or check-ups performed; and the number of inspection stations established. A State is encouraged to identify the proposed locations of child safety seat clinics, check-ups and inspection stations, specifying the target population to be served.

Specifically, the State must implement a child passenger protection program that:

(a) Is designed to prevent deaths and injuries to children. The State should provide a statement describing how its program supports efforts to prevent deaths and injuries to children, and indicate if it plans to conduct a program assessment;

(b) Educates the public on all aspects of child passenger safety. The public education program may include strategies that emphasize the four steps to child restraint use: infant seats for babies, forward facing child safety seats for toddlers, booster seats for young children, and safety belts for older children. It should include strategies that increase use of appropriate restraints and proper seating positions among targeted populations (*e.g.*, minority, rural, low-income, or special needs populations), or develop and implement child safety seat clinics and/or permanent locations where consumers can have child safety seats and booster seats inspected. Additional information under public education may be included relevant to proper use of child restraint systems, booster seats, proper seating positions relative to air bag safety and cargo areas of pick-up trucks, and Federal Motor Vehicle Safety Standard 225—a standardized child safety seat system known as Lower Anchors and Tethers for Children (LATCH).

At a minimum, the public education program must:

(1) Provide a summary of the information that the State intends to include or develop in the public education program. The information must address at least the following topics:

- All aspects of proper installation of child restraints using standard safety hardware, supplemental hardware, and modification devices (if needed), including special installation techniques;
- Appropriate child restraint design, selection, and placement [NHTSA interprets this to include instruction about proper seating positions for children in air bag equipped vehicles]; and
- Harness threading and harness adjustment on child restraints.

(2) Include a description of the public education information methods that the State intends to employ, how these messages will be delivered to the target population, and expected accomplishments. The methods could include billboards, public service announcements, and published materials. It is also important to deliver this information in the language of the targeted group.

(c) Trains and retrains child passenger safety professionals, police officers, fire and emergency medical personnel, and other educators concerning all aspects of child restraint use. At a minimum, States should include in the application a description of or reference to the curricula that the State will use to train and retrain child passenger safety experts to reach the targeted populations; factors used to determine appropriate coverage and support to meet the needs of the community and expected accomplishments.

All persons selected for training and retraining as child passenger safety professionals should achieve and maintain at least some minimum standards of expertise. In collaboration with partners, NHTSA has developed several model curricula including: ''Mobilizing America to Buckle Up Children'' and ''Operation Kids'' for law enforcement officers; ''Operation Kids'' for nurses; ''Moving Kids Safely In Child Care'' and the ''Standardized Child Passenger Safety Training Program'' for child passenger safety professional candidates. States are not restricted to using only these curricula, but States are encouraged to incorporate the learning objectives of these courses into the training and retraining provided to child passenger safety experts.

Funding for this grant program is intended to help States develop and sustain adequate cadres of persons with technical expertise in child passenger protection who will directly serve the public through child safety seat clinics, checkpoints, workshops, inspection stations and other training and educational opportunities.

The State shall include in the budget for FY 2003 grant funds information on prior-year Section 2003(b) grant funds. Specifically, the State shall itemize how much of these prior year funds have not yet been expended and how they will support the FY 2003 program.

2. Certification

A. The State must submit certifications that: (i) It will use the funds awarded under this grant program exclusively to implement a child passenger protection program in accordance with the requirements of Section 2003(b) of Pub. L. 105–178 (TEA–21); (ii) It will administer the funds in accordance with 49 CFR part 18; and (iii) It will provide to the NHTSA Regional Administrator no later than 15 months after the grant award a report of activities carried out with grant funds and accomplishments to date.

3. Eligibility Requirements

Eligibility is limited to the 50 States, the District of Columbia, Puerto Rico, the U.S. Territories (which include the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands) through their Governor's Office of Highway Safety, and Indian Tribes through the Secretary of the Interior.

Award Procedures

The amount appropriated for this program in fiscal year 2003 is $7,500,000. In FY 2000, NHTSA awarded $7.5 million to 47 States, the District of Columbia, Puerto Rico, 4 U.S. Territories and the Indian Nations. In FY 2001, NHTSA awarded $7.5 million to 48 States, the District of Columbia, Puerto Rico, 4 U.S. Territories and the Indian Nations. In FY 2002, NHTSA awarded $7.5 million to 48 States, the District of Columbia, Puerto Rico, 4 U.S. Territories and the Indian Nations. A new application is required to seek an award for fiscal year 2003 funds. Awards to applicants meeting the requirements of this notice will be made based upon the formula used for Section 402 apportionment, subject to the availability of funds. The amount awarded to each State qualifying under this program shall be determined by multiplying the amount appropriated for this grant program for the fiscal year by the ratio that the amount of funds apportioned to each such State under 23 U.S.C. 402 for the fiscal year bears to the total amount of funds apportioned to all such States under Section 402 for such fiscal year. Applicants will be required to submit to NHTSA within 30 days of notification that an award is made, a program cost summary (HS Form 217) obligating the Section 2003(b) funds to child passenger protection education programs. The Federal funding share may not exceed 80 percent of the program cost, and States should clearly identify their share in the program cost summary (HS Form 217).

Each State must submit one original and two copies of the application package to the appropriate NHTSA Regional Administrator. Only complete application packages submitted by a Governor's Highway Safety Representative and received on or before July 9, 2003, will be considered for funding in fiscal year 2003.

Report Requirements

A State that receives a grant must submit a report describing the activities carried out with the grant funds and the accomplishments to date. The report must be submitted to the NHTSA Regional Administrator no later than 15 months after the grant is awarded.

At a minimum, the report must contain the following:

1. A description of how the State's child passenger protection program is supporting efforts to prevent deaths and injuries to children through strategic placement of resources.

2. For the education component:

- A summary of the public education methods developed and how programs were delivered to the targeted population.
- The number of public education messages distributed (*e.g.* public service announcements or printed materials) and the type of audience targeted by those messages (*e.g.* minority or low-income communities);
- The number of child safety seat clinics or check-ups performed, and the number of inspection stations established. A State must also include the locations of child safety seat clinics, check-ups and inspection stations, specifying the target population served.

3. For the training component:

- The number of and type of training classes conducted and the individuals or groups trained (*e.g.* representing minority, rural or low-income communities);
- A description of or reference to the curricula that were used to train and retrain child passenger safety experts.
- The number of child passenger safety technicians and instructors certified during the grant period.

FY 2003 APPLICATION CHECKLIST

1.	1.
A.____	A. Statement describing how the program supports efforts to prevent deaths and injuries to children.
B.____	B. Statement indicating its plans to conduct a program assessment.
2.	2. Educates the public on all aspects of child passenger safety (CPS). At a minimum this must include the following:
A.	A. Summary of what the public education information will cover, to include:
(1)____	(1) All aspects of proper installation of child restraints using standard seat belt hardware, supplemental hardware, and modification devices (if needed), including special installation techniques.
2.____	(2) Appropriate child restraint design, selection, and placement [NHTSA interprets this to include instruction about proper seating positions for children in air bag equipped vehicles.]
(3)____	(3) Harness threading and harness adjustment on child restraints.
B.	B. Methods to deliver public education messages must include:
(1)____	(1) Description of the public education method.
(2)____	(2) How these messages will be delivered to the targeted populations.
(3)____	(3) Expected accomplishments in reaching audiences, including those in underserved areas.
3.	3. CPS Training and retraining. At a minimum, this must include the following:
A.____	A. Description of or reference to the CPS curricula that the State will use to train and retrain CPS experts to ensure appropriate and adequate coverage and support for the program.
B.____	B. Expected accomplishments.
C.____	C. Description of how the State plans to reprogram its unexpended Section 2003(b) funds to support this year's program.
4.____	4. Certification Statement

FY 2003 APPLICATION CHECKLIST—Continued

	The State must submit certifications that (i) It will use the funds awarded under this grant program exclusively to implement a child passenger protection program in accordance with the requirements of 23 U.S.C. 2003(b); (ii) It will administer the funds in accordance with 49 CFR Part 18 and OMB Circular A–87; and (iii) It will provide to the NHTSA Regional Administrator no later than 15 months after the grant award a report of activities carried out with grant funds and accomplishments to date.

NHTSA Publications Available To Support Public Education

A number of NHTSA publications are available through the *Traffic Safety Materials Catalog* that address child passenger safety program topics, including targeted education messages such as ''Four Steps for Kids;'' and ''*Sálvele la Vida a Su Bebé.*'' These materials may be ordered from the NHTSA web site at *http://www.nhtsa.dot.gov* or contacting the Office of Communications and Consumer Information by fax at (202) 493–2062.

Issued on: May 29, 2003.

Jeffrey W. Runge,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 03–13902 Filed 6–2–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34347]

Regional Rail Right of Way Company—Acquisition and Operation Exemption—Lines of Dallas Area Rapid Transit

Regional Rail Right of Way Company (RRROW), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire an exclusive, perpetual freight rail operating easement over the following rail lines owned by Dallas Area Rapid Transit (DART): (1) The Athens Branch East Line (a/k/a Elam Branch) between approximately milepost 314.84 (Briggs Jct.) and approximately milepost 308.8 (Pleasant Drive); (2) the Garland Line between approximately milepost D–755.27 and approximately milepost D–745.5; (3) the Rowlett Extension between approximately milepost 745.5 and approximately milepost 741.3; (4) the Carrollton Line between approximately milepost K–758.04 and approximately milepost K–741.3; (5) the Fair Park East Line between approximately milepost 210.704 (East Dallas Yard) and approximately milepost 210.078 (MP Junction); (6) the Denton Subdivision between approximately milepost K–741.3 (Carrollton) and approximately milepost K–729.5 (Lake Dallas); (7) the Sherman Subdivision between approximately milepost 290.5 (Allen) and approximately milepost 324.84 (South Sherman Jct.); (8) the White Rock/Fair Park Connector between approximately milepost 6.93 (Tenison Park) and approximately milepost 5.06 (MP Jct.); and (9) the Brookhollow Branch Line between approximately milepost 0.0 (DFW Main) and approximately milepost 3.31 (Denton Subdivision) (collectively, the lines). The total distance of the lines is approximately 92.2 miles in Collin, Dallas, Denton, Grayson, and Rockwall Counties, TX.

Pursuant to a Transfer Agreement to be entered into by and between DART and RRROW, RRROW will acquire an exclusive, perpetual freight rail operating easement and all freight common carrier obligations over the lines. RRROW states that the Dallas, Garland and Northeastern Railroad will continue to provide freight operations over the lines. In addition, DART will retain the ownership interest in the right-of-way, trackage, and other physical assets associated with the lines. Consummation of this transaction was expected to occur on or after May 12, 2003, the effective date of the exemption.

RRROW certifies that its projected annual revenues will not exceed those that would qualify it as a Class III rail carrier and that its projected annual revenues will not exceed $5 million, and thus the transaction will not result in the creation of a Class II or Class I rail carrier.

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. 34347, 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 Edward J. Fishman, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue NW., Washington, DC 20036–1221.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 27, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–13865 Filed 6–2–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34346]

Dallas Area Rapid Transit—Acquisition Exemption—Certain Assets of Regional Rail Right of Way Company

Dallas Area Rapid Transit (DART), a political subdivision of the State of Texas, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from its affiliate, Regional Rail Right of Way Company (RRROW), certain railroad assets, consisting of approximately 56 miles of rail line and related trackage in Dallas, Collin, and Tarrant Counties, TX (the lines). The lines include: (1) The line of railroad extending between approximately milepost 632.27 near Ft. Worth, TX, and approximately milepost 578.20 near Wylie, TX; and (2) the existing trackage between Tower 19 and Oakland Avenue in East Dallas, TX.

Pursuant to a Transfer Agreement to be entered into by and between DART and RRROW, DART will acquire RRROW's right, title, and ownership interest in the right-of-way, trackage, and other physical assets associated with the lines, subject to RRROW's reservation of an exclusive, perpetual freight rail operating easement. DART will not acquire the right or obligation to conduct any freight rail operations on the lines.[1] Consummation of this transaction was expected to occur on or after May 12, 2003, the effective date of the exemption.

DART certifies that its projected annual freight revenues as a result of this transaction will not exceed $5 million, and thus the transaction will not result in the creation of a Class II or Class I rail carrier.

[1] Accordingly, DART has filed a motion to dismiss this notice of exemption. The Board will address the motion to dismiss in a separate decision.

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. 34346, 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 Edward J. Fishman, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, NW., Washington, DC 20036–1221.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: May 27, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–13864 Filed 6–2–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Tuesday, July 1, 2003.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Tuesday, July 1, 2003 from 3 p.m. EDT to 4:30 p.m. EDT via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 29, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–13900 Filed 6–2–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0034]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to evaluate a trainee request for leave from Vocational Rehabilitation and Employment Program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 4, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0034'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Trainee Request for Leave—Chapter 31, Title 38, U. S. Code, VA Form 28–1905h.

OMB Control Number: 2900–0034.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 28–1905h is used to request leave and to provide the necessary information to determine whether to approve a trainee request for leave from Vocational Rehabilitation and Employment Program. A trainer or authorized school official must verify on the form the effect the absence will have on the veteran's progress in the program. Upon approval, the veteran can receive subsistence allowance and other program services during the leave period as if he or she were attending training. Disapproval of the request may result in loss of subsistence allowance for the leave period. Failure to collect the information would create the potential for substantial abuse through receipt of benefits for unauthorized absences.

Affected Public: Individuals or households.

Estimated Annual Burden: 7,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

Dated: May 16, 2003.

By direction of the Secretary:

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–13891 Filed 6–2–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0073]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine the amount of educational benefits payable to veterans or eligible persons pursuing approved programs.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 4, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to ''OMB Control No. 2900–0073'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Enrollment Certification, VA Form 22–1999. (**Note:** A reference to VA Form 22–1999 also includes VA Forms 22–1999–1, 22–1999–2, 22–1999–3, 22–1999–4, 22–1999–5, and 22–1999–6 which contains the same information as VA Form 22–1999.)

OMB Control Number: 2900–0073.

Type of Review: Extension of a currently approved collection.

Abstract: Educational institutions and job establishments use VA Form 22–1999 to report information concerning the enrollment or reenrollment into training of veterans, service persons, reservists, and other eligible persons. The information collected on VA Form 22–1999 is used by VA to determine the amount of educational benefits payable to the trainee during the period of enrollment or training and to determine whether the trainee has requested an advanced payment of benefits. Without the information, VA would not have a basis upon which to make payment.

Affected Public: Not-for-profit institutions, Business or other for-profit, Federal Government, and State, Local or Tribal Government.

Estimated Annual Burden: 137,424 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Annual Responses: 916,160.

Estimated Number of Respondents: 8,180.

Dated: May 16, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–13892 Filed 6–2–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0565]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 3, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0565.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0565'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: State Application for Interment allowance Under 38 U.S.C. Chapter 23, VA Form 21–530A.

OMB Control Number: 2900–0565.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–530a is used to gather information from states that are seeking payment of the benefits for plot-interment allowances. The form allows states to submit a consolidated application for plot or interment allowances for eligible veteran buried in a cemetery owned by that State and is also used for the interment of persons eligible for burial in a national cemetery.

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 **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on March 6, 2003, at page 10782.

Affected Public: State, Local or Tribal Government.

Estimated Annual Burden: 20,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 40,000.

Dated: May 15, 2003.

By direction of the Secretary:

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–13893 Filed 6–2–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0013]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 3, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0013.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0013'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Application for United States Flag for Burial Purposes, VA Form 21–2008.

OMB Control Number: 2900–0013.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–2008 is used to determine eligibility for issuance of a burial flag to a family member or friend of a deceased veteran. VA Form was revised to establish eligibility for certain Selected Reserve members, and certain Filipino veterans. The ineligibility provision for felons convicted of a capital crime was also included.

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 **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on January 30, 2003, at page 4814.

Affected Public: Individuals or households, Federal Government, and State, Local or Tribal Government.

Estimated Annual Burden: 162,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 650,000.

Dated: May 15, 2003.

By direction of the Secretary:

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–13894 Filed 6–2–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New—Foreign Medical]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to claim reimbursement for medical services outside the United States (except Canada and the Philippines) for service-connected disability.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 4, 2003.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *ann.bickoff@mail.va.gov.* Please refer to ''OMB Control No. 2900–New—Foreign Medical'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: Claim Cover Sheet for Foreign Medical Program, VA Form 10–7959f.

OMB Control Number: 2900–New—Foreign Medical.

Type of Review: New collection.

Abstract: VA Form 10–7959f will be used for submitting claims for payment/reimbursement of expenses related to veterans who are residing or traveling overseas (except for Canada and the Philippines) with a service-connected disability. The form outlines the basic veteran information necessary for consideration of claims for reimbursement. Use of this form by providers or veteran is optional. VA accepts provider generated billing statement, Uniform Billing-Forms (UB) 92, HCFA 1500, Medicare Health Insurance Claims Form. This information collection is needed to carry out the health care benefits allowed by the Foreign Medical Program.

Affected Public: Individuals or households, Business or other for profit, and Not for profit institutions.

Estimated Total Annual Burden: 3,652 hours.

Estimated Average Burden Per Respondent: 11 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,660.

Estimated Total Annual Responses: 19,920.

Dated: May 20, 2003.

By direction of the Secretary:

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–13895 Filed 6–2–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0524]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Policy and Planning, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Policy and Planning, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a previously approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to document pre-employment screening and special background checks for applicants seeking employment as VA police officers.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 4, 2003.

ADDRESSES: Submit written comments on the collection of information to Christopher Price, Department of Veterans Affairs, 4300 West 7th Street, Little Rock AR 72205 or e-mail *Christopher.price@mail.va.gov.* Please refer to ''OMB Control No. 2900–0524'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Christopher Price at (501) 257–4160.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501—3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, the Office of Security and Law Enforcement invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VA's functions, including whether the information will have practical utility; (2) the accuracy of the Office of Security and Law Enforcement's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VA Police Officer Pre-Employment Screening Checklist, VA Form 0120.

OMB Control Number: 2900–0524.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 0120 involves a thorough pre-employment screening and special background checks for police officer applicants. Prior to employment of a qualified applicant, each VA medical center is required to conduct a FBI arrest record inquiry and to contact listed former employers for information. The form is completed by each VA facility and serves as a record of pre-employment screening to determine the qualification and suitability of the applicant. It is the policy of VA that no person be employed as a VA police officer who has been convicted of a serious crime or whose history reflects a disregard for laws and regulations, questionable character, or a pattern of misconduct or poor work habits.

Affected Public: Business or other for-profit, and State, Local or Tribal Governments.

Estimated Annual Burden: 250 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,500.

Dated: May 16, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–13896 Filed 6–2–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0090]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine the suitability and placement of potential volunteers.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 4, 2003.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *ann.bickoff@mail.va.gov.* Please refer to ''OMB Control No. 2900–0090'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use

of automated collection techniques or the use of other forms of information technology.

Title: Application for Voluntary Service, VA Form 10–7055.

OMB Control Number: 2900–0090.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–7055 is used to assist personnel of both voluntary organizations, which recruit volunteers from their membership, and the VA in selection, screening and placement of volunteers in the nationwide VA Voluntary Service program. The volunteer program supplements the medical care and treatment of veteran patients in all VA medical centers. This form is necessary to assist in determining the suitability and placement of potential volunteers.

Affected Public: Individuals or households, Not-for-profit institutions.

Estimated Total Annual Burden: 8,000 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 32,000.

Dated: May 16, 2003.

By direction of the Secretary:

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–13897 Filed 6–2–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0427]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to assess the health care disability compensation or rehabilitation needs of Former Prisoners of War (FPOW).

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 4, 2003.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *ann.bickoff@mail.va.gov*. Please refer to ''OMB Control No. 2900–0427'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: Former POW Medical History, VA Form 10–0048.

OMB Control Number: 2900–0427.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–0048 is used to collect data in response to Public Law 97–37 that liberalizes eligibility requirements and extends the existing benefits. The form is completed by veterans and submitted to a VA physician during a medical examination. Without this information VA physician would be unable to assess the health care, disability compensation or rehabilitation needs of Former Prisoners of War.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 1,575 hours.

Estimated Average Burden Per Respondent: 90 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,050.

Dated: May 16, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–13898 Filed 6–2–03; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 68, No. 106

Tuesday, June 3, 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 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

Correction

In rule document 03–12303 beginning on page 28092 in the issue of Thursday, May 22, 2003, make the following correction:

On page 28092, in the second column, under the heading **DATES**, ''May 23, 2003'' should read, ''May 22, 2003''.

[FR Doc. C3–12303 Filed 6–2–03; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47871; File No. S7–966]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing of the Plan for Allocation of Regulatory Responsibilities Between the National Association of Securities Dealers, Inc. and the International Securities Exchange, Inc.

May 14, 2003.

Correction

In notice document 03–12730 beginning on page 27869, in the issue of Wednesday, May 21, 2003, make the following correction:

On page 27869, in the third column, the docket number is corrected to read as set forth above.

[FR Doc. C3–12730 Filed 6–2–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15076; Airspace Docket No. 03–ACE–44]

Modification of Class E Airspace; Kaiser, MO

Correction

In rule document 03–13046 beginning on page 28122 in the issue of Friday, May 23, 2003, make the following correction:

§71.1 [Corrected]

On page 28123, in the second column, in §71.1, under the heading **ACE MO E5 Kaiser/Lake Ozark, MO** in the 17th line, ''7.8'' should read ''7.9''.

[FR Doc. C3–13046 Filed 6–2–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15080; Airspace Docket No. 03–ACE–48]

Modification of Class E Airspace; Sibley, IA

Correction

In rule document 03–13040 beginning on page 28126 in the issue of Friday, May 23, 2003, make the following correction:

§71.1 [Corrected]

On page 28127, in the first column in §71.1, under the heading **ACE IA E5 Sibley IA**, in the second line, ''long. 94°'' should read ''long. 95°''.

[FR Doc. C3–13040 Filed 6–2–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
June 3, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for Five Endangered Mussels in the Tennessee and Cumberland River Basins; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI76

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for Five Endangered Mussels in the Tennessee and Cumberland River Basins

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for five mussels in the Tennessee and Cumberland River Basins: the Cumberland elktoe (*Alasmidonta atropurpurea*), oyster mussel (*Epioblasma capsaeformis*), Cumberlandian combshell (*Epioblasma brevidens*), purple bean (*Villosa perpurpurea*), and rough rabbitsfoot (*Quadrula cylindrica strigillata*), all of which are species listed as endangered under the Endangered Species Act of 1973, as amended (Act or ESA). We propose to designate 13 geographic areas (units) that include rivers and streams in the Tennessee and/or Cumberland River Basins as critical habitat for these five mussel species. These 13 units encompass approximately 892 river kilometers (rkm) (544 river miles (rmi)). Proposed critical habitat includes portions of Bear Creek (Mississippi, Alabama), the Duck River (Tennessee), Obed River (Tennessee), Powell River (Tennessee, Virginia), Clinch River and its tributaries (Copper Creek and Indian Creek) (Tennessee, Virginia), Nolichucky River (Tennessee), and Beech Creek (Tennessee) in the Tennessee River System and portions of Rock Creek (Kentucky), the Big South Fork and its tributaries (Bone Camp Creek, White Oak Creek, North White Oak Creek, New River, Crooked Creek, Clear Fork, and North Prong Clear Fork) (Kentucky, Tennessee), Buck Creek (Kentucky), Marsh Creek (Kentucky), Sinking Creek (Kentucky), and Laurel Fork (Kentucky) in the Cumberland River System.

Critical habitat identifies specific areas that are essential to the conservation of a listed species, and that may require special management considerations or protection. If this proposal is made final, section 7(a)(2) of the Act requires that Federal agencies ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of an endangered or threatened species or result in the destruction or adverse modification of critical habitat. State or private actions, with no Federal involvement, are not affected.

Section 4 of the Act requires us to consider the economic and other relevant impacts of specifying any area as critical habitat. We will conduct an analysis of the economic impacts of designating these areas, in a manner that is consistent with the ruling of the 10th Circuit Court of Appeals in *N.M. Cattle Growers Ass'n* v. *USFWS.* We hereby solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation.

DATES: We will consider comments received by September 2, 2003. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by July 18, 2003.

ADDRESSES: If you wish to submit comments and information:

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, TN 38501.

2. You may hand-deliver written comments and information to our Tennessee Field Office, at the above address, or fax your comments to (931) 528–7075.

3. You may send comments by electronic mail (e-mail) to *robert_tawes@fws.gov*. For directions on how to submit electronic filing of comments, see the ''Public Comments Solicited'' section.

All comments and materials received, as well as supporting documentation used in preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Rob Tawes, at the above address (telephone (931) 528–6481, extension 213; facsimile (931) 528–7075).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend for any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We are particularly interested in comments concerning:

(1) The reasons why any area should or should not be determined to be critical habitat as provided by section 4 of the Act and 50 CFR 424.12(a)(1), including whether the benefits of designation will outweigh any threats to the species resulting from designation.

(2) Specific information on the amount and distribution of habitat for these five mussel and what habitat is essential to the conservation and why.

(3) Whether areas within proposed critical habitat are currently being managed to address conservation needs of these five mussel.

(4) Current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(5) Any foreseeable economic or other impacts resulting from the proposed designation, in particular, any impacts on small entities.

(6) Economic and other values associated with designating critical habitat for the mussels, such as those derived from nonconsumptive uses (*e.g.*, hiking, camping, enhanced watershed protection, increased soil retention, ''existence values,'' and reductions in administrative costs).

If you wish to comment on this proposed rule, you may submit your comments and materials concerning this proposal by any one of several methods (*see* **ADDRESSES** section). Electronic comments (e-mail) should avoid the use of special characters and encryption. Please also include ''Attn: RIN 1018–AI76'' and your name and return address in your e-mail message. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home addresses, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Disclaimer

Designation of critical habitat provides little additional protection to species. In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming

significant amounts of scarce conservation resources. The present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation rather than biology, forces decisions to be made before complete scientific information is available, consumes enormous agency resources that would otherwise be applied to actions of much greater conservation benefit, and imposes huge social and economic costs. The Service believes that rational public policy demands serious attention to this issue in order to allow our limited resources to be applied to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. [Sidle (1987. Env. Manage.11(4):429–437) stated, ''Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.''] Currently, only 306 species or 25 percent of the 1,211 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,211 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

Procedural and Resource Difficulties in Designating Critical Habitat

With a budget consistently inadequate to fund all of the petition review, listing, and critical habitat designation duties required of us by statute, we have in the past prioritized our efforts and focused our limited resources on adding species in need of protection to the lists of threatened or endangered species. We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are significantly delayed. Litigation over critical habitat issues for species already listed and receiving the Act's full protection has precluded or delayed many listing actions nationwide.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with National Environmental Policy Act (NEPA), all are part of the cost of critical habitat designation. None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

We previously provided information on these species in our Final rule (January 10, 1997; 62 FR 1647). The following presents new information.

The Cumberland elktoe, Cumberlandian combshell, oyster mussel, purple bean, and rough rabbitsfoot are all bivalve mussels (possessing a soft body enclosed by two shells) in the family Unionidae. Unionid mussels, in general, live embedded in the bottom (mud, sand, gravel, cobble/boulder substrates) of rivers, streams, and other bodies of water. These mussels siphon water into their shells and across four gills that are specialized for respiration. Mussels are known to consume detritus (organic decomposed debris), diatoms, phytoplankton, zooplankton, and other microorganisms (*i.e.* bacteria and algae) (Coker *et al.* 1921; Churchill and Lewis 1924; Fuller 1974).

Sexes in unionid mussels are usually separate. Males release sperm into the water; the sperm are then taken in by the females through their siphons during feeding and respiration. Eggs are held in the gills of the female where they come into contact with the sperm. Once eggs are fertilized, females retain them in their gills until the larvae (glochidia) fully develop. The change (metamorphosis) of the larvae of most unionid species into juvenile mussels requires a parasitic stage on the fins, gills, or skin of a fish. Late stage mussel glochidia are released into the water column and they must find and attach to a suitable host fish in order to develop into a juvenile mussel. Glochidia may be released separately or in masses termed conglutinates. Developed juvenile mussels normally detach from their fish host and sink to the stream bottom, where they continue to develop, provided they land in a suitable substrate with correct water conditions. Consequently, unionid mussels are specialized to only parasitize one or a few suitable host fish that occupy similar habitats as the mussels.

These 5 mussels are historically native to portions of the ''Cumberlandian'' Region of the Tennessee and Cumberland River Systems. The Cumberlandian Region, considered to be the center of freshwater mussel diversity in North America, historically contained over 100 species, 45 of which were found nowhere else (Starnes and Bogan 1988; Parmalee and Bogan 1998; Cicerello and Laudermilk 2001). The Cumberlandian Region encompasses the Cumberland River and its tributaries downstream to the vicinity of Clarksville, Montgomery County, Tennessee; the Tennessee River and its tributaries downstream to the vicinity of Muscle Shoals, Colbert and Lauderdale Counties, Alabama; the Duck River (Tennessee River system)

downstream to just below Columbia, Maury County, Tennessee (Ortmann 1924); and the Buffalo River (a lower Duck River tributary) (van der Schalie 1973). Biological factors relevant to these freshwater mussels' habitat needs are discussed in the ''Methods and Analysis used to Identify Proposed Critical Habitat'' section of this proposed rule. We present information below on taxonomy, life history, and distribution specific to these 5 Cumberlandian mussels. Additional information can be found in our final listing determination for these mussels (62 FR 1647) and agency draft recovery plan (April 22, 2003, 68 FR 19844) (Service 2003).

Taxonomy, Life History, and Distribution

Cumberland Elktoe (Alasmidonta atropurpurea (Rafinesque 1831))

Adult Cumblerand elktoe may reach lengths of up to 10.0 centimeters (cm) (3.9 inches (in)) (Parmalee and Bogan 1998). Gravid females (females with larvae) have been observed between October and May, but fish infected with glochidia of the Cumberland elktoe have not been encountered until March (Gordon and Layzer 1993). While glochidial infestation from this species has been recorded on 5 native fish species, glochidia successfully transformed or developed only on the northern hogsucker (*Hypentelium nigricans*) under laboratory conditions (Gordon and Layzer 1993). This species appears to prefer habitats in medium-sized streams that contain sand and mud substrata interspersed with cobbles and large boulders (Call and Parmalee 1981; Parmalee and Bogan 1998).

The Cumberland elktoe is endemic to the upper Cumberland River system in southeast Kentucky and north-central Tennessee. It appears to have historically occurred only in the main stem of the Cumberland River and primarily its southern tributaries upstream from the hypothesized original location of Cumberland Falls near Burnside, Pulaski County, Kentucky (Cicerello and Laudermilk 2001). This species has apparently been extirpated from the main stem of the Cumberland River as well as Laurel River and its tributary, Lynn Camp Creek (Service 2003). Based on recent records, the Cumberland elktoe continues to persist in 12 Cumberland River tributaries: Laurel Fork, Claiborne County, Tennessee and Whitley County, Kentucky; Marsh Creek, McCreary County, Kentucky; Sinking Creek, Laurel County, Kentucky; Big South Fork, Scott County, Tennessee, and McCreary County, Kentucky; Rock Creek, McCreary County, Kentucky; North Fork White Oak Creek, Morgan and Fentress County, Tennessee; Clear Fork, Fentress, Morgan, and Scott Counties, Tennessee; North Prong Clear Fork and Crooked Creek, Fentress County, Tennessee; White Oak Creek, Scott County, Tennessee; Bone Camp Creek, Morgan County, Tennessee; and the New River, Scott County, Tennessee (Call and Parmalee 1981; Bakaletz 1991; Gordon 1991; Cicerello 1996; Parmalee and Bogan 1998; Cicerello and Laudermilk 2001; Ronald Cicerello, Kentucky State Nature Preserves Commission, pers. comm. 2002, 2003; Service 2003).

Oyster Mussel (Epioblasma capsaeformis (Lea 1834))

According to Parmalee and Bogan (1998), adult oyster mussels can reach lengths of up to 7.0 cm (2.8 in). Ortmann (1924) was the first to note color differences in female oyster mussel mantle pads (shell lining). The mantle color appears to be bluish or greenish white in the Clinch River, grayish to blackish in the Duck River, and nearly white in the Big South Fork population (Ortmann 1924; Service 2003). In addition, the Duck River form achieves nearly twice the size of specimens from other populations. Two small projections (microattractants) at the junction of the mantle pads serve to attract host fish. Subtle differences in the morphology of these projections or structures also exist in these two populations (J.W. Jones, Virginia Tech, pers.comm. 2002).

Spawning probably occurs in the oyster mussel in late spring or early summer (Gordon and Layzer 1989). Glochidia of the oyster mussel have been identified on seven native host fish species, including the wounded darter (*Etheostoma vulneratum*), redline darter (*E. rufilineatum*), bluebreast darter (*E. camurum*), dusky darter (*Percina sciera*), banded sculpin (*Cottus carolinae*), black sculpin (*C. baileyi*), and mottled sculpin (*C. bairdi*) (Yeager and Saylor 1995; J.W. Jones and R.J. Neves, U.S. Geological Survey (USGS), unpublished (unpub.) data 1998). Oyster mussels typically occur in sand and gravel substrate in streams ranging from medium-sized creeks to large rivers (Gordon 1991; Parmalee and Bogan 1998). They apparently prefer shallow riffles and shoals and have been found associated with water willow (*Justicia americana*) beds (Ortmann 1924; Gordon 1991; Parmalee and Bogan 1998).

The oyster mussel was one of the most widely distributed Cumberlandian mussel species, with historical records existing from six States (Alabama, Georgia, Kentucky, North Carolina, Tennessee, and Virginia). It has apparently been eliminated from both main stems of the Cumberland and Tennessee Rivers and a large number of their tributaries (Fraley and Ahlstedt 2001; S.A. Ahlstedt, USGS, pers. comm. 2002; Service 2003). This mussel is now only extant in a handful of stream and river reaches in four States in the Tennessee and Cumberland River systems, including the Duck River, Maury and Marshall Counties, Tennessee; Powell River, Claiborne and Hancock Counties, Tennessee, and Lee County, Virginia; Clinch River, Hancock County, Tennessee, and Scott, Russell, and Tazewell Counties, Virginia; Nolichucky River, Hamblen and Cocke Counties, Tennessee; and Big South Fork of the Cumberland River, McCreary County, Kentucky, and Scott County, Tennessee (Wolcott and Neves 1990; Ahlstedt 1991; Bakaletz 1991; Gordon 1991; Ahlstedt and Tuberville 1997; S.A. Ahlstedt, pers. comm. 2002; Service 2003).

Cumberlandian Combshell (Epioblasma brevidens (Lea 1831))

Most mature Cumberlandian combshell are approximately 5 cm (2 in) in length, but may reach 8 cm (3.1 in) (Parmalee and Bogan, 1998). Spawning in this species most likely occurs in late winter (Gordon 1991). Glochidia of the Cumberlandian combshell have been identified on several native host fish species, including the wounded darter, redline darter, bluebreast darter, snubnose darter (*Etheostoma simoterum*), greenside darter (*E. blennioides*), logperch (*Percina caprodes*), banded sculpin, black sculpin, and mottled sculpin (Yeager and Saylor 1995; J.W. Jones and R.S. Neves, USGS, unpub. data 1998). This species is typically associated with riffle and shoal areas in medium to large-sized rivers (Gordon 1991; Parmalee and Bogan 1998). It is found in substrata ranging from coarse sand to cobble (Gordon 1991).

This species, like the oyster mussel, was once widely distributed, historically occurring in five States (Alabama, Kentucky, Mississippi, Tennessee, and Virginia). It has likewise apparently been eliminated from the mainstems of the Tennessee and Cumberland Rivers and several of their tributaries (Service 2003). It is now restricted to five stream reaches. The Cumberlandian combshell persists in Bear Creek, Colbert County, Alabama, and Tishomingo County, Mississippi; Powell River, Claiborne and Hancock

counties, Tennessee, and Lee County, Virginia; Clinch River, Hancock County, Tennessee, and Scott, Russell, and Tazewell Counties, Virginia; Big South Fork, Scott County, Tennessee and McCreary County, Kentucky; and Buck Creek, Pulaski County, Kentucky (Isom and Yokely 1968; Schuster *et al.* 1989; Ahlstedt 1991; Bakaletz 1991; Gordon 1991; Ahlstedt and Tuberville 1997; Hagman 2000; Ahlstedt, pers. comm. 2002; B. Jones, Mississippi Museum of Natural Science, pers. comm. 2002; Cicerello, pers.comm. 2003; Garner and McGregor, in press).

Purple Bean (Villosa perpurpurea (Lea 1861))

Adult purple beans are typically 2.5 to 7.5 cm (1.0 to 3.0 in) in length (R. Tawes, personal observation, 2003). Gravid females have been observed in January and February (Ahlstedt, 1991; Bob Butler, Service, pers. comm. 2003). Glochidia of the purple bean have been identified on the fantail darter (*Etheostoma flabellare*), greenside darter, and mottled sculpin (Watson and Neves 1996). This species inhabits small creeks to medium-sized rivers and can be found in a variety of substrates (Gordon 1991; Parmalee and Bogan 1998).

The purple bean is endemic to the upper Tennessee River drainage in Tennessee and Virginia. Its historical range included the Powell River, Lee County, Virginia; Clinch River system, Claiborne, Grainger, and Hancock Counties, Tennessee, and Russell, Scott, Tazewell, and Wise Counties, Virginia; Emory and Obed Rivers, Morgan and Cumberland counties, Tennessee; and Holston River System, Hawkins and Sullivan Counties, Tennessee, and Scott and Washington Counties, Virginia. It has apparently been extirpated from the Powell River, Emory River, North Fork Beech Creek (Holston River System) and North Fork Holston River (Service 2003). The purple bean persists in portions of the Clinch River mainstem, Hancock County, Tennessee, and Scott, Russell, and Tazewell Counties, Virginia; Copper Creek (a Clinch River tributary), in Scott County, Virginia; Indian Creek (a Clinch River tributary), in Tazewell County, Virginia; in the Obed River, Morgan and Cumberland Counties, Tennessee; and in Beech Creek, a tributary of the Holston River, Hawkins County, Tennessee (Ahlstedt 1991; Gordon 1991; Winston and Neves 1997; Watson and Neves 1998; Ahlstedt and Tuberville 1997; S.A. Ahlstedt, pers. comm. 2000, 2002, 2003; Fraley and Ahlstedt 2001).

Rough Rabbitsfoot (Quadrula cylindrica strigillata (Wright, 1898))

The rough rabbitsfoot is the largest of the five mussels, with adult specimens sometimes reaching 12 cm (5 in) in length (Parmalee and Bogan, 1998). Spawning in this species apparently occurs from May through June (Yeager and Neves 1986). Glochidia of rough rabbitsfoot have been identified on the whitetail shiner (*Cyprinella galactura*), spotfin shiner (*Cyprinella spiloptera*), and bigeye chub (*Hybopsis amblops*) (Yeager and Neves 1986). This species prefers clean sand and gravel substrate in streams ranging from medium-sized creeks to medium-sized rivers (Parmalee and Bogan 1998).

Like the purple bean, the rough rabbitsfoot is endemic to the upper Tennessee River system. The rough rabbitsfoot historically occupied the Powell River, Hancock and Claiborne Counties, Tennessee, and Lee County, Virginia; Clinch River system, Hancock and Claiborne Counties, Tennessee, and Russell, Scott, and Tazewell Counties, Virginia; and Holston River System, Hawkins and Sullivan Counties, Tennessee, and Scott and Washington Counties, Virginia. It is apparently extirpated from the entire Holston River system (Service, 2003). It currently persists in portions of the Powell River, Claiborne and Hancock Counties, Tennessee and Lee County, Virginia; Clinch River, Hancock County, Tennessee and Scott, Russell, and Tazewell Counties, Virginia; and in Indian Creek, Tazewell County, Virginia (Ahlstedt 1981; Gordon 1991; Ahlstedt and Tuberville 1997; Winston and Neves 1997; Watson and Neves 1998; S.A. Ahlstedt, pers. comm. 2000, 2002, 2003; Fraley and Ahlstedt 2001).

The summary of these five mussels presented above represents our current understanding of their historical and current range and distribution. Research is ongoing regarding identification of some species. For example, varying mantle coloration, microattractant configuration, size differential, and spawning cycles may indicate that the oyster mussel is actually a species complex (more than one species represented). Researchers from Virginia Tech are in the process of formally describing the Duck River variety (J.W. Jones, Virginia Tech, in press), and some malacologists, molluscs biologists, believe that the Big South Fork variety is actually a distinct, undescribed species, or possibly a variant of the tan riffleshell (*Epioblasma florentina walkeri*), a closely related species (S.A. Ahlstedt, USGS, pers. comm. 2002). A recent genetic investigation on the genus *Epioblasma* using mitochondrial DNA markers suggested that the tan riffleshell and the oyster mussel may be the same species (Buhay *et al.* 2002). Because these observations have not yet been published or peer reviewed and/or are not conclusive, we believe for the purposes of this proposed rule that the Duck River and Big South Fork populations are true *E. capsaeformis.* The distributions presented above are based upon shell morphology as described and currently recognized in the scientific literature. Therefore, we will consider these species' current ranges as outlined above, until presented with new information.

Summary of Decline and Threats to Surviving Populations

These five mussels, like many other Cumberlandian Region mussel taxa, have undergone significant reductions in total range and population density (Layzer *et al.* 1993; Williams *et al.* 1993; Neves *et al.* 1997; Fraley and Ahlstedt 2000; Cicerello and Laudermilk 2001; Service 2003), primarily resulting from human-induced changes in stream and river channels, including channel modifications (*e.g.*, dams, dredging, mining) and historic or episodic water pollution events (Schuster *et al.* 1989; Gordon 1991; Neves *et al.* 1997; Parmalee and Bogan 1998; Cicerello and Laudermilk 2001). The entire length of the main stems of the Tennessee and Cumberland Rivers and many of their largest tributaries are now impounded or greatly modified by the discharge of tailwaters (Service 2003). For example, more than 3,700 rkm (2,300 rmi) (about 20 percent) of the Tennessee River and its tributaries were impounded by the Tennessee Valley Authority by 1971 (Service 2003). Dams permanently alter the free-flowing aquatic habitat required by many mussels and their host fish. None of the five mussels are known to survive in impounded waters. Riverine mussels are killed during construction of dams; they may be suffocated by sediments that accumulate behind the dams and the reduced water flow behind dams limits food and oxygen available to mussels. Mussel populations in free-flowing river sections below dams can be adversely affected or extirpated from reduced dissolved oxygen levels, unnatural flow regimes, and colder temperatures, or greatly modified by the dams or their tailwater releases (Neves *et al.* 1997). Many fish species that serve as hosts to mussel larvae are also eliminated by dams and impounded waters.

Other forms of habitat modification, such as channelization, channel clearing and de-snagging (woody debris

removal), and gravel mining, caused stream bed scour and erosion, increased turbidity, reduction of groundwater levels, and sedimentation, often resulting in severe local impacts to and even extirpation of mussel species. Sedimentation may also eliminate or reduce recruitment of juvenile mussels (Negus 1966), and suspended sediments can also interfere with feeding (Dennis 1984).

Water pollution from various point-sources such as mines, industrial plants, and municipal sewage treatment facilities also have contributed to the demise or decline of the five species in certain portions of their historical ranges. Freshwater mussels, especially in their early life stages, are extremely sensitive to many pollutants (*e.g.*, chlorine, ammonia, heavy metals, high concentrations of nutrients) commonly found in municipal and industrial wastewater effluents (Havlik and Marking 1987; Goudreau *et al.* 1988; Keller and Zam 1991). Stream discharges from these sources could result in decreased dissolved oxygen concentration, increased acidity and conductivity, and other changes in water chemistry, which may impact mussels or their host fish.

An additional major impact on individual populations of the five mussels that has resulted from historic activities (especially dam construction) was separation and isolation of populations by impoundments or large stretches of unsuitable habitat, rendering natural reproduction between those populations (and associated genetic interchange) problematic (Service 2003). Once existing in hundreds of river kilometers, these five mussels now survive in only a few relatively small, isolated populations of questionable long-term viability which cover portions of Virginia, Kentucky, Alabama, Tennessee, and Mississippi (Service 2003). Small populations are more vulnerable to natural random events such as droughts, as well as to changes in human activities and land-use practices that impact aquatic habitats (Neves *et al.* 1997). Current threats to surviving populations of these five mussels include continued habitat loss and fragmentation, cumulative effects of land use activities on aquatic environments, population isolation and associated deleterious genetic effects such as inbreeding depression, and competition with invasive exotic mussel species (Foose *et al.* 1995; Neves *et al.* 1997). Non-point source pollution, such as sediment and agrochemical run-off, which are known to adversely affect aquatic invertebrates (Waters 1995; Folkerts 1997) also poses a continuing threat to the long-term survival of these remaining mussel populations (Wolcott and Neves 1990; Neves *et al.* 1997; Service 2003). More detailed information on the threats to these species can be found in the January 10, 1997, final listing determination (62 FR 1647) and the agency draft recovery plan for these five species (Service 2003).

Previous Federal Actions

We discussed our previous Federal actions in the Final listing rule for these 5 mussel species (62 FR 1649). The following discuss our Federal actions since the Final listing rule.

On January 10, 1997, we published a final rule listing the 5 mussels as endangered. At that time, we determined that critical habitat was not prudent because it would result in no known benefit to the five species and that designation could pose a further threat to the five mussels by publishing their site-specific localities.

In June 1998, a technical draft recovery plan for the five mussels was written and underwent a technical review dealing primarily with the biological accuracy and sufficiency of the plan. We released an agency draft recovery plan on April 22, 2003, and disseminated to State and Federal agencies, universities, public officials, nongovernmental organizations, and knowledgeable individuals for review and comment on all aspects of the plan. We published in the **Federal Register** a Notice of Draft Recovery Plan Availability (68 FR 19844). The comment period will close on June 23, 2003.

On October 12, 2000, the Southern Appalachian Biodiversity Project filed a lawsuit in U.S. District Court for the Eastern District of Tennessee against the Service, the Director of the Service, and the Secretary of the Department of the Interior, challenging our not-prudent critical habitat determination for the Cumberlandian combshell, Cumberland elktoe, purple bean, rough rabbitsfoot, and oyster mussel (United States District Court, Eastern District of Tennessee (*Southern Appalachian Biodiveristy Project* v. *U.S. Fish and Wildlife Service et al.*, No. 2:00–CV–361). On November 8, 2001, the District Court issued an order directing us to re-evaluate our prudency determination for these five mussels and submit new proposed prudency determinations for the Cumberland elktoe to the **Federal Register** no later than May 19, 2003, and for the remaining four mussels to the **Federal Register** no later than June 16, 2003. We were also directed to submit by those same dates new proposed critical habitat designations, if prudent. Additionally, for these mussels in which critical habitat was found to be prudent, we were directed to finalize our designation not less than 12 months following the prudency determination.

This proposal is the product of our re-evaluation of our 1997 determination that critical habitat for these five mussels was not prudent. It reflects our interpretation of recent judicial opinions on critical habitat designation and the standards placed on us for making a prudency determination. If additional information becomes available on the species' biology or distribution, or threats to the species, we may reevaluate this proposal to propose additional critical habitat, propose boundary refinements that substantially change existing proposed critical habitat, or withdraw our proposal to designate critical habitat.

Critical Habitat

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

The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. It does not allow government or public access to private lands. Federal agencies must consult with the Service on activities they undertake, fund, or permit that may affect critical habitat. However, the Act prohibits unauthorized take of listed species and requires consultation for activities that may affect them, including habitat alterations, regardless of whether critical habitat has been designated. The Service has found that the designation of critical habitat provides little additional protection to most listed species.

In order for habitat to be included in a critical habitat designation, the habitat features must be ''essential to the conservation of the species.'' Such

critical habitat designations identify, to the extent known and using the best scientific 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)).

Regulations at 50 CFR 424.02(j) define special management considerations or protection to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species. When we designate critical habitat, we may not have the information necessary to identify all areas which are essential for the conservation of the species. Nevertheless, we are required to designate those areas we consider to be essential, using the best information available to us.

Within the geographic area of the species, we will designate only currently known essential areas. We will not speculate about which areas might be found to be essential if better information became available, or which areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then we will include the area in the critical habitat designation. Our regulations state that ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species'' (50 CFR 424.12(e)). Accordingly, when the best available scientific data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area currently occupied by the species.

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides guidance to ensure that our decisions are based on the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, information that should be considered includes the listing package for the species; the recovery plan; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys, studies, and biological assessments; unpublished materials; and expert opinion or personal knowledge.

Section 4 of the Act generally requires that we designate critical habitat at the time of listing and based on what we know at the time of designation. There are several thousands of kilometers of perennial streams in the Cumberlandian Region. Many of these flow through private property and may not have been adequately surveyed for mussels. We recognize that additional small, limited populations for some of these species could exist in some of these streams and may be discovered over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. Therefore, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the take prohibitions pursuant to section 9 of the Act, as determined on the basis of the best available information at the time of the action. It is possible that federally funded or assisted projects affecting listed species outside their designated critical habitat areas could jeopardize those species. 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 and recovery efforts if new information available to these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act and its implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is listed as endangered or threatened. Our regulations at 50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species. In our January 10, 1997, final rule (62 FR 1647), we determined that both situations applied to these five mussels, and consequently indicated that the designation of critical habitat was not prudent.

However, in the past few years, several of our determinations that the designation of critical habitat would not be prudent have been overturned by court decisions. For example, in *Conservation Council for Hawaii* v. *Babbitt*, the United States District Court for the District of Hawaii ruled that the Service could not rely on the ''increased threat'' rationale for a ''not prudent'' determination without specific evidence of the threat to the species at issue (2 F. Supp. 2d 1280 [D. Hawaii 1998]). Additionally, in *Natural Resources Defense Council* v. *U.S. Department of the Interior*, the United States Court of Appeals for the Ninth Circuit ruled that the Service must balance, in order to invoke the ''increased threat rationale,'' the threat against the benefit to the species of designating critical habitat 113 F. 3d 1121, 1125 (9th Cir. 1997).

We continue to be concerned that the five mussels are vulnerable to unrestricted collection, vandalism, or disturbance of their habitat and that these threats might be increased by the designation of critical habitat, publication of critical habitat maps, and further dissemination of location and habitat information. The low numbers and restricted range of these mussels make it unlikely that their populations could withstand even moderate collecting pressure, or vandalism. However, at this time we do not have specific evidence for the taking, collection, trade, vandalism, or other unauthorized human disturbance specific to these five mussels.

The courts also have ruled that, in the absence of a finding that the designation of critical habitat would increase threats to a species, the existence of another type of protection, even if it offers potentially greater protection to the species, does not justify a ''not prudent'' finding (*Conservation Council for Hawaii* v. *Babbitt* 2 F. Supp. 2d 1280). We are already working with Federal and State agencies, private individuals, and organizations in carrying out conservation activities for these five mussels and in conducting surveys for

additional occurrences of the species and to assess habitat conditions. These entities are fully aware of the distribution, status, and habitat requirements for these mussels, as currently known. However, the designation may provide additional information to individuals, local and State governments, and other entities engaged in long-range planning, since areas essential to the conservation of the species are more clearly defined and, to the extent currently feasible, the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. Accordingly, we withdraw our previous determination that the designation of critical habitat will not benefit these five mussel species. Therefore, we determine that the designation of critical habitat is prudent for the Cumberland elktoe, oyster mussel, Cumberlandian combshell, purple bean, and rough rabbitsfoot and propose to designate critical habitat for these mussels. At this time, we have sufficient information necessary to identify specific areas as essential to the conservation of these five mussel species and are therefore proposing critical habitat (see ''Methods and Analysis used to Identify Proposed Critical Habitat'' section below for a discussion of information used in our reevaluation).

Methods and Analysis Used To Identify Proposed Critical Habitat for Five Mussel Species

As required by section 4(b)(2) of the Act and its implementing regulations (50 CFR 424.12), we used the best scientific information available to determine critical habitat areas that contain the physical and biological features that are essential for the conservation of these 5 mussels. We reviewed the available information pertaining to the historic and current distributions, life histories, host fishes, habitats of, and threats to these species. The information used in the preparation of this proposed designation includes our own site-specific species and habitat information; recent biological surveys and reports and communications with other qualified biologists or experts; Statewide Geographic Information System (GIS) species occurrence coverages provided by the Kentucky State Nature Preserves Commission, Tennessee Department of Environment and Conservation, and Tennessee Valley Authority; peer-reviewed scientific publications; the final listing rule for the five mussels; and our draft agency recovery plan for these mussels. We considered all collection records within the last 15 years from streams currently and historically known to be occupied by one or more of the species (*see* ''Taxonomy, Life History, and Distribution'' section above).

As discussed in part under the ''Summary of Decline'' section of this rule and the agency draft recovery plan (Service 2003), the five mussels are highly restricted in distribution, generally occur in small populations, and show little evidence of recovering from historic habitat loss without significant human intervention. In fact, the draft recovery plan states that recovery for the five mussels is not likely in the near future because of the extent of their decline, the relative isolation of remaining populations, and varied threats to their continued existence. Therefore, the recovery plan emphasizes protection of surviving populations of these five mussels and their stream and river habitats, enhancement and restoration of habitats, and population management, including augmentation and reintroduction of the mussels.

Much of what is known about the specific physical and biological habitat requirements of these five mussels is summarized above in the ''Background'' section of this rule and in the agency draft recovery plan. In determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific data available and to focus on 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, in accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12. Such requirements include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distribution of a species.

On the basis of the best available information, we include the following as primary constituent elements essential for the conservation of the five mussels:

1. Permanent, flowing stream reaches with a flow regime (*i.e,* the magnitude, frequency, duration, and seasonality of discharge over time) necessary for normal behavior, growth, and survival of all life stages of the five mussels and their host fish;

2. Geomorphically stable stream and river channels and banks (structurally stable stream cross section);

3. Stable substrates, consisting of mud, sand, gravel, and/or cobble/boulder, with low amounts of fine sediments or attached filamentous algae;

4. Water quality (including temperature, turbidity, oxygen content, and other characteristics) necessary for the normal behavior, growth, and survival of all life stages of the five mussels and their host fish; and

f. Fish hosts with adequate living, foraging, and spawning areas for them.

In considering and identifying primary constituent elements, we have taken into account the dynamic nature of riverine systems. We recognize that riparian areas and floodplains are integral parts of the stream ecosystem, important in maintaining channel geomorphology; and providing nutrient input and buffering from sediments and pollution and that side channel and backwater habitats may be important in the life cycle of fish that serve as hosts for mussel larvae.

We considered several factors in the selection and proposal of specific areas for critical habitat for these five mussels. We assessed the recovery strategy outlined in the agency draft recovery plan for these species, which emphasizes: (1) Protection and stabilization of surviving populations (2) protection and management of their habitat (3) augmentation of existing small populations (4) reestablishment/reintroduction of new populations within their historic ranges, and (5) research on species biology and ecology. Small, isolated populations are subject to the loss of unique genetic material (genetic drift) (Soulé 1980; Lacy *et al.* 1995) and the gradual loss of reproductive success or fecundity due to limited genetic diversity (Foose *et al.* 1995). They are likewise more vulnerable to extirpation from random catastrophic events and to changes in human activities and land-use practices (Soulé 1980; Lacy *et al.* 1995). The ultimate goal of the agency draft recovery plan is to restore enough viable (self-sufficient) populations of these five mussels such that each species no longer needs protection under the Act.

In the agency draft recovery plan, we selected the number of distinct viable stream populations required for delisting of each of the five mussels on the basis primarily of the historic distribution of each species (Table 1). For example, the rough rabbitsfoot is narrowly endemic to the upper Tennessee River basin. It historically occupied only three river reaches and, therefore, its conservation can be

achieved with fewer populations. We have concluded that identification of critical habitat that would provide for the number of populations outlined in Table 1 for each species is essential to their conservation.

TABLE 1.—NUMBER OF DISTINCT VIABLE STREAM POPULATIONS OF FIVE CUMBERLANDIAN MUSSELS REQUIRED BEFORE DELISTING CAN OCCUR AS OUTLINED IN DRAFT AGENCY RECOVERY PLAN (SERVICE 2003)

Species	Number of populations required for delisting
Cumberland elktoe	10
Oyster mussel	11
Cumberlandian combshell	10
Purple bean	4
Rough rabbitsfoot	3

Our approach to delineating specific critical habitat units, based on the recovery strategy outlined above, focused first on considering the historic ranges of the five mussels. We evaluated streams and rivers within the historic ranges of these five mussels for which there was evidence that these species had occurred there at some point (*i.e.,* collection records). Within the historic range of these species, we found that a large proportion of the streams and rivers in the Tennessee and Cumberland River Basins that historically supported these mussels has been modified by existing dams and their impounded waters. Extensive portions of the Tennessee and Cumberland River drainages, including the mainstem of the Cumberland River, segments of the Holston River, the Powell River, the Tennessee River mainstem, and numerous tributaries of these rivers, cannot be considered essential to the conservation of these species because they no longer provide the physical and biological features that are essential for their conservation (see Primary Constituent Elements discussion above). We also did not consider several streams with single site occurrence records of a single species as essential to the conservation of these species because these areas exhibited limited habitat availability, isolation, degraded habitat, and/or low management value or potential (*e.g.,* Cedar Creek in Colbert County, Alabama; Little Pigeon River in Sevier County, Tennessee). Similarly, we did not consider as essential areas from which there have been no collection records of these species for several decades (*e.g.,* portions of the upper Holston River system in Tennessee and Virginia, Buffalo River, Little South Fork of the Cumberland River, Laurel River).

We then identified 13 stream or river reaches (units) within the historic range of these species for which our data (*i.e.,* collection records over the last 15 years and view of experts) indicate that one or more of the 5 mussel species are present along with the primary constituent elements (*see* Table 2; Index map). These units total approximately 892 rkm (544 rmi), in Alabama, Kentucky, Mississippi, Tennessee, and Virginia. We believe that these areas support darters, minnows, sculpins, and other fishes that have been identified as hosts or potential hosts for one or more of the mussels, as evidenced by known fish distributions (Etnier and Starnes 1998), the persistence of the mussels over extended periods of time, or field evidence of recruitment (Ahlstedt pers. comm. 2002, B. Butler, pers.comm. 2002). We consider all of these 13 reaches essential for the conservation of these 5 mussels. As discussed in the agency draft recovery plan, long-term conservation of these five mussels is unlikely in their currently reduced and fragmented state. Therefore, it is essential to include in this designation these 13 reaches within the historic range of all 5 mussels that still contain mussels and the primary constituent elements of habitat.

We then considered whether these essential areas were adequate for the conservation of these five mussels. As indicated in the agency draft recovery plan, threats to the five species are compounded by their limited distribution and isolation and it is unlikely that currently occupied habitat is adequate for the conservation of all five species. Conservation of these species requires expanding their ranges into currently unoccupied portions of their historic habitat because small, isolated, fragmented aquatic populations, as discussed previously, are subject to chance catastrophic events and to changes in human activities and land use practices that may result in their elimination. Larger, more contiguous populations can reduce the threat of extinction.

Each of the 13 habitat units is currently occupied by 1 or more of the 5 listed mussels. Because portions of the historic range of each of the 5 mussels are shared with three or more of the other mussel species, there is considerable overlap between species' current and historic distribution within the 13 habitat units. This offers opportunities to increase each species' current range and number of extant populations into units currently occupied by other listed species included in this designation. For example, the oyster mussel historically inhabited seven units and currently inhabits five. Successful reintroduction of the species into units that they historically occupied (and that are currently occupied by one or more of the five mussels) would expand the number of populations, thereby reducing the threat of extinction.

We believe that the habitat proposed for designation in these 13 units is essential to the conservation of all 5 mussels and that the 13 units encompass sufficient habitat necessary for the recovery of 3 of these 5 species (the Cumberland elktoe, purple bean, and rough rabbitsfoot.) However, we do not believe that the 13 units provide sufficient essential habitat for the conservation of the oyster mussel and Cumberlandian combshell, based on the number of viable populations required for conservation and recovery of these two species (Table 1). For example, these 13 proposed units include occupied habitat for 5 existing oyster mussel populations and include unoccupied habitat in three other areas that could support oyster mussel populations. Our agency draft recovery plan, however, requires 11 viable populations of the oyster mussel before it may be delisted. The essential area as defined by our 13 units is not adequate to ensure the conservation of the oyster mussel and Cumberlandian combshell. Therefore, we then considered free-flowing river reaches that historically contained the Cumberlandian combshell and oyster mussel but that have had no collection records for the past 15 years, and that, resulting from water quality and quantity improvements, likely contain suitable habitat for these mussels. Through our analysis, we identified 4 such reaches that are separated by dams and impoundments from free-flowing habitats that contain extant populations of oyster mussels and Cumberlandian combshells. These areas are the lower French Broad River below Douglas Dam to its confluence with the Holston River, Sevier and Knox Counties, Tennessee; the free-flowing reach of the Holston River below Cherokee Dam to its confluence with the French Broad River, Jefferson, Grainger, and Knox Counties, Tennessee; the Tennessee River mainstem below Wilson Dam in Colbert and Lauderdale Counties, Alabama; and a stretch of the Rockcastle River in Laurel, Rockcastle, and Pulaski Counties, Kentucky. Natural recolonization of these areas by these two species is unlikely; however, these

species can be reintroduced into these areas to create the additional viable populations necessary to conserve and recover the species. We have therefore concluded that these four reaches are also essential to the conservation of the oyster mussel and Cumberlandian combshell.

Although we have concluded that they are essential, we are not proposing to designate critical habitat in each of these 4 reaches, due to their current or potential status as nonessential experimental population areas. Section 10(j) of the Act states critical habitat shall not be designated for any experimental population determined to be not essential to the continued existence of the species. On June 14, 2001, we published a final rule to designate nonessential experimental population status under section 10(j) of the Act for the reintroduction of 17 Federally listed species (including the oyster mussel and Cumberlandian combshell) to the free-flowing reach below Wilson Dam, in the Tennessee River (66 FR 32250). Therefore, we are not proposing critical habitat for the oyster mussel and Cumberlandian combshell in the Tennessee River mainstem below Wilson Dam in Colbert and Lauderdale Counties, Alabama.

In addition, we are actively considering the remaining three reaches (the lower French Broad, lower Holston, and Rockcastle Rivers) for designation as nonessential experimental populations in order to facilitate the reintroduction of the oyster mussel and Cumberlandian combshell, as well as numerous other listed mussels, fishes, and snails. Therefore, while we recognize their likely importance to our recovery strategy for these species, we are not proposing these three river reaches as critical habitat. A further discussion of these areas can be found below (*see* Exclusions under 4(b)(2) section).

In summary, the habitat contained within the 13 proposed units described below and the habitat within the 4 historic reaches designated or under consideration for nonessential experimental population status constitute our best determination of areas essential for the conservation, and eventual recovery, of these 5 Cumberlandian mussels. We are proposing as critical habitat only 13 habitat units encompassing approximately 849 rkm (528 rmi) of stream and river channels in Alabama, Mississippi, Tennessee, Kentucky, and Virginia. Each of these units is occupied by one or more of the 5 mussels. Although these 13 areas represent only a small proportion of each species' historic range, these habitat units include a significant proportion of the Cumberlandian Region's remaining highest-quality free-flowing rivers and streams, and reflect the variety of small-stream-to-large-river habitats historically occupied by each species. Because mussels are naturally restricted by certain physical conditions within a stream or river reach (*e.g.*, flow, substrate), they may be unevenly distributed within these habitat units. Uncertainty on upstream and downstream distributional limits of some populations may have resulted in small areas of occupied habitat excluded from, or areas of unoccupied habitat included in, the designation. Proposed critical habitat may be revised for any or all of these species should new information become available prior to the final rule, and existing critical habitat may be revised if new information becomes available after the final rule.

Need for Special Management Consideration or Protection

An area designated as critical habitat contains one or more of the primary constituent elements that are essential to the conservation of the species (*see* ''Primary Constituent Elements'' section), and that may require special management considerations or protection. Various activities in or adjacent to each of the critical habitat units described in this proposed rule may affect one or more of the primary constituent elements that are found in the unit. These activities include, but are not limited to, those listed in the ''Effects of Critical Habitat'' section as ''Federal Actions That May Affect Critical Habitat and Require Consultation.'' None of the proposed critical habitat units is presently under special management or protection provided by a legally operative plan or agreement for the conservation of the five mussel species. Therefore, we have determined that the proposed units require special management or protection.

Proposed Critical Habitat Designation

The areas that we are proposing for designation as critical habitat for the five mussels provide one or more of the primary constituent elements described above. Table 2 summarizes the location and extent of proposed critical habitat, and whether or not that critical habitat is currently occupied or unoccupied. These areas require special management considerations to ensure their contribution to the conservation of these mussels. For each stream reach proposed as a critical habitat unit, the up-stream and downstream boundaries are described in general detail below; more precise estimates are provided in the Regulation Promulgation section of this rule.

TABLE 2*.—APPROXIMATE RIVER DISTANCES, BY DRAINAGE AREA, FOR OCCUPIED AND UNOCCUPIED PROPOSED CRITICAL HABITAT FOR THE FIVE ENDANGERED MUSSEL SPECIES

Species	Approximate river distances currently occupied by the species		Approximate river distances currently unoccupied by the species	
	River kilometers	River miles	River kilometers	River miles
Cumberland elktoe	204	128		
Oyster mussel	511	322	119	74.5
Cumberlandian combshell	527	330	82	51
Purple bean	330	216	154	94
Rough rabbitsfoot	390	244.5	21	13
Total	1962	1240.5	376	232.5

*Table 2 refers to the location and extent of proposed critical habitat for each species. For more detail, refer to § 17.95

Species, Stream (Unit), and State	Currently occupied		Currently unoccupied	
Cumberland elktoe:				
Rock Creek (Unit 8), KY	11	7		
Big South Fork (Unit 9), TN, KY	43	27		
North Fork White Oak Creek (Unit 9), TN	11	7		
New River (Unit 9), TN	14.5	9		
Clear Fork (Unit 9), TN	40	25		
White Oak Creek (Unit 9), TN	10	6		
Bone Camp Creek (Unit 9), TN	6	4		
Crooked Creek (Unit 9), TN	14.5	9		
North Prong Clear Fork (Unit 9), TN	14.5	9		
Sinking Creek (Unit 11), KY	13	8		
Marsh Creek (Unit 12), KY	19	12		
Laurel Fork (Unit 13), TN, KY	8	5		
Total	204	128		
Oyster mussel:				
Duck River (Unit 1), TN	74	46		
Bear Creek (Unit 2), AL, MS	.....	.....	40	25
Powell River (Unit 4), TN, VA	154	94		
Clinch River (Unit 5), TN, VA	242	150		
Copper Creek (Unit 5), VA	.....	.....	21	13
Nolichucky River (Unit 6), TN	8	5		
Big South Fork (Unit 9), TN, KY	43	27		
Buck Creek (Unit 10), KY	.....	.....	58	36
Total	511	322	119	74.5
Cumberlandian combshell:				
Duck River (Unit 1), TN	.....	.....	74	46
Bear Creek (Unit 2), AL, MS	40	25		
Powell River (Unit 4), TN, VA	154	94		
Clinch River (Unit 5), TN, VA	242	148		
Nolichucky River (Unit 6), TN	.....	.....	8	5
Big South Fork (Unit 9), TN, KY	43	27		
Buck Creek (Unit 10), KY	58	36		
Total	527	330	82	51
Purple bean:				
Obed River (Unit 3), TN	40	25		
Powell River (Unit 4), TN, VA	.....	.....	154	94
Clinch River (Unit 5), TN, VA	242	148		
Copper Creek (Unit 5), VA	21	13		
Indian Creek (Unit 5), VA	4	2.5		
Beech Creek (Unit 7), TN	23	14		
Total	330	216	154	94
Rough rabbitsfoot:				
Powell River (Unit 4), TN, VA	154	94		
Clinch River (Unit 5), TN, VA	242	148		
Copper Creek (Unit 5), VA	.....	.....	21	13
Indian Creek (Unit 5), VA	4	2.5		
Total	390	244.5	21	13

Critical Habitat Unit Descriptions

The critical habitat units described below include the stream and river channels within the ordinary high water line. As defined in 33 CFR 329.11, the ordinary high water line on nontidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas. We are proposing the following units for designation as critical habitat for these five mussels.

Unit 1. Duck River, Maury and Marshall Counties, Tennessee

Unit 1 encompasses 74 rkm (46 rmi) of the mainstem of the Duck River channel from rkm 214 (rmi 133) (0.3 rkm (0.2 rmi) upstream of the First Street Bridge) in the City of Columbia, Maury County, Tennessee, upstream to Lillards Mill Dam at rkm 288 (rmi 179), Marshall County, Tennessee. This reach of the Duck River contains a robust, viable population of the oyster mussel (Ahlstedt 1991; Gordon 1991; S.A. Ahlstedt USGS, pers. comm. 2002) and historically supported the Cumberlandian combshell (Hinkley and Marsh 1885; Ortmann 1925; Isom and

Yokley 1968; van der Schalie 1973; Gordon 1991).

Unit 2. Bear Creek, Colbert County, Alabama, and Tishomingo County, Mississippi

Unit 2 encompasses 40 rkm (25 rmi) of the mainstem of Bear Creek from the backwaters of Pickwick Lake at rkm 37 (rmi 23), Colbert County, Alabama, upstream through Tishomingo County, Mississippi, ending at the Mississippi/Alabama State line. Recent mussel surveys in the Mississippi section of Bear Creek confirmed that the Cumberlandian combshell is still extant there (R.M. Jones, MMNS, pers. comm. 2002), and continues to be present in the Colbert County, Alabama portion of the unit (Isom and Yokley 1968; Garner and McGregor, in press). Bear Creek is in the historical range of the oyster mussel (Ortmann 1925).

Unit 3. Obed River, Cumberland and Morgan Counties, Tennessee

Unit 3 encompasses 40 rkm (25 rmi) and begins at the confluence of the Obed with the Emory River, Morgan County, Tennessee, and continues upstream to Adams Bridge, Cumberland County, Tennessee. This unit currently contains a population of the purple bean (Gordon 1991; S.A. Ahlstedt, USGS, pers. comm. 2002) and is also within designated critical habitat for the Federally listed spotfin chub (*Erimonax monacha*) (*see* ''Existing Critical Habitat'' and Table 3). Unit 3 is located within the Obed National Wild and Scenic River, a unit of the National Park Service, and the Catoosa Wildlife Management Area, which is owned by the Tennessee Wildlife Resources Agency.

Unit 4. Powell River, Claiborne and Hancock Counties, Tennessee, and Lee County, Virginia

Unit 4 encompasses 154 rkm (94 rmi) and includes the Powell River from the U.S. 25E Bridge in Claiborne County, Tennessee, upstream to river mile 159 (upstream of Rock Island in the vicinity of Pughs) Lee County, Virginia. This reach is currently occupied by the Cumberlandian combshell (Ahlstedt 1991; Gordon 1991), rough rabbitsfoot (Service 2003), and oyster mussel (Wolcott and Neves 1990), and was historically occupied by the purple bean (Ortmann 1918). It is also existing critical habitat for the Federally listed slender chub (*Erimystax cahni*) and yellowfin madtom (*Noturus flavipinnis*)(*see* ''Existing Critical Habitat'' and Table 3).

Unit 5. Clinch River and tributaries, Hancock County, Tennessee, and Scott, Russell, and Tazewell Counties, Virginia

Unit 5 totals 272 rkm (171 rmi), including 242 rkm (148 rmi) of the Clinch River from rkm 255 (rmi 159) immediately below Grissom Island, Hancock County, Tennessee, upstream to its confluence with Indian Creek in Cedar Bluff, Tazewell County, Virginia; 4 rkm (2.5 rmi) of Indian Creek from its confluence with the Clinch River upstream to the fourth Norfolk Southern Railroad crossing at Van Dyke, Tazewell County, Virginia; and 21 rkm (13 rmi) of Copper Creek from its confluence with the Clinch River upstream to Virginia State Route 72, Scott County, Virginia. The Clinch mainstem currently contains the oyster mussel, rough rabbitsfoot, Cumberlandian combshell, and purple bean (Gordon 1991; Ahlstedt and Tuberville 1997; S.A. Ahlstedt, USGS, pers. comm. 2002). Indian Creek currently supports populations of the purple bean and rough rabbitsfoot (Winston and Neves 1997; Watson and Neves 1998). Copper Creek is currently occupied by a low density population of the purple bean, and contains historic records of both the oyster mussel and rough rabbitsfoot (Ahlstedt 1981; Fraley and Ahlstedt 2001; Ahlstedt, pers. comm. 2003). Copper Creek is critical habitat for the yellowfin madtom and a portion of the proposed Clinch River mainstem section is critical habitat for both the slender chub and the yellowfin madtom (*see* ''Existing Critical Habitat'' and Table 3).

Unit 6. Nolichucky River, Hamblen and Cocke Counties, Tennessee

Unit 6 includes 8 rkm (5 rmi) of the mainstem of the Nolichucky River and extends from rkm 14 (rmi 9) (approximately 0.6 rkm (0.4 rmi) upstream of Enka Dam) to Susong Bridge in Hamblen, Cocke Counties, Tennessee. The Nolichucky River currently supports a small population of the oyster mussel (S.A. Ahlstedt, USGS, pers. comm. 2002) and was historically occupied by the Cumberlandian combshell (Gordon 1991).

Unit 7. Beech Creek, Hawkins County, Tennessee

Unit 7 encompasses 23 rkm (14 rmi) and extends from rkm 4 (rmi 2) of Beech Creek (in the vicinity of Slide, Tennessee) upstream to the dismantled railroad bridge at rkm 27 (rmi 16). It supports the best remaining population of purple bean and the only remaining population of this species in the Holston River drainage (Ahlstedt 1991; S.A. Ahlstedt, USGS, pers. comm. 2002).

Unit 8. Rock Creek, McCreary County, Kentucky

Unit 8 includes 11 rkm (7 rmi) of the mainstem of Rock Creek and begins at the Rock Creek/White Oak Creek confluence and extends upstream to Dolan Branch at rkm 18 (rmi 11) in McCreary County, Kentucky. This unit, which is bounded by the Daniel Boone National Forest and some private inholdings, is currently occupied by the Cumberland elktoe (Cicerello 1996).

Unit 9. Big South Fork and Tributaries, Fentress, Morgan, and Scott Counties, Tennessee, and McCreary County, Kentucky

Unit 9 encompasses 153 rkm (95 rmi) and consists of 43 rkm (27 rmi) of the Big South Fork of the Cumberland River mainstem from its confluence with Laurel Crossing Branch (downstream of Big Shoals), McCreary County, Kentucky, upstream to its confluence with the New River and Clear Fork, Scott County, Tennessee; 11 rkm (7 rmi) of North Fork White Oak Creek from its confluence with the Big South Fork upstream to Panther Branch, Fentress County, Tennessee; 14.5 rkm (9 rmi) of the New River from its confluence with Clear Fork upstream to U.S. Highway 27, Scott County, Tennessee; 40 rkm (25 rmi) of Clear Fork from its confluence with the New River upstream to its confluence with North Prong Clear Fork, Morgan, Fentress Counties, Tennessee; 10 rkm (6 rmi) of White Oak Creek from its confluence with Clear Fork upstream to its confluence with Bone Camp Creek, Morgan County, Tennessee; 6 rkm (4 rmi) of Bone Camp Creek from its confluence with White Oak Creek upstream to Massengale Branch, Morgan County, Tennessee; 14.5 rkm (9 rmi) of Crooked Creek from its confluence with Clear Fork upstream to Buttermilk Branch, Fentress County, Tennessee; and 14.5 rkm (9 rmi) of North Prong Clear Fork from its confluence with Clear Fork upstream to Shoal Creek, Fentress County, Tennessee. The mainstem of the Big South Fork currently supports the Cumberland elktoe and the best remaining Cumberlandian combshell population in the Cumberland system (Bakaletz 1991; Gordon 1991; R.R. Cicerello, Kentucky State Nature Preserves Commission (KSNPC), pers. comm. 2003). The mainstem of the Big South Fork also currently contains the oyster mussel (S.A. Ahlstedt, USGS, pers. comm. 2002; Service 2003). The remainder of the unit contains habitat currently occupied by the Cumberland elktoe (Call and Parmalee 1981; Bakaletz 1991; Gordon 1991). The largest population of

Cumberland elktoe in Tennessee is in the headwaters of the Clear Fork system (Call and Parmalee 1981; Bakaletz 1991). The Big South Fork and its many tributaries may actually serve as habitat for one large interbreeding population of the Cumberland elktoe (Service 2003).

Unit 10. Buck Creek, Pulaski County, Kentucky

Unit 10 encompasses 58 rkm (36 rmi) and includes Buck Creek from the State Route 192 Bridge upstream to the State Route 328 Bridge in Pulaski County, Kentucky. Buck Creek is currently occupied by the Cumberlandian combshell (Gordon 1991; Hagman 2000; R.R. Cicerello, KSNPC, pers. comm. 2003) and historically supported the oyster mussel (Schuster *et al.* 1989; Gordon 1991).

Unit 11. Sinking Creek, Laurel County, Kentucky

Unit 11 encompasses 13 rkm (8 rmi) and extends from the Sinking Creek/Rockcastle River confluence upstream to Sinking Creek's confluence with Laurel Branch in Laurel County, Kentucky. This unit contains a strong population of Cumberland elktoe (R.R. Cicerello, KSNPC, pers. comm. 2002). This unit is primarily within land owned by the Daniel Boone National Forest, but also includes private lands.

Unit 12. Marsh Creek, McCreary County, Kentucky

Unit 12 includes 24 rkm (15 rmi) and consists of Marsh Creek from its confluence with the Cumberland River upstream to the State Road 92 bridge. This unit, which is bounded by lands owned by the Daniel Boone National Forest and private landowners, currently contains the State of Kentucky's best population of Cumberland elktoe (R.R. Cicerello, KSNPC, pers. comm. 2003) and the best remaining mussel fauna in the Cumberland River above Cumberland Falls (Cicerello and Laudermilk 2001).

Unit 13. Laurel Fork, Claiborne County, Tennessee, and Whitley County, Kentucky

Unit 13 includes 8 rkm (5 rmi) of Laurel Fork of the Cumberland River from the Campbell/Claiborne County line upstream through Claiborne County, Tennessee to 11 rkm (6.85 rmi) in Whitley County, Kentucky. The upstream terminus is 2 river miles upstream of the Kentucky/Tennessee State line. A ''sporadic'' population of Cumberland elktoe currently persists in this area (Cicerello and Laudermilk 2001).

Existing Critical Habitat

Approximately 206.5 miles (38 percent) of the proposed critical habitat for the five mussels (within three units) are already designated critical habitat for the yellowfin madtom, slender chub, or spotfin chub (Table 3). The spotfin chub, slender chub, and yellowfin madtom are listed as threatened species under the Act. Our consultation history on these existing critical habitat units is provided in the ''Effects of Critical Habitat Designation Section.''

TABLE 3.—WITHIN PROPOSED CRITICAL HABITAT DESIGNATION FOR THE FIVE MUSSELS, REACHES AND STREAMS THAT ARE CURRENTLY DESIGNATED CRITICAL HABITAT FOR OTHER FEDERALLY LISTED SPECIES

Unit (unit #)	Species	Reference	Length of overlap (km/mi)
Obed River (3)	spotfin chub	(42 FR 45527)	40/25
Powell River (4)	yellowfin madtom, slender chub	(42 FR 45527)	154/94
Clinch River (5) (and Copper Creek)	yellowfin madtom, slender chub	(42 FR 45527)	142/87.5
Total			336/206.5

Land Ownership

Streambeds of non-navigable waters and most navigable waters are owned by the riparian landowner. Waters of navigable streams are considered public waters by the States of Mississippi, Alabama, Tennessee, Kentucky, and Virginia. Table 4 summarizes primary riparian land ownership in each of the proposed units. Approximately 79 percent, 671 rkm (418 rmi), of stream channels proposed as critical habitat are bordered by private lands.

Public land adjacent to proposed critical habitat units consists of approximately 170 km (107 mi) of riparian lands, including the Obed Wild and Scenic River and the Catoosa Wildlife Management Area in the Obed River Unit (40 km (25 mi)); Daniel Boone National Forest in the Rock Creek, Sinking Creek, and Marsh Creek Units (30 km (19 mi)); and the Big South Fork National River and Recreation Area in the Big South Fork Unit (109 km (68 mi)).

TABLE 4.—ADJACENT RIPARIAN LAND OWNERSHIP IN PROPOSED CRITICAL HABITAT UNITS (RKM/RMI) IN THE TENNESSEE AND CUMBERLAND RIVER BASINS

Critical habitat units	Private	State	Federal
1. Duck River	74/46	.....	
2. Bear Creek	40/25	.....	
3. Obed River	.....	32/20	8/5
4. Powell River	154/94	.....	
5. Clinch River and tributaries	272/171	.....	
6. Nolichucky River	8/5	.....	
7. Beech Creek	23/14	.....	
8. Rock Creek	11/7	.....	
9. Big South Fork and tributaries	44/27	.....	109/68
10. Buck Creek	58/36	.....	
11. Sinking Creek	8/5	.....	5/3
12. Marsh Creek	10/6	.....	14/9

TABLE 4.—ADJACENT RIPARIAN LAND OWNERSHIP IN PROPOSED CRITICAL HABITAT UNITS (RKM/RMI) IN THE TENNESSEE AND CUMBERLAND RIVER BASINS—Continued

Critical habitat units	Private	State	Federal
13. Laurel Fork	8/5	.....	
Totals	689/434	32/20	170/107

Effects of Critical Habitat Designation

ESA Section 7 Consultation

The regulatory effects of a critical habitat designation under the Act are triggered through the provisions of section 7, which apply only to activities conducted, authorized, or funded by a Federal agency (Federal actions). Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Individuals, organizations, States, local governments, and other non-Federal entities are not affected by the designation of critical habitat unless their actions occur on Federal lands, require Federal authorization, or involve Federal funding.

Section 7 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. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to: alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' However, in a 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.,* F.3d 434), the Court found our definition of destruction or adverse modification 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.

Conference for Proposed Critical Habitat

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to result in the destruction or adverse modification of proposed critical habitat. During a conference on the effects of a Federal action on proposed critical habitat, we make nonbinding recommendations on ways to minimize or avoid adverse effects of the action. We document these recommendations and any conclusions reached in a conference report provided to the Federal agency and to any applicant involved. Also, if we conduct a formal consultation during conference, we may adopt an opinion issued at the conclusion of the conference as our biological opinion when the critical habitat is designated by final rule, but only if new information or changes to the proposed Federal action would not significantly alter the content of the opinion.

Consultation for Designated Critical Habitat

If a Federal action may affect a listed species or its designated critical habitat, the action agency must initiate consultation with us (50 CFR 402.14). Through this consultation, we would advise the agency whether the action would likely jeopardize the continued existence of the species or adversely modify its critical habitat, or both. The Services' Consultation Handbook states that the destruction or adverse modification analysis focuses on the entire critical habitat area designated unless the critical habitat rule identifies another basis for the analysis, such as discrete units or groups of units necessary for different life cycle phases or units representing distinctive habitat characteristics or gene pools, or units fulfilling essential geographic distribution requirements. The extent of the five mussels' decline, the fragmentation and isolation of their habitats, and continuing impacts upon their habitats, and the importance of every unit to the recovery of the species suggests that individual units or groups of units that are used by populations which fulfill essential geographic distribution requirements are the appropriate scale for the analysis. An action occurring only within a unit or group of units may appreciably reduce the value of the critical habitat for the recovery of the species and therefore result in a determination of adverse modification.

When we issue a biological opinion that concludes that an action is likely to result in the destruction or adverse modification of critical habitat, we must provide reasonable and prudent alternatives to the action, if any are identifiable. Reasonable and prudent alternatives are actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the proposed action, are consistent with the scope of the action agency's authority and jurisdiction, are economically and technologically feasible, and would likely avoid the destruction or adverse modification of critical habitat (50 CFR 402.02).

Reinitiation of Prior Consultations

A Federal agency may request a conference with us for any previously reviewed action that is likely to destroy or adversely modify proposed critical habitat and over which the agency retains discretionary involvement or control, as described above under ''Conference for Proposed Critical Habitat.'' Following designation of critical habitat, regulations at 50 CFR 402.16 require a Federal agency to reinitiate consultation for previously reviewed actions that may affect critical habitat and over which the agency has retained discretionary involvement or control.

Federal Actions That May Destroy or Adversely Modify Critical Habitat for the Five Mussels

Section 4(b)(8) of the Act requires us, in any proposed or final rule designating critical habitat, to briefly describe and evaluate those activities that may adversely modify such habitat, or that may be affected by such designation.

Federal actions that, when carried out, funded or authorized by a federal agency, may destroy or adversely modify critical habitat for the five mussels include, but are not limited to:

(1) Actions that would alter the minimum flow or the existing flow regime to a degree that appreciably reduces the value of the critical habitat for both the long-term survival and recovery of the species. Such activities could include, but are not limited to, impoundment, channelization, water diversion, water withdrawal, and hydropower generation.

(2) Actions that would significantly alter water chemistry or temperature to a degree that appreciably reduces the value of the critical habitat for both the long-term survival and recovery of the

species. Such activities could include, but are not limited to, release of chemicals, biological pollutants, or heated effluents into the surface water or connected groundwater at a point source or by dispersed release (non-point).

(3) Actions that would significantly increase sediment deposition within the stream channel to a degree that appreciably reduces the value of the critical habitat for both the long-term survival and recovery of the species. Such activities could include, but are not limited to, excessive sedimentation from livestock grazing, road construction, channel alteration, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances.

(4) Actions that would significantly increase the filamentous algal community within the stream channel to a degree that appreciably reduces the value of the critical habitat for both the long-term survival and recovery of the species. Such activities could include, but are not limited to, release of nutrients into the surface water or connected groundwater at a point source or by dispersed release (non-point).

(5) Actions that would significantly alter channel morphology or geometry to a degree that appreciably reduces the value of the critical habitat for both the long-term survival and recovery of the species. Such activities could include but are not limited to channelization, impoundment, road and bridge construction, mining, dredging, and destruction of riparian vegetation.

Previous Section 7 Consultations

We have consulted on over 100 Federal actions (or activities that required Federal permits) involving these 5 species since they received protection under the Act. Nine of these were formal consultations. Federal actions that we have reviewed include Federal land management plans, road and bridge construction and maintenance, water quality standards, recreational facility development, dam construction and operation, surface mining proposals, and issuance of permits under section 404 of the Clean Water Act. Federal agencies involved with these activities included the U.S. Army Corps of Engineers; Tennessee Valley Authority; U.S. Forest Service; Environmental Protection Agency; Office of Surface Mining, Reclamation and Enforcement; National Park Service; Federal Highway Administration; and the Service. The nine formal consultations that have been conducted all involved Federal projects, including five bridge replacements in Tennessee, Kentucky, and Virginia; two Federal land management plans; and the review of two scientific collecting permits for one or more of the five mussel species. None of these formal consultations resulted in a finding that the proposed action would jeopardize the continued existence of any of the five species or destroy or adversely modify existing critical habitat previously designated in the area.

In each of the biological opinions resulting from these consultations, we included discretionary conservation recommendations to the action agency. Conservation recommendations are activities that would avoid or minimize the adverse effects of a proposed action on a listed species or its critical habitat, help implement recovery plans, or develop information useful to the species' conservation.

Previous biological opinions also included nondiscretionary reasonable and prudent measures, with implementing terms and conditions, which are designed to minimize the proposed action's incidental take of these five mussels. Section 3(18) of the Act defines the term take as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct.'' Harm is further defined in our regulations (50 CFR 7.3) to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

Conservation recommendations and reasonable and prudent measures provided in previous biological opinions for these mussels have included maintaining State water quality standards, maintaining adequate stream flow rates, minimization of work in the wetted channel, restriction of riparian clearing, monitoring of channel morphology and mussel populations, sign installation, protection of buffer zones, avoidance of pollution, cooperative planning efforts, minimization of ground disturbance, use of sediment barriers, use of best management practices to minimize erosion, mussel relocation from bridge pier footprints, and funding research useful for mussel conservation. In reviewing past formal consultations, we anticipate the need to reinitiate only one consultation on Federal actions as a result of this proposed designation. The Daniel Boone National Forest in Kentucky is in the process of finalizing their Forest Plan. The Forest Service may be required to revise this plan to account for proposed critical habitat designations in Rock Creek, Sinking Creek, and Marsh Creek.

As mentioned in the ''Existing Critical Habitat'' section, 36 percent of the areas proposed critical habitat is currently designated critical habitat for the spotfin chub, yellowfin madtom, or slender chub. We have conducted 56 informal consultations involving existing critical habitat for these fish in the areas proposed as critical habitat for the five mussels in the Obed River, Powell River, and Clinch River in Tennessee. All of these consultations involved both the potential adverse effects to the species and the potential adverse modification or destruction of critical habitat. These consultations, which were similar to consultations carried out for the five mussel species, primarily included utility lines, bridge replacements and reconstructions, gravel dredging, and an oil spill on Clear Creek (a tributary of the Obed River and designated critical habitat for the spotfin chub). We have consulted on seven projects that involved existing critical habitat for the yellowfin madtom and/or slender chub in Virginia. Three of these consultations were formal, involving projects like bridge crossing on the Clinch and Powell Rivers. None of these formal consultations resulted in a finding that the proposed activity would destroy or adversely modify existing critical habitat previously designated in the area.

The designation of critical habitat for these five mussels will have no impact on private landowner activities that do not involve Federal funding or permits. Designation of critical habitat is only applicable to activities approved, funded, or carried out by Federal agencies.

If you have questions regarding whether specific activities would constitute adverse modification of critical habitat, you may contact: Alabama—Daphne, FWS Ecological Services Office (251/441–5181); Kentucky—Frankfort, FWS Ecological Services Office (502/695–0468); Mississippi—Jackson, FWS Ecological Services Office (601/965–4900); Tennessee—Cookeville, FWS Ecological Services Office (931/528–6481); Virginia—Abingdon, FWS Ecological Services Office (276/623–1233).

Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific data available, and after taking into consideration the economic and any other relevant impact of specifying any particular area as critical habitat. We may exclude areas from critical habitat if the benefits of

exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. Our preliminary analysis (discussed below) of the following three river reaches: the free-flowing reach of the French Broad River below Douglas Dam to its confluence with the Holston River, Sevier and Knox Counties, Tennessee; the free-flowing reach of the Holston River below Cherokee Dam to its confluence with the French Broad River, Jefferson, Grainger, and Knox Counties, Tennessee; and the free flowing reach of the Rockcastle River from the backwaters of Cumberland Lake upstream to Kentucky Route 1956 Bridge, in Laurel, Rockcastle, and Pulaski Counties, Kentucky, finds that the benefits of excluding these areas from the designation of critical habitat for the oyster mussel and Cumberlandian combshell outweighs the benefits of including them. Therefore, on the basis of our analysis below, we are proposing to exclude these three river reaches from critical habitat.

Benefits of Inclusion

The principal benefit of designating these portions of the lower French Broad, lower Holston, and Rockcastle Rivers as critical habitat would result from the requirement under section 7(a)(2) of the Act that Federal agencies consult with us to ensure that any actions that they fund, authorize, or carry out do not destroy or adversely modify critical habitat. No consultations have occurred for the oyster mussel and Cumberlandian combshell in these areas since they are not occupied by these two species. However, consultations are already occurring for other federally listed species, like the endangered pink mucket (*Lampsilis abrupta*) mussel (found in the Holston River), the threatened snail darter (*Percina tanasi*) (found in both the French Broad and Holston Rivers), and the Cumberland bean (*Villosa trabalis*) mussel (found in the Rockcastle River) in these areas. Even though these species do not have designated critical habitat, consultations evaluating impacts to the species would still take into consideration habitat and habitat impacts which may constitute take of the species. Projects that would adversely affect critical habitat for the Cumberlandian combshell and oyster mussel (if it were designated) would likely also trigger consultation with us under section 7 of the Act because of their potential to adversely affect the listed species already present. Thus, we find that the additional benefit through section 7 consultation due to designation of critical habitat for the oyster mussel and Cumberland combshell would be minimal.

Since 1997, we have been involved in 25 consultations regarding the snail darter and pink mucket in the lower French Broad and Holston Rivers. Approximately 10 of these consultations have involved the Tennessee Valley Authority (TVA). TVA manages the dams upstream of the area on the lower French Broad and Holston Rivers, and issues permits for docks and recreational structures along these two river reaches. The TVA has improved water quality in the two subject reaches by instituting minimum flows for the protection of aquatic life and by increasing the dissolved oxygen content of the water. In a letter to us dated December 9, 1998, TVA expressed its support for mussel recovery efforts in the Tennessee Valley streams and tailwaters. TVA would likely be involved in consultations regarding critical habitat (if it were designated) on the Holston and French Broad Rivers. Because TVA is already working with us to improve water quality in the two subject reaches and below other dams in Tennessee, designation may reduce the success of these continued cooperative efforts.

Similarly, the segment of the Rockcastle River is listed as a State Scenic River and designated as an ''Outstanding State Resource Water'' (OSRW) by the State of Kentucky because of the presence of federally protected species. OSRWs are given more consideration during the State environmental review process, and their designation provides some additional protections for streams from proposed development activities, all of which affords them increased recognition and additional protections under the State's environmental review process. Since 1994, we have had only 12 informal consultations on this stretch of the Rockcastle River, all involving the Cumberland bean. These consultations included a forest management plan for the Daniel Boone National Forest. Oyster mussels and Cumberlandian combshells placed into the Rockcastle River through NEP designations would be treated as species proposed for listing by the Forest Service, and therefore would still be considered during Federal management actions under section 7 of the Act. Because this stretch has very little consultation history and possesses current protections from existing State designations and the presence of the Cumberland bean, the benefit that would be gained for the oyster mussel and Cumberlandian combshell through section 7 protections provided by a critical habitat designation is relatively minor.

The identification of habitat essential to the conservation of the species can provide some informational benefits to the public, State and local governments, scientific organizations, and Federal agencies, and may facilitate conservation efforts. However, we believe that there would be little additional informational benefit from including the lower Holston, lower French Broad River, and Rockcastle Rivers as critical habitat, because this proposal identifies all areas that are essential to the conservation of the species, regardless of whether all of these areas are designated as critical habitat. Consequently, we believe that informational benefits will be provided to the lower Holston, French Broad, and Rockcastle Rivers, even though these areas are not proposed as critical habitat.

Benefits of Exclusion

Congress made significant changes to the Act, with the addition of section 10(j) in 1982, which provides for the designation of specific reintroduced populations of listed species as ''experimental populations.'' This section was designed to provide us with innovative means to introduce a listed species into unoccupied habitat within its historic range when doing so would foster the conservation and recovery of the species. Experimental populations provide us with a flexible, proactive means to meet recovery criteria while not alienating stakeholders, such as municipalities and landowners, whose cooperation is essential for eventual success of the reintroduced population.

Section 10(j) increases our flexibility in managing an experimental population by allowing us to treat the population as threatened, regardless of the species' status elsewhere in its range. Threatened status gives us more discretion in developing and implementing management programs and special regulations for a population and allows us to develop any regulations we consider necessary to provide for the conservation of a threatened species. This flexibility allows us to manage the experimental population in a manner that will ensure that current and future land, water, or air uses and activities will not be unnecessarily restricted and the population can be managed for recovery purposes.

When we designate a population as experimental, section 10(j) of the Act requires that we determine whether that population is either essential or nonessential to the continued existence

of the species, on the basis of the best available information. Nonessential experimental populations located outside the National Wildlife Refuge System or National Park System lands are treated, for the purposes of section 7 of the Act, as if they are proposed for listing, while on National Wildlife Refuges or National Parks the species is treated as threatened. Section 7(a)(2) of the Act, which requires Federal agencies to ensure that their activities are not likely to jeopardize the continued existence of a listed species, would not apply except on National Wildlife Refuge System and National Park System lands only. Experimental populations determined to be ''essential'' to the survival of the species would remain subject to the consultation provisions of section 7(a)(2) of the Act.

The flexibility gained by establishment of an experimental population through section 10(j) would be of little value if a designation of critical habitat overlaps it. This is because Federal agencies would still be required to consult with us on any actions that may adversely affect critical habitat. In effect, the flexibility gained from section 10(j) would be rendered useless by the designation of critical habitat. In fact, section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated under the Act for any experimental population determined to be not essential to the continued existence of a species.

As mentioned above, the recovery strategy for the oyster mussel and Cumberlandian combshell outlined in the agency draft recovery plan requires the reestablishment/reintroduction of these two mussels into areas of their historic ranges. Because of their currently reduced and fragmented state, the mussels face enhanced threats and would never be able to repopulate these reaches naturally. We strongly believe that, in order to achieve recovery for these mussels, in accordance with the Service's Recovery Plan we would need the flexibility provided for in section 10(j) of the Act to help ensure the success of reestablishing these mussels in the specified areas of the lower French Broad, Rockcastle, and Holston Rivers which have been identified as having medium to high recovery potential. Use of section 10(j) is meant to encourage local cooperation through management flexibility. Nonessential experimental populations in certain areas are often our only mechanism to achieve recovery. We believe it is crucial for recovery of these two mussels that we have the support of the public in these three river reaches when we move forward in the reintroduction efforts required in our agency draft recovery plan. However, critical habitat is often viewed negatively by the public since it is not well understood and there are many misconceptions about how it affects private landowners (Patlis 2001).

The specified areas in the lower Holston and French Broad Rivers represent years of planning and coordination between the Service, the State of Tennessee, TVA, and others to recover aquatic species and their habitat. We have cooperation and support from the State of Tennessee, TVA, and others in considering these areas an NEP. We continue to have extensive cooperation and support from these stakeholders in working towards aquatic species recovery in general in the Tennessee and Cumberland River Basins. Due to work done in large part by these agencies as well as by landowners, municipalities, and other stakeholders, we have collectively improved the water and habitat quality in these areas to the point where there are suitable reintroduction sites in certain areas for a host of listed species, including 1 federally listed, endangered, aquatic snail, 5 federally listed fishes (2 endangered and 3 threatened), and 14 additional federally listed, endangered, freshwater mussels. Designating these 2 reaches as critical habitat could jeopardize the establishment and success of the reintroductions as well as this cooperative effort that we are considering for the Cumberlandian combshell and oyster mussel as well as these other species to achieve their recovery criteria.

Similarly, the Rockcastle River contains a robust mussel community (Thompson 1985; Cicerello 1992) second only to the Big South Fork as the best remaining representation of preimpoundment (before the water was dammed) mussel fauna in the Cumberland River System (R.R. Cicerello, KSNPC, pers. comm. 2003). However, the oyster mussel and Cumberlandian combshell no longer occur in this river. We have worked for years with the Daniel Boone National Forest to protect the water quality and unique mussel community found in the Rockcastle River. Designating unoccupied critical habitat in the Rockcastle River would be viewed as an unnecessary regulatory intrusion into a cooperative relationship between our agencies. It would also likely be viewed negatively by local stakeholders, whose very support we need to effect the recovery of these rare mussel taxa by reintroducing them into suitable historic habitat found there.

In summary, we believe that the benefits of excluding the lower French Broad, Rockcastle, and Holston Rivers areas outweigh the benefits of their inclusion as critical habitat. Including these areas may result in some benefit through additional consultations with Federal agencies whose activities may affect critical habitat. However, overall this benefit is minimal because of the presence of other listed species with similar habitat requirements which are, and will continue to be, considered in consultation. A proposed designation in these two river reaches would also provide little additional informational benefit to the public, State and governmental agencies, and others. On the other hand, an exclusion will greatly benefit the overall recovery of the oyster mussel and Cumberlandian combshell (as well as 20 other federally listed species) by allowing us to use the flexibility and greater public acceptance of section 10(j) of the Act to reestablish the oyster mussel and Cumberlandian combshell in other portions of their historic range where they no longer occur. We also believe that the exclusion of the specified areas in the lower French Broad, lower Holston, and Rockcastle Rivers will not lead to the extinction of these two mussels based on their occurrences in other river and stream stretches, and the cooperative partnerships in place for establishing these NEPs. We seek comment on our preliminary determination to exclude these areas from critical habitat.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if

requested. Requests must be filed within 45 days of the date of this proposal. Such requests must be made in writing and should be addressed to the Field Supervisor, Tennessee Field Office (*see* **ADDRESSES** section). Written comments submitted during the comment period receive equal consideration with those comments presented at a public hearing. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make proposed rules easier to understand, including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (*e.g.*, grouping and order of sections, use of headings, paragraphing) aid or reduce its clarity? (4) Is the description of the proposed rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Execsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is not a significant rule and, therefore, was not reviewed by the Office of Management and Budget (OMB). The Service is preparing a draft economic analysis of this proposed action, and will use this analysis to meet the requirement of section 4(b)(2) of the ESA to determine the economic consequences of designating the specific areas as critical habitat and excluding any area from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying such areas as part of the critical habitat, unless failure to designate such area as critical habitat will lead to the extinction of any of these five mussels. We will make this analysis available for public comment before we finalize this designation.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. We are hereby certifying that this proposed rule will not have a significant effect on a substantial number of small entities.

According to the Small Business Administration, 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 (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result.

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, the 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 *American Trucking Associations, Inc.* v. *EPA*).

To determine if the rule would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting). We applied the ''substantial number'' test individually to each industry to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. Federal agencies are already required to consult with the Services under section 7 of the Act on activities that they fund, permit, or implement that may affect the five mussels.

If this critical habitat designation is finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, we believe this will result in only minimal additional regulatory burden on Federal agencies or their applicants because consultation would already be required because of the presence of the listed mussel species. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process and trigger only minimal additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Since the five mussels were listed (1997), we have conducted nine formal consultations involving one or more of these species. These formal consultations, which all involved Federal projects, included five bridge replacements, two Federal land management plans, an intra-agency review of the Wilson Dam NEP and associated collecting permits, and an intra-agency review of collection

permits needed by researchers involved in endangered mussel propagation. These nine consultations resulted in non-jeopardy biological opinions.

We also reviewed approximately 100 informal consultations that have been conducted since these 5 species were listed involving private businesses and industries, counties, cities, towns, or municipalities. At least 15 of these were with entities that likely met the definition of small entities. These informal consultations concerned activities such as excavation or fill, docking facilities, transmission lines, pipelines, mines, and road and utility development authorized by various Federal agencies, or review of National Pollution Discharge Elimination System permit applications to State water quality agencies by developers, municipalities, mines, businesses, and others. Informal consultations regarding the mussels usually resulted in recommendations to employ Best Management Practices for sediment control, relied on current State water quality standards for protection of water quality, and resulted in little to no modification of the proposed activities. In reviewing these past informal consultations and the activities involved in light of proposed critical habitat, we do not believe the outcomes would have been different in areas designated as critical habitat.

In summary, we have considered whether this proposed designation would result in a significant economic impact on a substantial number of small entities and find that it would not. Informal consultations on approximately 100 activities in the Tennessee and Cumberland River Basins, by businesses and governmental jurisdictions that might affect these species and their habitats, resulted in little to no economic effect on small entities. In the 6 years since the five mussels were listed, there have been no formal consultations regarding actions by small entities. This does not meet the definition of ''substantial.'' In addition, we see no indication that the types of activities we review under section 7 of the Act will change significantly in the future. There would be no additional section 7 consultations resulting from this rule as all 13 of the proposed critical habitat units are currently occupied by one or more listed mussels, so the consultation requirement has already been triggered. Future consultations are not likely to affect a substantial number of small entities. This rule would result in major project modifications only when proposed activities with a Federal nexus would destroy or adversely modify critical habitat. While this may occur, it is not expected to occur frequently enough to affect a substantial number of small entities. Therefore, we are certifying that the proposed designation of critical habitat for these 5 mussels will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required. This determination will be revisited after the close of the comment period and revised, if necessary, in the final rule.

This discussion is based upon the information regarding potential economic impact that is available to us at this time. This assessment of economic effect may be modified prior to final rulemaking based upon review of the draft economic analysis prepared pursuant to section 4(b)(2) of the Act and Executive Order 12866. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect our position on the type of economic analysis required by *New Mexico Cattle Growers Assn.* v. *U.S. Fish & Wildlife Service* 248 F.3d 1277 (10th Cir. 2001).

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2))

In the draft economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more; (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

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. This rule is not a significant regulatory action under Executive Order 12866, and it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Service will use the economic analysis to further evaluate this rule's effect on nonfederal 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 proposing to designate approximately 544 rmi in 13 river and stream reaches in Alabama, Mississippi, Tennessee, Kentucky, and Virginia. This preliminary assessment concludes that this proposed rule does not pose significant takings implications. However, we have not yet completed the economic analysis for this proposed rule. Once the economic analysis is available, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policies, the Service requested information from, and coordinated development of this critical habitat proposal with, appropriate State resource agencies in Mississippi, Alabama, Tennessee, Kentucky, and Virginia. The designation of critical habitat for these five species imposes no additional restrictions to those currently in place, and, therefore, has little additional impact on State and local governments and their activities. The designation may provide some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While this definition and this identification do not alter where and what federally sponsored activities may occur, they may assist these local governments in long-range planning, rather than leaving them to wait for case-by-case section 7 consultations to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system, and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the 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 mussel species.

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

This proposed rule does not contain new or revised information collection for which Office of Management and Budget approval is required under the Paperwork Reduction Act. Information collections associated with certain Act permits are covered by an existing OMB approval and are assigned clearance No. 1018–0094, Forms 3–200–55 and 3–200–56, with an expiration date of July 31, 2004. Detailed information for Act documentation appears at 50 CFR part 17. The Service may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

We have determined that we do not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 (NEPA) in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of these five mussels. Therefore, designation of critical habitat for the five mussels has not been proposed on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Cookeville Field Office (*see* **ADDRESSES** section).

Author

The primary author of this notice is Rob Tawes (931/528–6481, extension 213) (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

For the reasons outlined in the preamble, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

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

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

2. In § 17.11(h), revise each of the entries here, listed in alphabetical order under ''CLAMS'' in the List of Endangered and Threatened Wildlife, so that they read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
CLAMS							
*	*	*	*	*	*		*
Bean, Purple	*Villosa perpurpurea*	U.S.A. (TN, VA)	NA	E	602	17.95(f)	NA
*	*	*	*	*	*		*
Combshell, Cumberlandian.	*Epioblasma brevidens*.	U.S.A. (AL, KY, MS, TN, VA).	NA	E	602	17.95(f)	NA
*	*	*	*	*	*		*
Elktoe, Cumberland	*Alasmidonta atropurpurea*.	U.S.A. (KY, TN)	NA	E	602	17.95(f)	NA
*	*	*	*	*	*		*
Mussel, oyster	*Epioblasma capsaeformis*.	U.S.A. (AL, GA, KY, MS, NC, TN, VA).	NA	E	602	17.95(f)	NA
*	*	*	*	*	*		*
Rabbitsfoot, rough	*Quadrula cylindrica strigillata*.	U.S.A. (TN, VA)	NA	E	602	17.95(f)	NA
*	*	*	*	*	*		*

3. In § 17.95, at the end of paragraph (f), add an entry for five Cumberland and Tennessee River Basin mussels species to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Clams and snails.*

* * * * *

Five Tennessee and Cumberland River Basin mussels species: Purple bean (*Villosa perpurpurea*), Cumberlandian combshell (*Epioblasma brevidens*), Cumberland elktoe (*Alasmidonta atropurpurea*), oyster mussel (*Epioblasma capsaeformis*), and rough rabbitsfoot (*Quadrula cylindrica strigillata*).

(1) Primary constituent elements.

(i) The primary constituent elements essential for the conservation of the

purple bean (*Villosa perpurpurea*), Cumberlandian combshell (*Epioblasma brevidens*), Cumberland elktoe (*Alasmidonta atropurpurea*), oyster mussel (*Epioblasma capsaeformis*), and rough rabbitsfoot (*Quadrula cylindrica strigillata*) are those habitat components that support feeding, sheltering, reproduction, and physical features for maintaining the natural processes that support these habitat components. The primary constituent elements include:

(A) Permanent, flowing stream reaches with a flow regime (*i.e,* the magnitude, frequency, duration, and seasonality of discharge over time) necessary for normal behavior, growth, and survival of all life stages of the five mussels and their host fish;

(B) Geomorphically stable stream and river channels and banks;

(C) Stable substrates consisting of mud, sand, gravel, and/or cobble/boulder, with low amounts of fine sediments or attached filamentous algae;

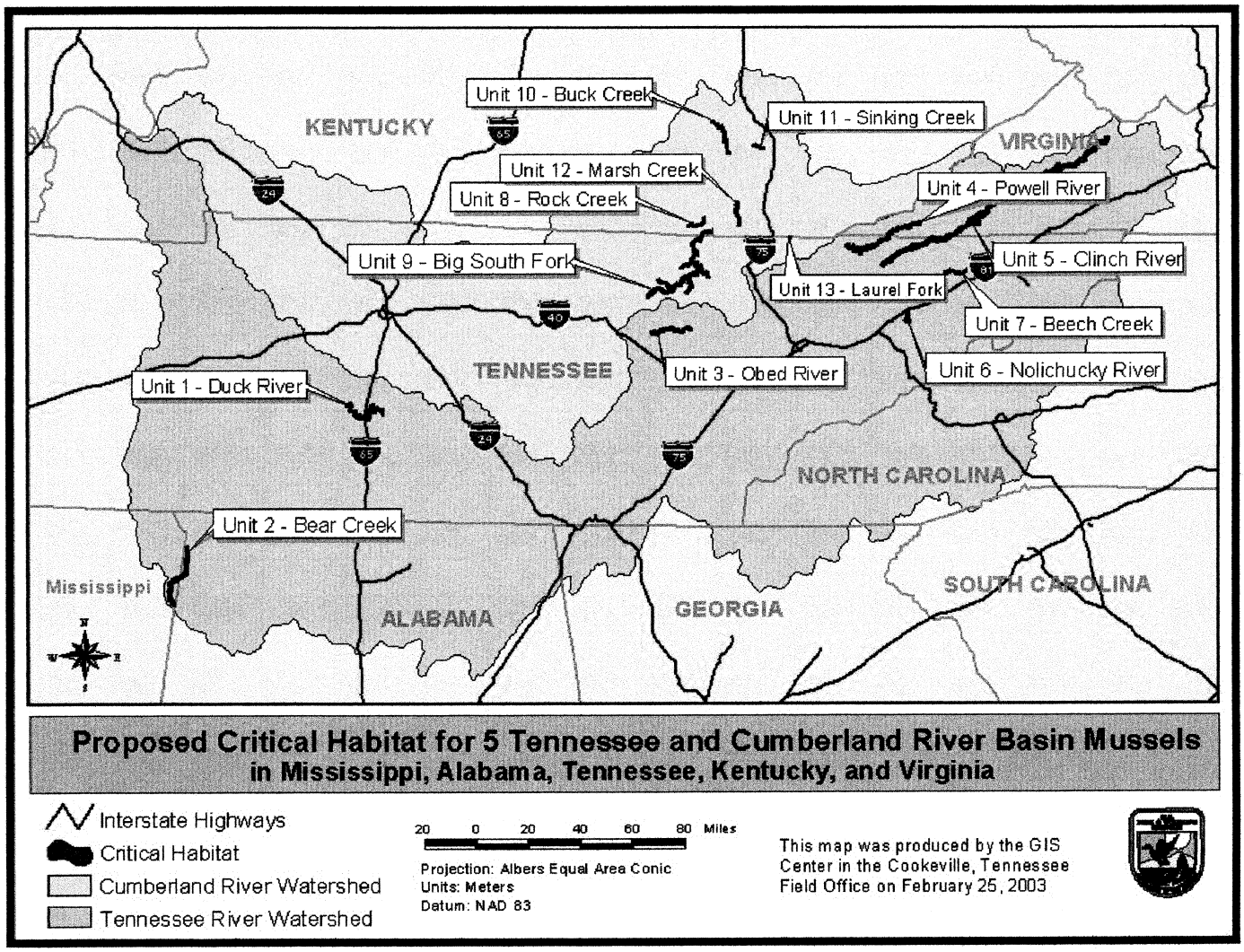
(D) Water quality (including temperature, turbidity, oxygen content, and other characteristics) necessary for the normal behavior, growth, and survival of all life stages of the five mussels and their host fish; and

(E) Fish hosts with adequate living, foraging, and spawning areas.

(ii) [Reserved]

(2) Critical habitat unit descriptions and maps.

(i) Index map. The index map showing critical habitat units in the States of Mississippi, Alabama, Tennessee, Kentucky, and Virginia for the five Tennessee and Cumberland River Basin mussels follows:



(ii) Table of protected species and critical habitat units. A table listing the protected species, their respective critical habitat units, and the States that contain those habitat units follows. Detailed critical habitat unit descriptions and maps appear below the table.

TABLE OF FIVE TENNESSEE AND CUMBERLAND RIVER BASIN MUSSELS, THEIR CRITICAL HABITAT UNITS, AND STATES CONTAINING THOSE CRITICAL HABITAT UNITS

Species	Critical habitat units	States
Purple bean, (*Villosa perpurpurea*)	Units 3, 4, 5, 7	TN, VA.
Cumberlandian combshell, (*Epioblasma brevidens*)	Units 1, 2, 4, 5, 6, 9, 10	AL, KY, MS, TN, VA.

TABLE OF FIVE TENNESSEE AND CUMBERLAND RIVER BASIN MUSSELS, THEIR CRITICAL HABITAT UNITS, AND STATES CONTAINING THOSE CRITICAL HABITAT UNITS—Continued

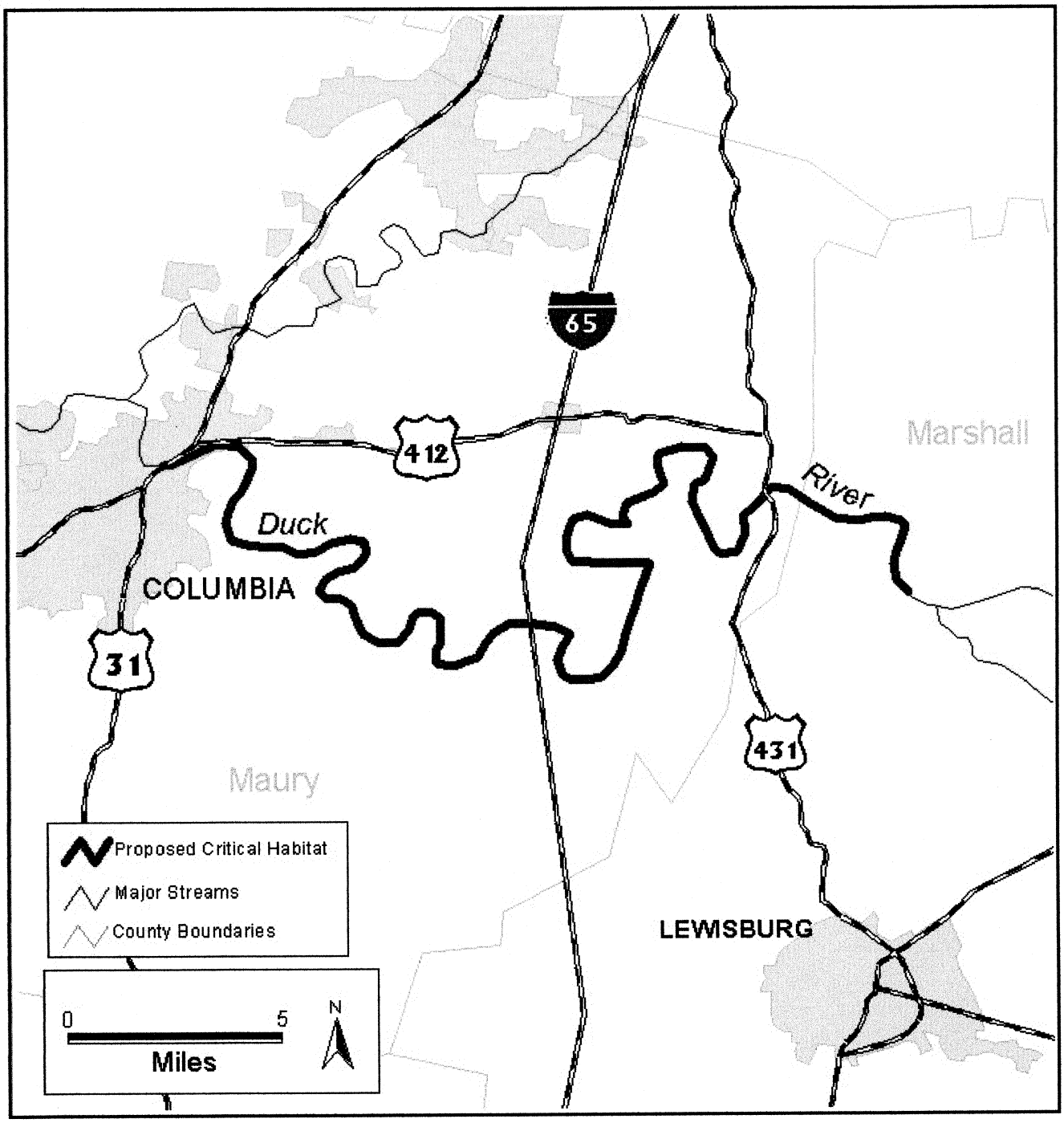
Species	Critical habitat units	States
Cumberland elktoe, (*Alasmidonta atropurpurea*)	Units 8, 9, 11, 12, 13	KY, TN.
Oyster mussel, (*Epioblasma capsaeformis*)	Units 1, 2, 4, 5, 6, 9, 10	AL, KY, MS, TN, VA.
Rough rabbitsfoot (*Quadrula cylindrica strigillata*)	Units 4, 5	TN, VA.

(iii) *Unit 1.* Duck River, Marshall and Maury Counties, Tennessee. This is a critical habitat unit for the oyster mussel and Cumberlandian combshell.

(A) Unit 1 includes the mainstem of the Duck River from rkm 214 (rmi 133) (0.3 rkm (0.2 rmi) upstream of the First Street Bridge) (−87.03 longitude, 35.63 latitude) in the City of Columbia, Maury County, Tennessee, upstream to Lillards Mill Dam at rkm 288 (rmi 179) (−86.78 longitude, 35.58 latitude), Marshall County, Tennessee.

(B) Map of Unit 1 follows:

Unit 1 - Duck River: Critical Habitat for Oyster musssel and Cumberlandian combshell



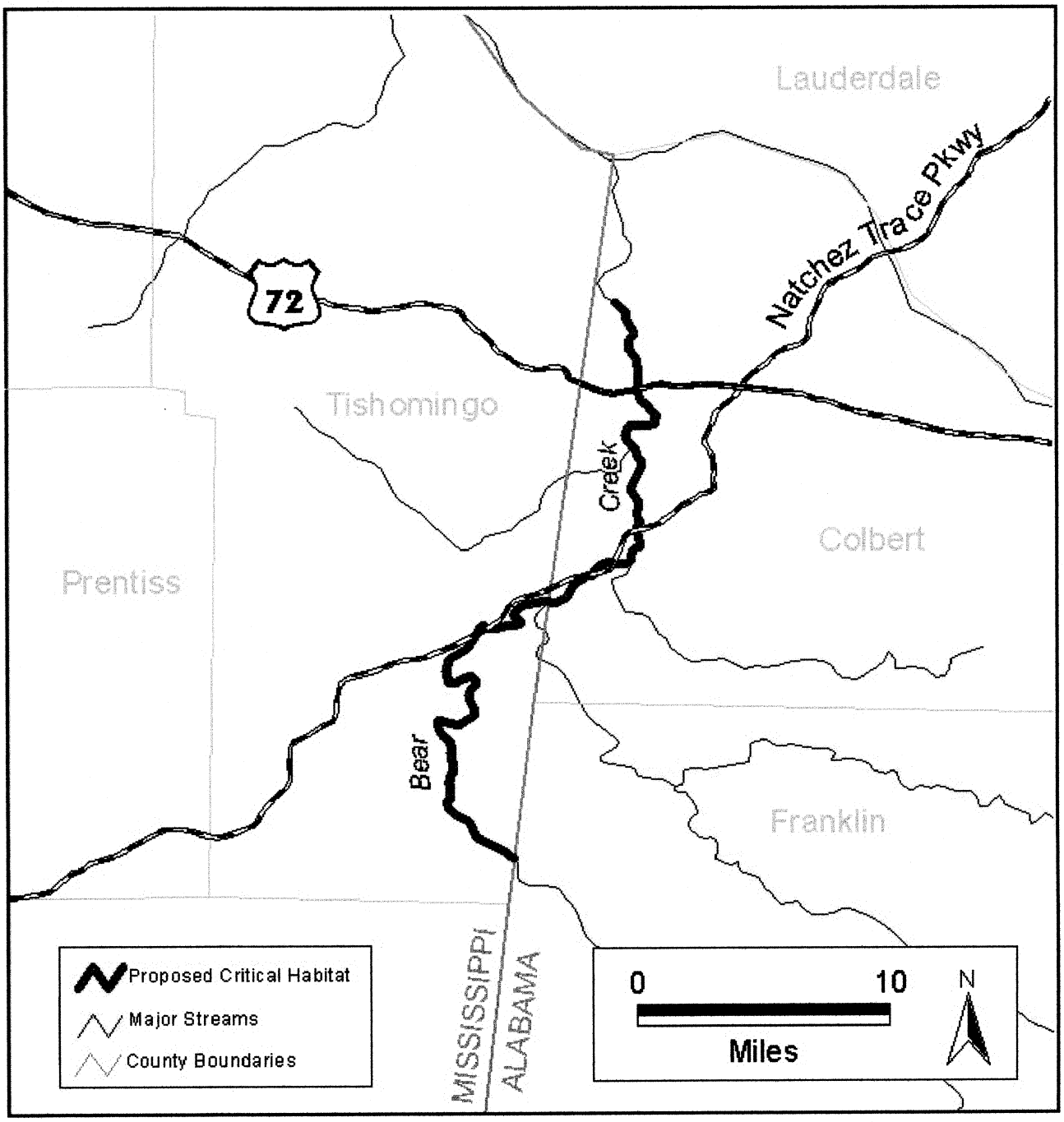
This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(iv) *Unit 2.* Bear Creek, Colbert County, Alabama, and Tishomingo County, Mississippi. This is a critical habitat unit for the oyster mussel and Cumberlandian combshell.

(A) Unit 2 consists of the mainstem of Bear Creek from the backwaters of Pickwick Lake at rkm 37 (rmi 23) (−88.09 longitude, 34.81 latitude), Colbert County, Alabama, upstream through Tishomingo County, Mississippi, ending at the Mississippi/Alabama state line.

(B) Map of Unit 2 follows:

Unit 2 - Bear Creek: Critical Habitat for Oyster mussel and Cumberlandian combshell



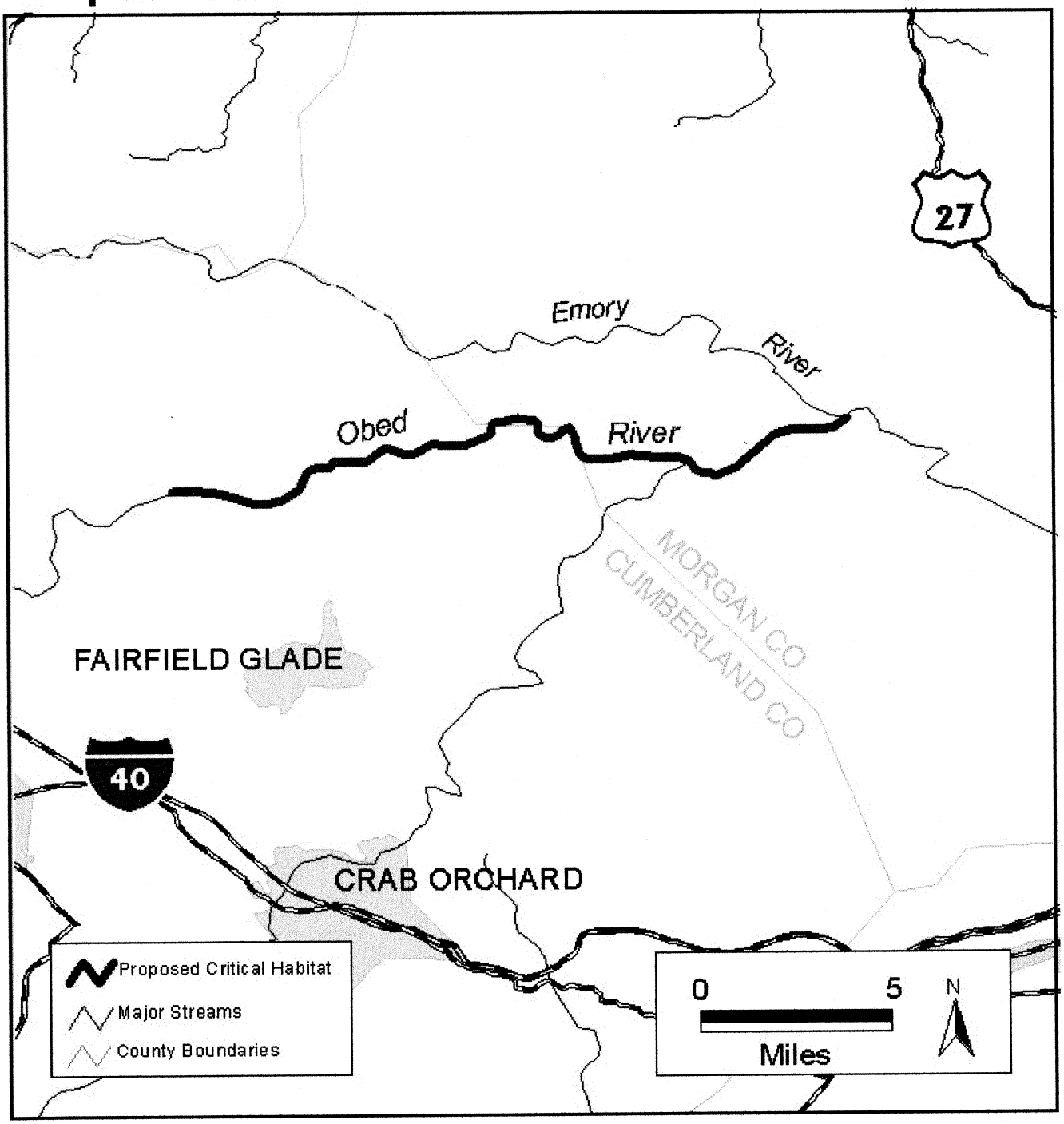
This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(v) *Unit 3.* Obed River, Cumberland and Morgan Counties, Tennessee. This is a critical habitat unit for the purple bean.

(A) Unit 3 includes the Obed River mainstem from its confluence with the Emory River (−84.69 longitude, 36.09 latitude), Morgan County, Tennessee, upstream to Adams Bridge, Cumberland County, Tennessee (−84.95 longitude, 36.07 latitude).

(B) Map of Unit 3 follows:

Unit 3 - Obed River: Critical Habitat for Purple bean



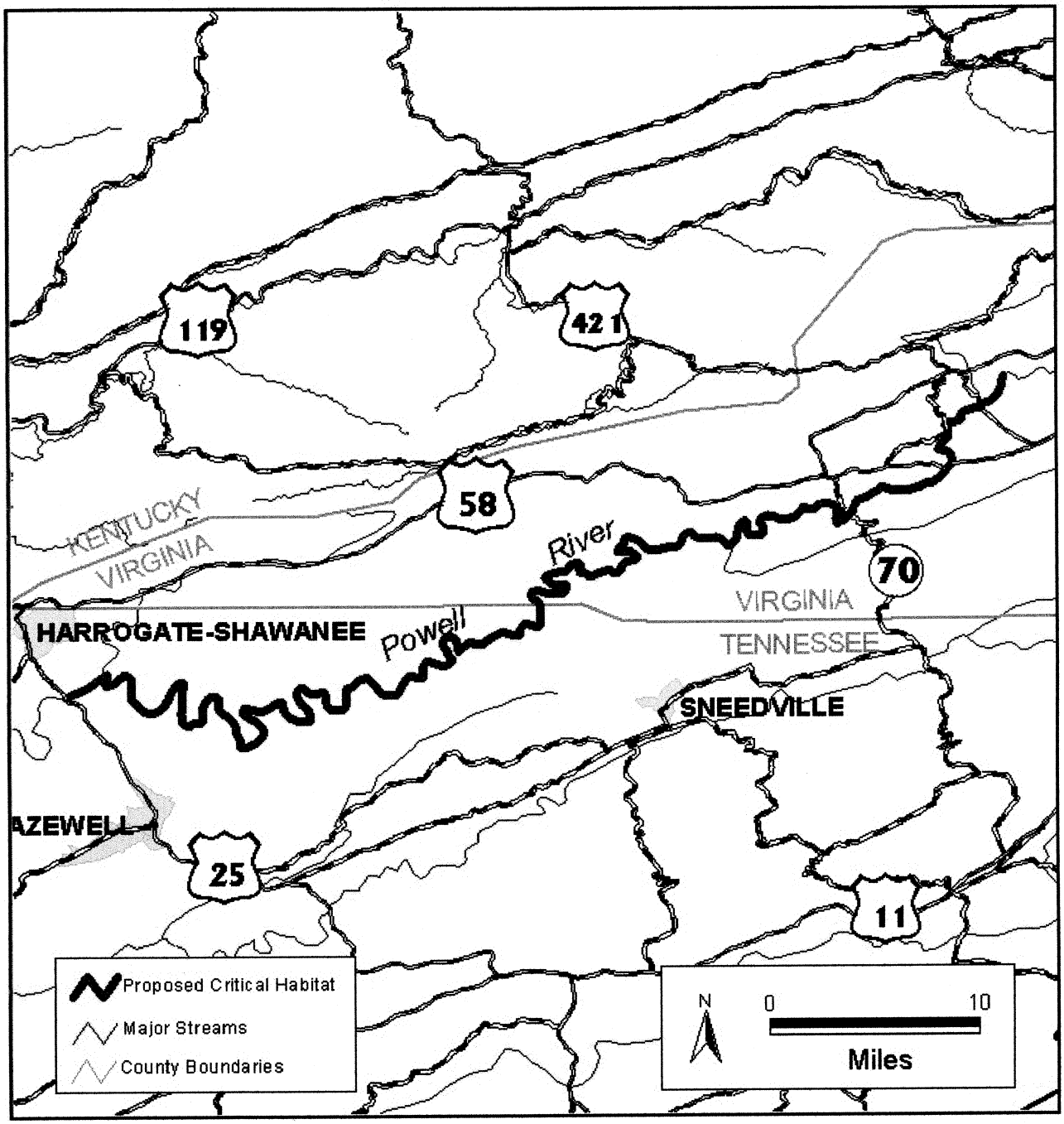
This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(vi) *Unit 4.* Powell River, Claiborne and Hancock Counties, Tennessee, and Lee County, Virginia. This is a critical habitat unit for the purple bean, Cumberlandian combshell, oyster mussel, and rough rabbitsfoot.

(A) Unit 4 includes the mainstem of the Powell River from the U.S. 25E bridge in Claiborne County, Tennessee (−83.63 longitude, 36.53 latitude), upstream to river mile 159 (upstream of Rock Island in the vicinity of Pughs) Lee County, Virginia.

(B) Map of Unit 4 follows:

Unit 4 - Powell River: Critical Habitat for Purple bean, Cumberlandian combshell, Oyster mussel, and Rough rabbitsfoot



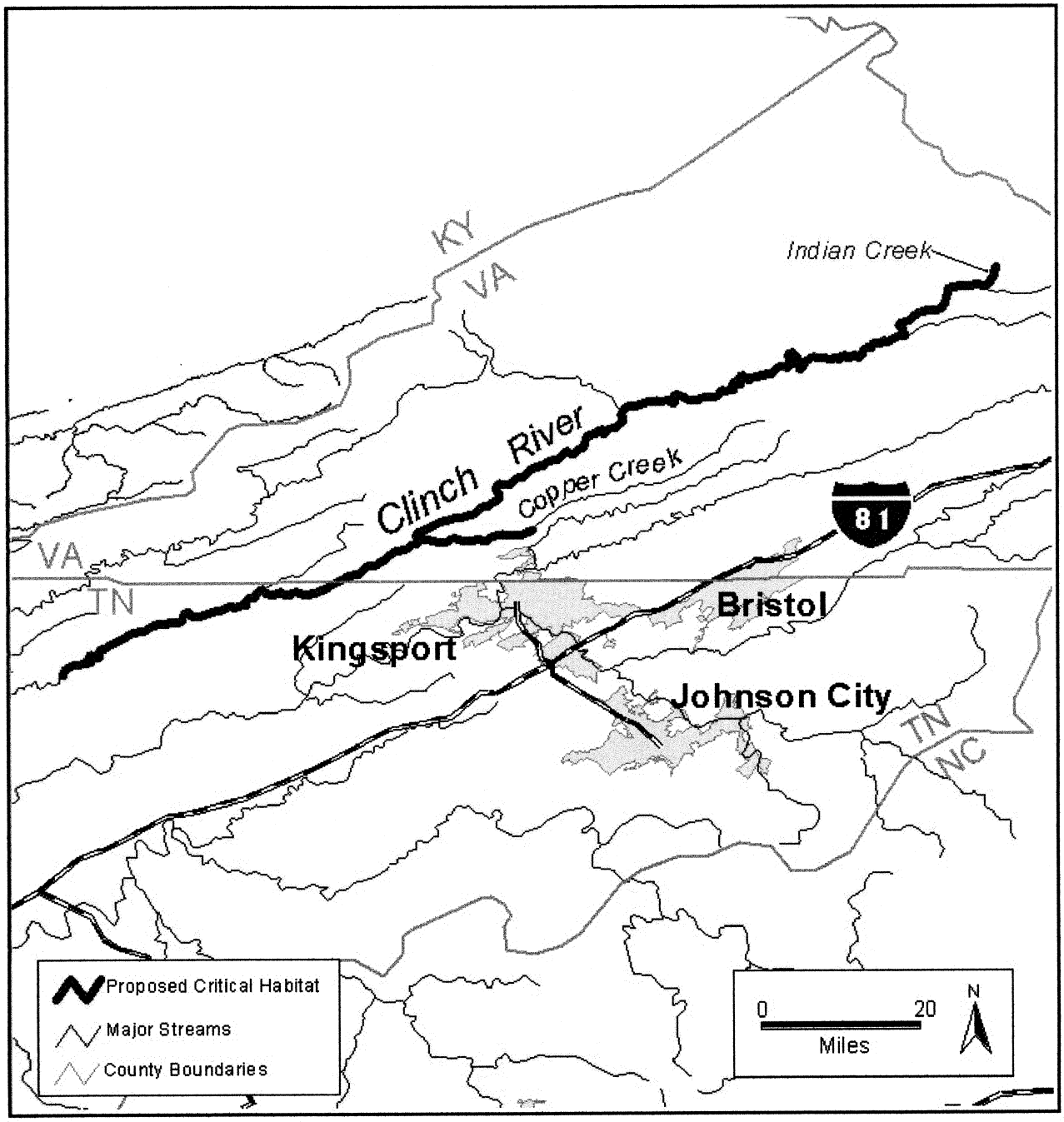
This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(vii) *Unit 5.* Clinch River, Hancock County, Tennessee, and Scott, Russell, and Tazewell Counties, Virginia; Copper Creek, Scott County, Virginia; and Indian Creek, Tazewell County, Virginia. This is a critical habitat unit for the purple bean, Cumberlandian combshell, oyster mussel, and rough rabbitsfoot.

(A) Unit 5 includes the Clinch River mainstem from rkm 255 (rmi 159) (−83.36 longitude, 36.43 latitude) immediately below Grissom Island, Hancock County, Tennessee, upstream to its confluence with Indian Creek in Cedar Bluff, Tazewell County, Virginia (−81.80 longitude, 37.10 latitude); Copper Creek in Scott County, Virginia, from its confluence with the Clinch River (−82.74 longitude, 36.67 latitude) upstream to Virginia State Route 72 (−82.56 longitude, 36.68 latitude); and Indian Creek from its confluence with the Clinch River upstream to the fourth Norfolk Southern Railroad crossing at Van Dyke, Tazewell County, Virginia (−81.77 longitude, 37.14 latitude).

(B) Map of Unit 5 follows:

Unit 5 - Clinch River: Critical Habitat for Purple bean, Cumberlandian combshell, Oyster mussel, and Rough rabbitsfoot.



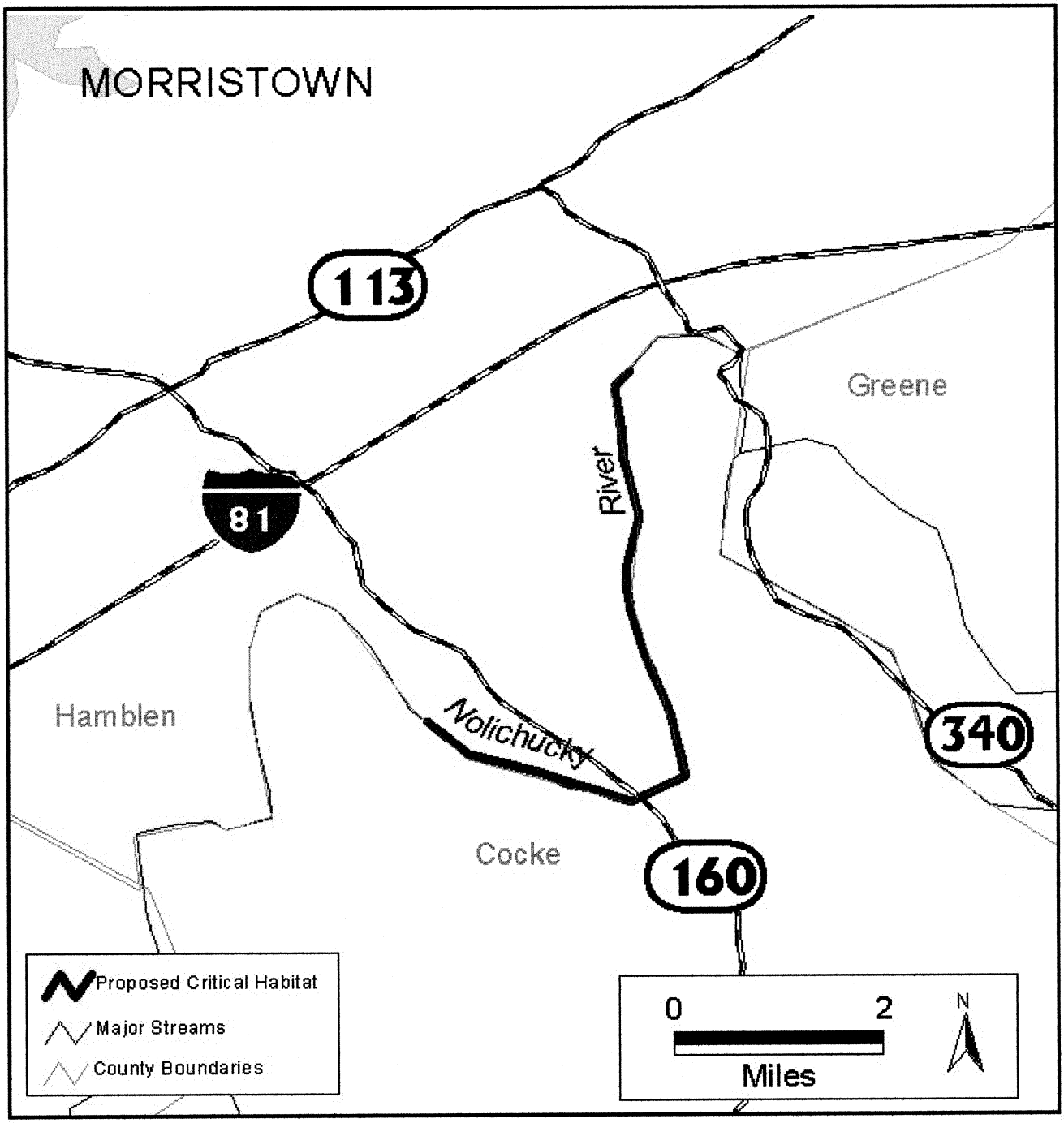
This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(viii) *Unit 6*. Nolichucky River, Hamblen and Cocke Counties, Tennessee. This is a critical habitat unit for the Cumberlandian combshell and oyster mussel.

(A) Unit 6 consists of the mainstem of the Nolichucky River from rkm 14 (rmi 9) (−83.18 longitude, 36.18 latitude) (approximately 0.6 rkm (0.4 rmi) upstream of Enka Dam) upstream to Susong Bridge (−83.20 longitude, 36.14 latitude) in Hamblen and Cocke Counties, Tennessee.

(B) Map of Unit 6 follows:

Unit 6 - Nolichucky River: Critical Habitat for Cumberlandian combshell and Oyster mussel



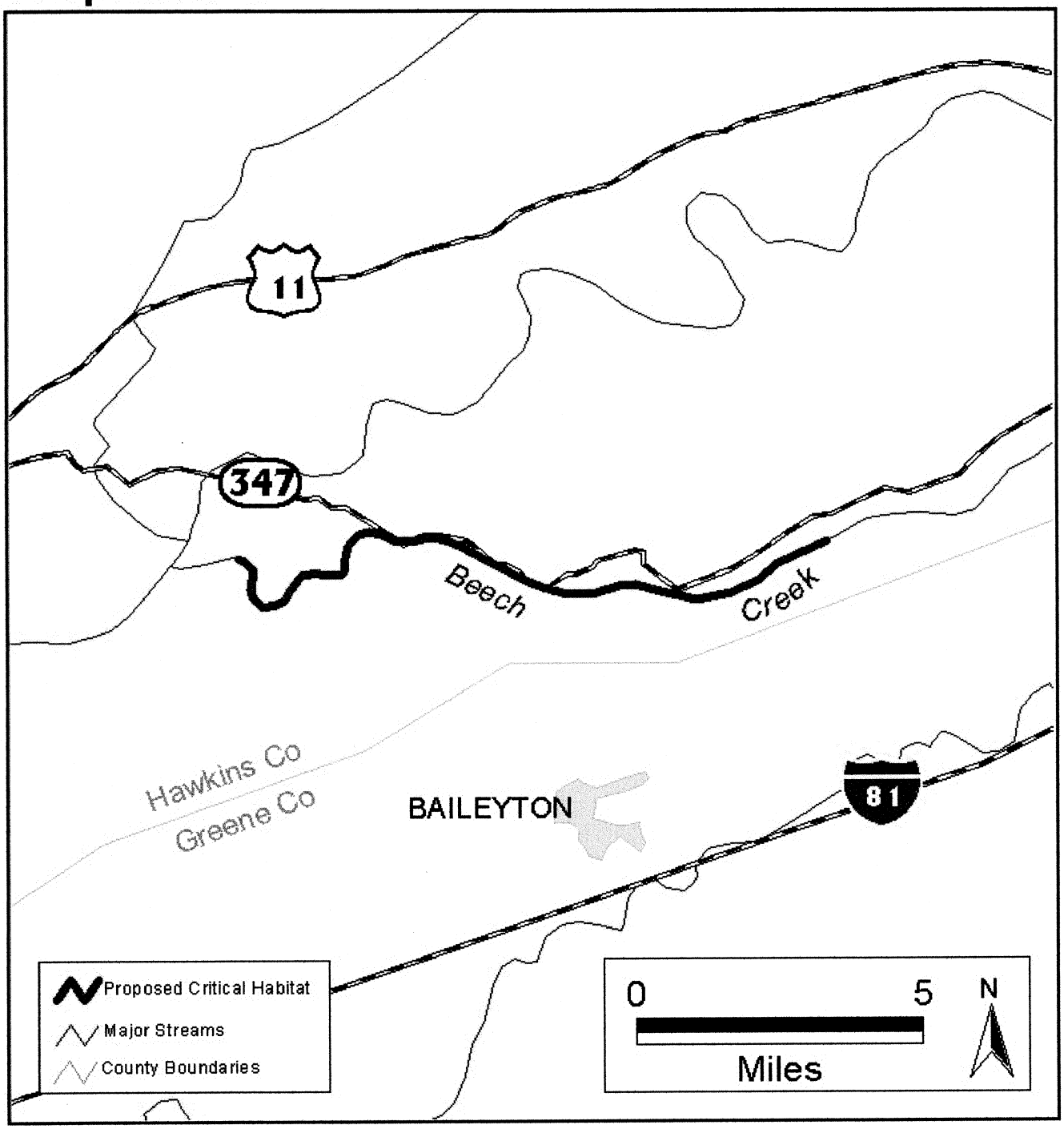
This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(ix) *Unit 7.* Beech Creek, Hawkins County, Tennessee. This is a critical habitat unit for the purple bean.

(A) Unit 7 includes the Beech Creek mainstem from rkm 4 (rmi 2) (−82.92 longitude, 36.40 latitude) of Beech Creek (in the vicinity of Slide, Tennessee) upstream to the dismantled railroad bridge at rkm 27 (rmi 16) (−82.77 longitude, 36.40 latitude).

(B) Map of Unit 7 follows:

Unit 7 - Beech Creek: Critical Habitat for Purple bean



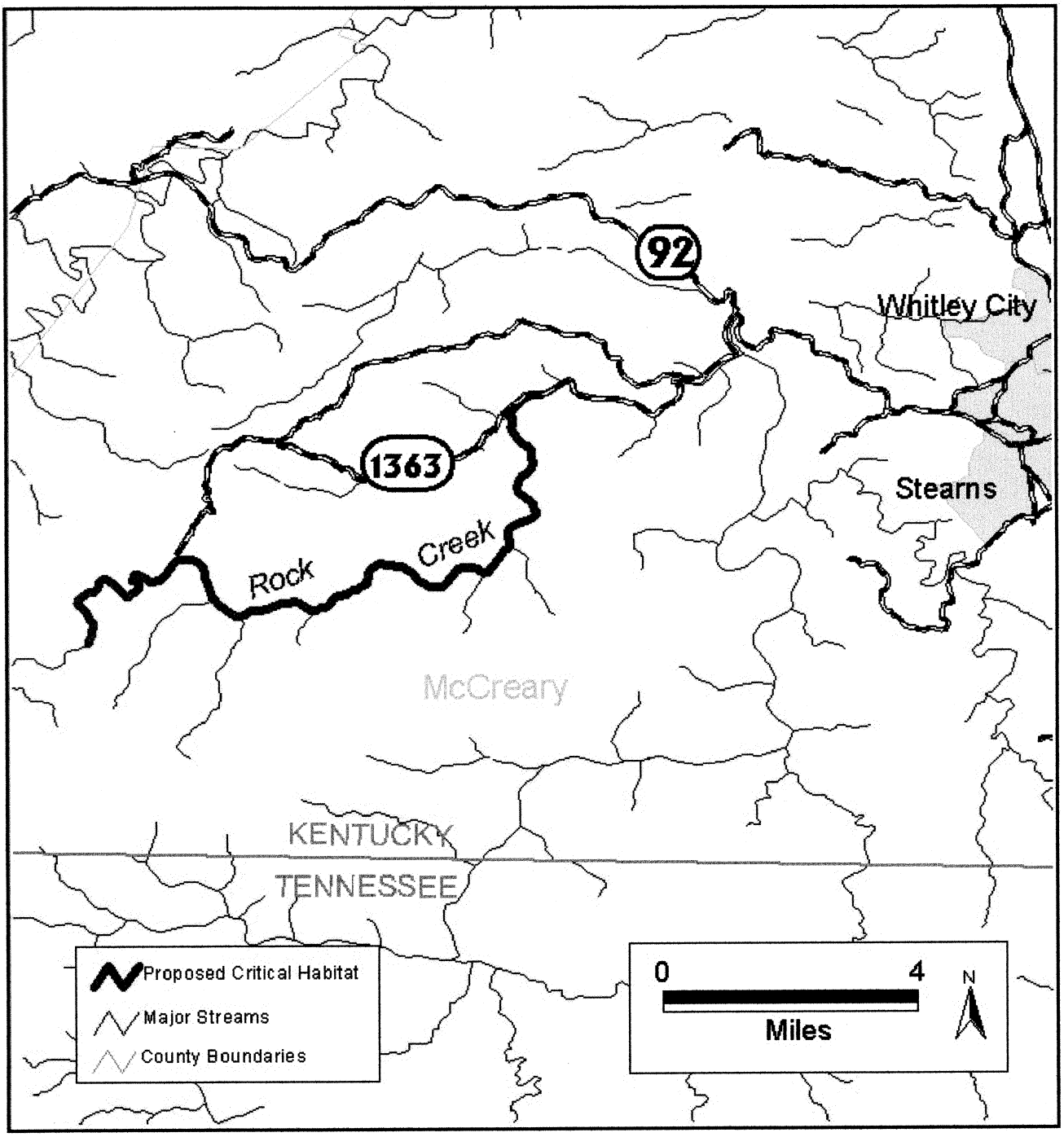
This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(x) *Unit 8.* Rock Creek, McCreary County, Kentucky. This is a critical habitat unit for the Cumberland elktoe.

(A) Unit 8 includes the mainstem of Rock Creek from its confluence with White Oak Creek (−84.59 longitude, 36.71 latitude), upstream to Sinking Creek rkm 18 (rmi 11) (−84.69 longitude, 36.65 latitude), McCreary County, Kentucky.

(B) Map of Unit 8 follows:

Unit 8 - Rock Creek: Critical Habitat for Cumberland elktoe



This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

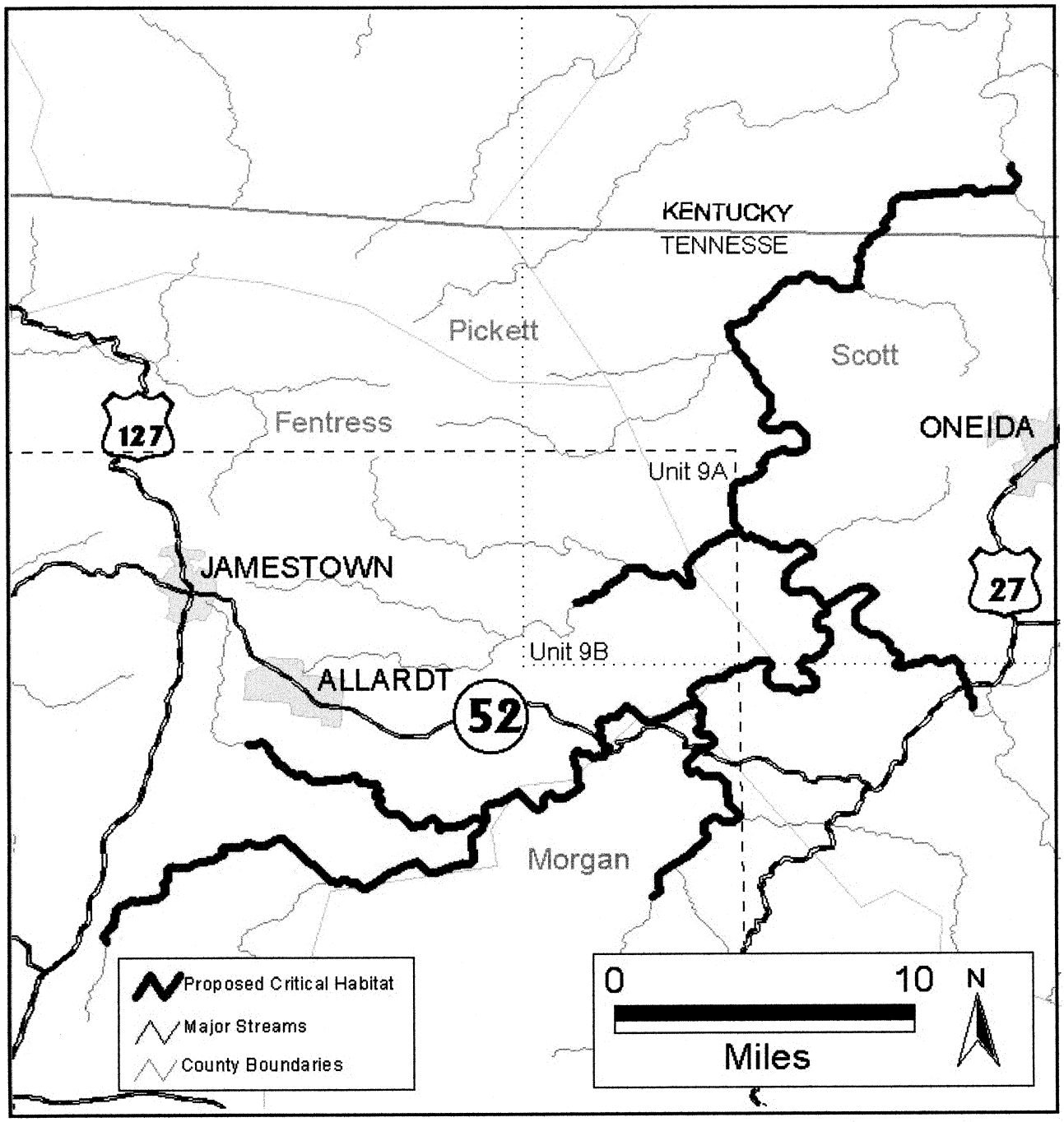
(xi) *Unit 9.* Big South Fork of the Cumberland River and its tributaries, Fentress, Morgan, and Scott Counties, Tennessee, and McCreary County, Kentucky. This is a critical habitat unit

for the Cumberlandian combshell, Cumberland elktoe, and oyster mussel.

(A) Unit 9 consists of the Big South Fork of the Cumberland River mainstem from its confluence with Laurel Crossing Branch (−84.54 longitude, 36.64 latitude), McCreary County, Kentucky, upstream to its confluence with the New River and Clear Fork, Scott County, Tennessee; North White Oak Creek from its confluence with the Big South Fork upstream to Panther Branch (−84.75 longitude, 36.42 latitude), Fentress County, Tennessee; New River from its confluence with Clear Fork upstream to U.S. Highway 27 (−84.55 longitude, 36.38 latitude), Scott County, Tennessee; Clear Fork from its confluence with the New River upstream to its confluence with North Prong Clear Fork, Morgan and Fentress Counties, Tennessee; White Oak Creek from its confluence with Clear Fork upstream to its confluence with Bone Camp Creek, Morgan County, Tennessee; Bone Camp Creek from its confluence with White Oak Creek upstream to Massengale Branch (−84.71 longitude, 36.28 latitude), Morgan County, Tennessee; Crooked Creek from its confluence with Clear Fork upstream to Buttermilk Branch (−84.92 longitude, 36.36 latitude), Fentress County, Tennessee; and North Prong Clear Fork from its confluence with Clear Fork upstream to Shoal Creek (−84.97 longitude, 36.26 latitude), Fentress County, Tennessee.

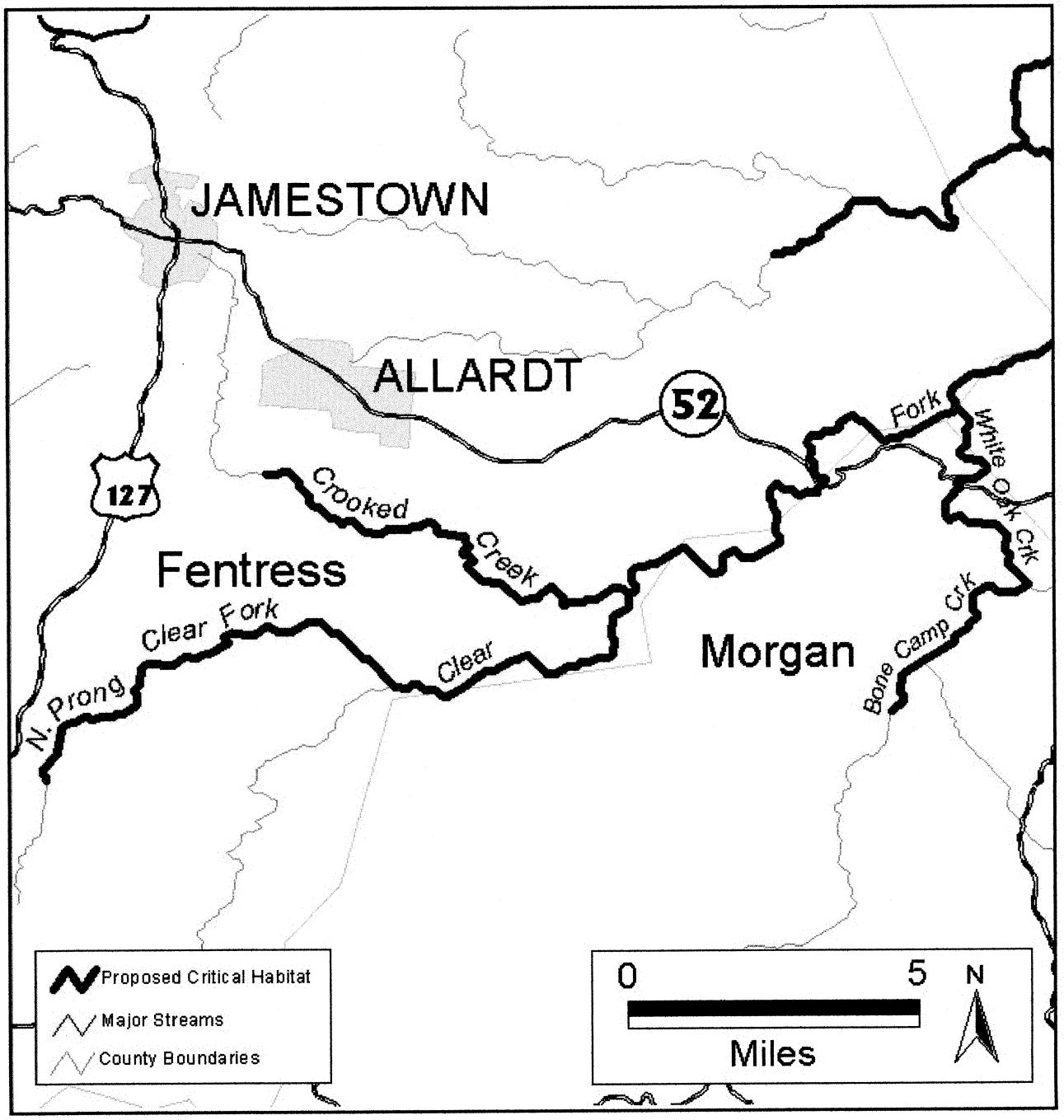
(B) Maps of Unit 9 follow:

Unit 9 - Big South Fork: Critical Habitat for Cumberland combshell, Cumberland elktoe, and Oyster mussel



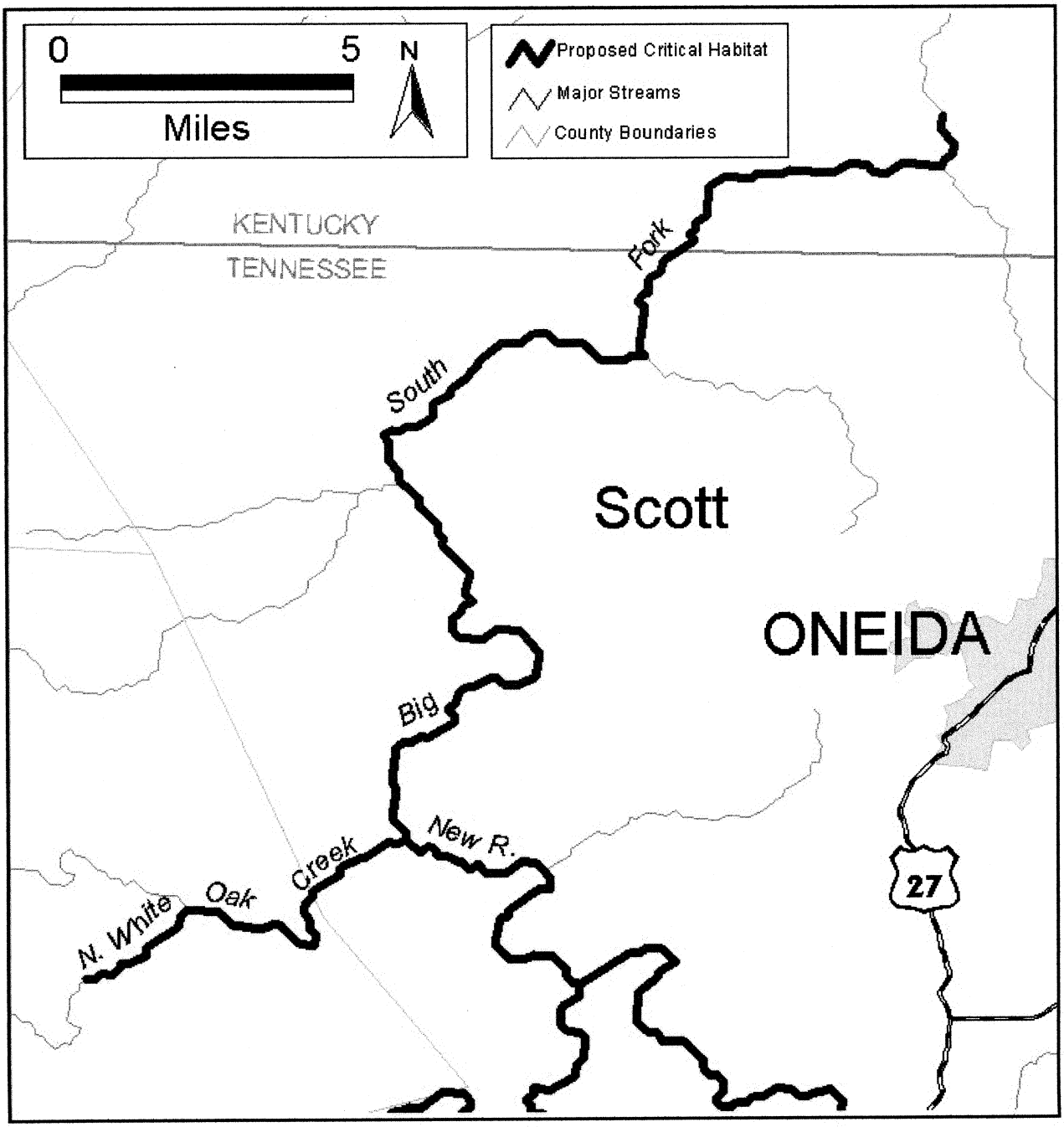
This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

Unit 9A - Big South Fork: Critical Habitat for Cumberlandian combshell, Cumberland elktoe, and Oyster mussel



This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

Unit 9B - Big South Fork: Critical Habitat for Cumberlandian combshell, Cumberland elktoe, and Oyster mussel



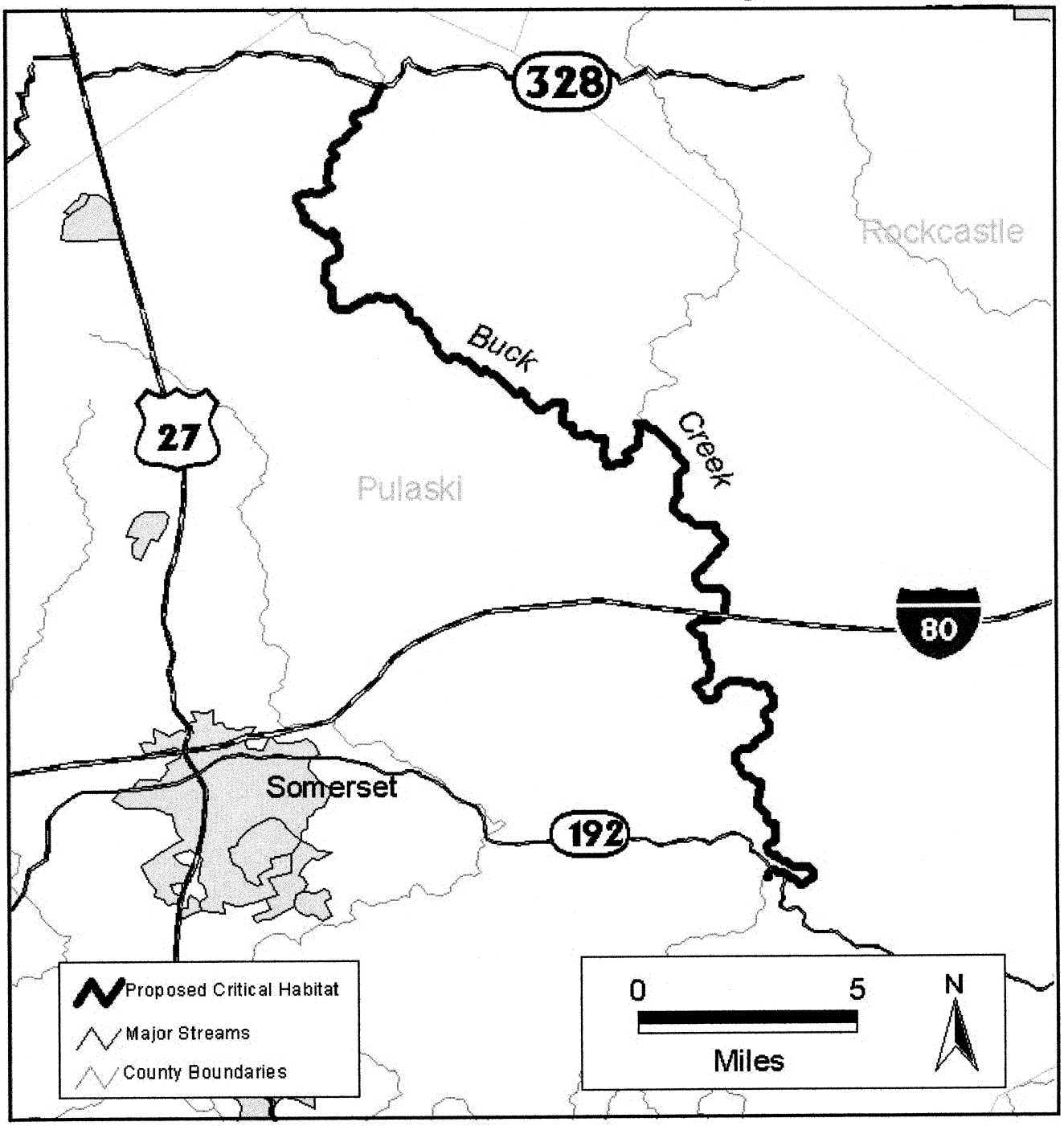
This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(xii) *Unit 10.* Buck Creek, Pulaski County, Kentucky. This is a critical habitat unit for the Cumberlandian combshell and oyster mussel.

(A) Unit 10 includes the Buck Creek mainstem from the State Road 192 Bridge (−84.43 longitude, 37.06 latitude) upstream to the State Road 328 Bridge (−84.56 longitude, 37.32 latitude) in Pulaski County, Kentucky.

(B) Map of Unit 10 follows:

Unit 10 - Buck Creek: Critical Habitat for Cumberlandian combshell and Oyster mussel



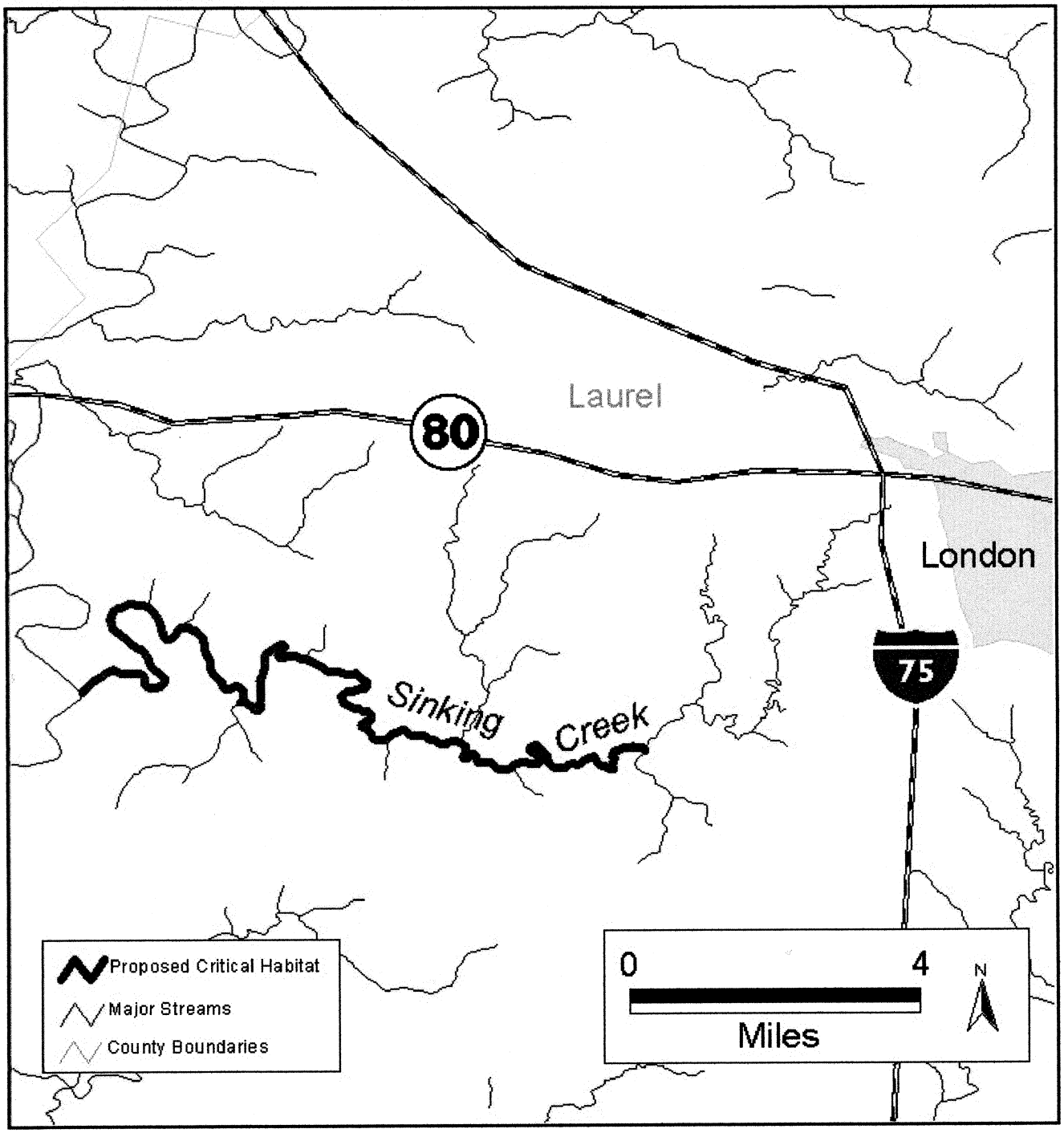
This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(xiii) *Unit 11.* Sinking Creek, Laurel County, Kentucky. This is a critical habitat unit for the Cumberland elktoe.

(A) Unit 11 includes the mainstem of Sinking Creek from its confluence with the Rockcastle River (−84.28 longitude, 37.10 latitude) upstream to its confluence with Laurel Branch (−84.17 longitude, 37.09 latitude) in Laurel County, Kentucky.

(B) Map of Unit 11 follows:

Unit 11 - Sinking Creek: Critical Habitat for Cumberland elktoe



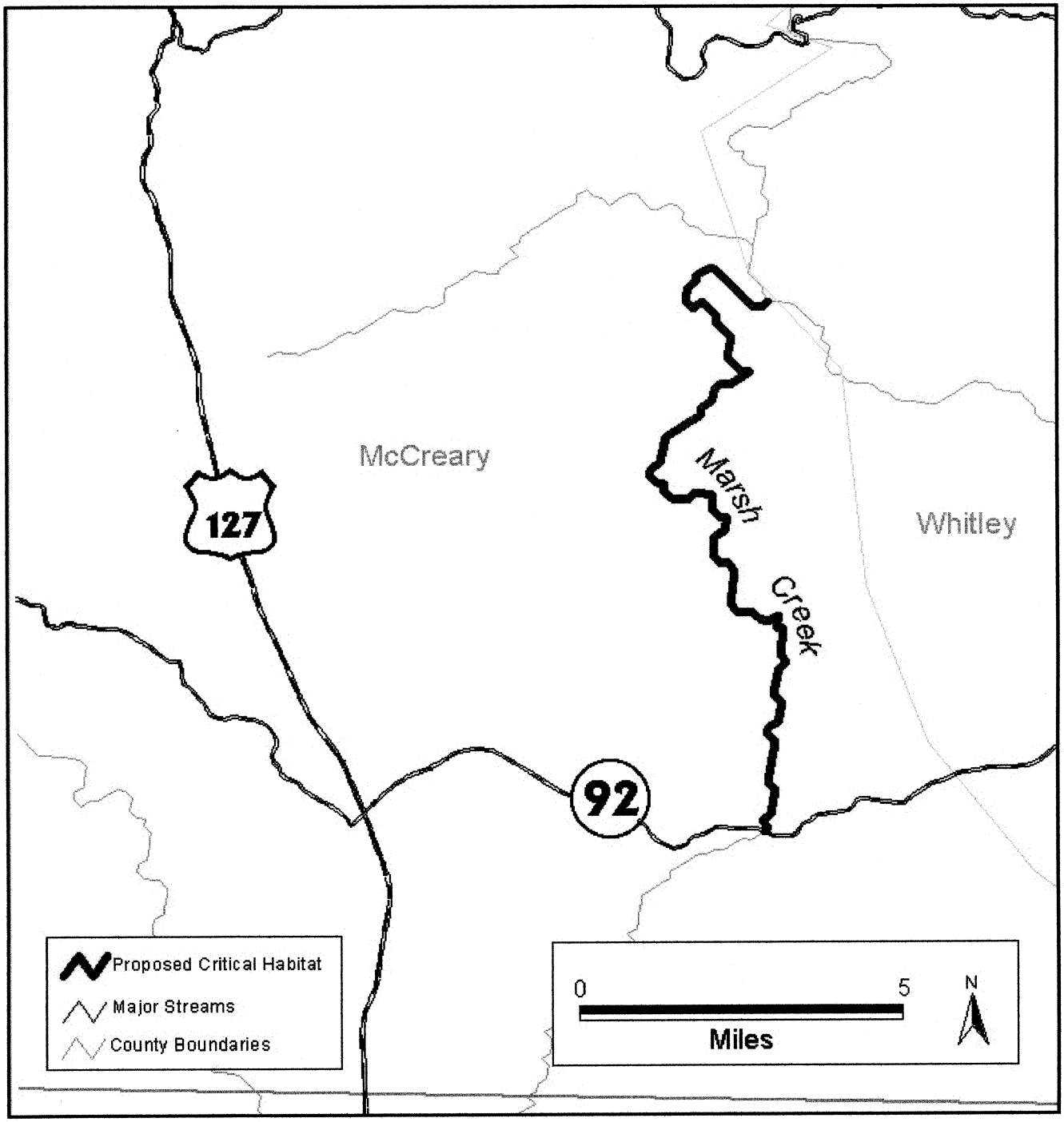
This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(xiv) *Unit 12.* Marsh Creek, McCreary County, Kentucky. This is a critical habitat unit for the Cumberland elktoe.

(A) Unit 12 includes the Marsh Creek mainstem from its confluence with the Cumberland River (−84.35 longitude, 36.78 latitude) upstream to State Road 92 bridge (−84.35 longitude, 36.66 latitude) in McCreary County, Kentucky.

(B) Map of Unit 12 follows:

Unit 12 - Marsh Creek: Critical Habitat for Cumberland elktoe



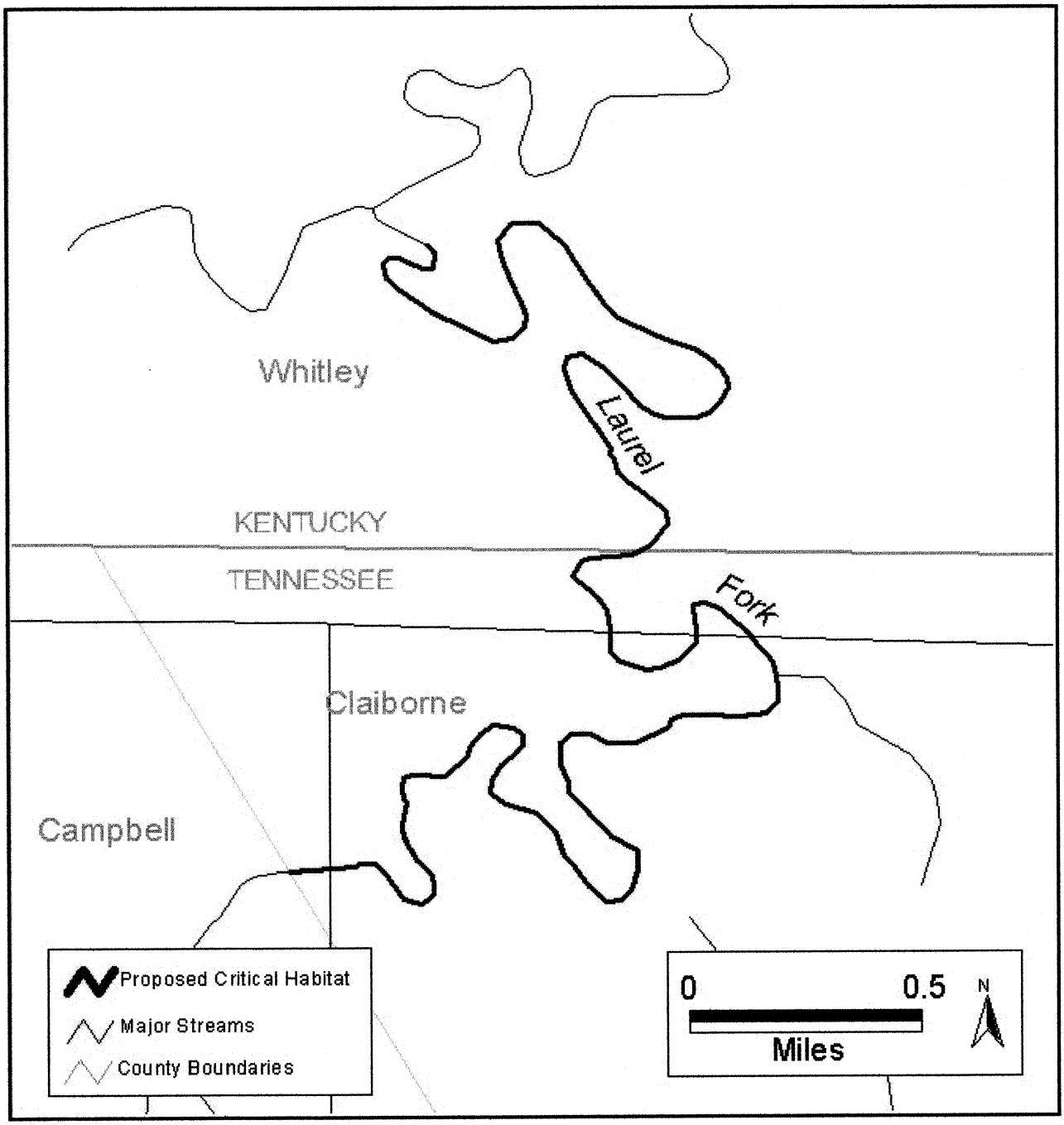
This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(xv) *Unit 13.* Laurel Fork, Claiborne County, Tennessee, and Whitley County, Kentucky. This is a critical habitat unit for the Cumberland elktoe.

(A) Unit 13 includes the mainstem of the Laurel Fork of the Cumberland River from the boundary between Claiborne and Campbell Counties (−84.00 longitude, 36.58 latitude) upstream to rkm 11 (rmi 6.85) in Whitley County, Kentucky. The upstream terminus is 2 river miles upstream of the Kentucky/Tennessee State line (−84.00 longitude, 36.60 latitude).

(B) Map of Unit 13 follows:

Unit 13 - Laurel Fork: Critical Habitat for Cumberlandian elktoe



This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

* * * * *

Dated: May 19, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–12944 Filed 6–2–03; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Tuesday,
June 3, 2003

Part III

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances—n-Propyl Bromide; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7504–3]

RIN 2060–AK28

Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances—n-Propyl Bromide

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to list n-propyl bromide (nPB) as an acceptable substitute for ozone-depleting substances (ODSs), subject to use conditions, in the solvent cleaning sector and aerosol solvents and adhesive end uses under the U.S. Environmental Protection Agency's (EPA or ''we'') Significant New Alternatives Policy (SNAP) program. The SNAP program implements section 612 of the amended Clean Air Act of 1990 (CAA), which requires EPA to evaluate substitutes for ODSs in order to reduce overall risk to human health and the environment.

While we find that nPB has a short atmospheric lifetime and low ozone depletion potential when emitted from locations in the continental U.S., the Agency cautions that significant use of nPB closer to the equator poses significant risks to the stratospheric ozone layer. Further, if workplace exposure to nPB is poorly controlled, it may increase health risks to workers. In the interim, until the Occupational Safety and Health Administration (OSHA) develops a mandatory workplace exposure limit under Section 6 of the Occupational Safety and Health Act, the Agency recommends that users of nPB adhere to an acceptable exposure limit of 25 parts per million (ppm) over an eight-hour time-weighted average.

In today's action, EPA proposes that the use of nPB is acceptable subject to a use condition, in a limited number of specific applications where emissions can be tightly controlled for both environmental and exposure concerns. The proposal only allows the use of nPB as a solvent in metals, precision, and electronics cleaning, and in aerosol solvent and adhesive end-uses. EPA is proposing to list nPB as an acceptable substitute for chlorofluorocarbon (CFC)-113, hydrochlorofluorocarbon (HCFC)-141b, and methyl chloroform when used in aerosol solvent and adhesive end uses, subject to the condition that nPB used in these end uses not contain more than 0.05% isopropyl bromide by weight before adding stabilizers or other chemicals. We are also proposing to list nPB as an acceptable substitute for CFC–113 and methyl chloroform in general metals cleaning, electronics cleaning, and precision cleaning, subject to the condition that nPB used in these end uses not contain more than 0.05% isopropyl bromide by weight before adding stabilizers or other chemicals.

DATES: Comments must be received in writing by August 4, 2003.

ADDRESSES: Comments may be submitted by mail to: Air and Radiation Docket, Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0064. Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided at the beginning of the ''supplementary information'' section.

FOR FURTHER INFORMATION CONTACT: For further information about this proposed rule, contact Margaret Sheppard by telephone at (202) 564–9163, or by e-mail at *sheppard.margaret@epa.gov.* Notices and rulemakings under the SNAP program are available on EPA's Stratospheric Ozone World Wide Web site at *http://www.epa.gov/ozone/snap/regs.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information
A. Regulated entities
B. How can I get copies of related information?
C. How and to whom do I submit comments?
D. How should I submit CBI to the agency?
E. Acronyms and abbreviations used in the preamble
II. How does the Significant New Alternatives Policy (SNAP) program work?
A. What are the statutory requirements and authority for the SNAP program?
B. How do the regulations for the SNAP program work?
C. Where can I get additional information about the SNAP program?
III. Is EPA listing n-propyl bromide as an acceptable substitute for ozone-depleting substances?
A. What is EPA proposing today?
B. What is n-propyl bromide?
C. What industrial sectors are included in our proposed decision?
IV. What did EPA consider in preparing today's proposal?
A. Toxicity
1. What Acceptable Exposure Limit is EPA recommending for n-propyl bromide, and why?
a. Summary of toxicity studies
b. Derivation of an AEL for nPB
c. Overview of the Center for Evaluation of Risk to Human Reproduction (CERHR) Expert Panel Report
d. AELs suggested by other reviewers and outside parties
e. Feasibility of meeting the AEL for nPB in each sector
2. Are there other entities that may set workplace standards for nPB?
3. Is the general population exposed to too much nPB?
4. What limit is EPA setting on isopropyl bromide contamination of n-propyl bromide as a condition of acceptability, and why?
B. Ozone depletion potential
C. Global warming potential
D. Flammability
E. Other environmental concerns
F. Comparison of nPB to other solvents
V. What other factors did EPA consider that are unique to nPB?
A. Continued review of nPB by other federal and international programs
B. Potential market for n-propyl bromide
C. Estimated economic impacts on businesses
VI. How is EPA responding to comments on the advance notice of proposed rulemaking and December 18, 2000 notice of data availability?
VII. What should I include in my comments on EPA's proposal?
VIII. What is the federal government doing to help businesses use nPB safely?
IX. How can I use nPB as safely as possible?
X. Statutory and Executive Order Reviews
XI. References

I. General Information

A. Regulated Entities

Today's proposal would regulate the use of n-propyl bromide as a solvent used in industrial equipment for metals cleaning, electronics cleaning, or precision cleaning, and as an aerosol solvent and a carrier solvent in adhesives. Businesses that currently might be using nPB, or might want to use it in the future, include:

- Businesses that clean metal parts, such as automotive manufacturers, machine shops, machinery manufacturers, and electroplaters.
- Businesses that manufacture electronics or computer equipment.
- Businesses that require a high level of cleanliness in removing oil, grease, or wax, such as for aerospace applications or for manufacture of optical equipment.
- Foam fabricators that glue pieces of polyurethane foam together or foam cushion manufacturers that glue fabric around a cushion.
- Furniture manufacturers that use adhesive to attach wood parts to floors, tables and counter tops.

Regulated entities may include:

TABLE 1.—POTENTIALLY REGULATED ENTITIES, BY NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) CODE OR SUBSECTOR

Category	NAICS code or subsector	Description of regulated entities
Industry	331	Primary metal manufacturing
Industry	332	Fabricated metal product manufacturing
Industry	333	Machinery manufacturing
Industry	334	Computer and electronic product manufacturing
Industry	336	Transportation equipment manufacturing
Industry	337	Furniture and related product manufacturing
Industry	326150	Urethane and other foam product (except polystyrene) manufacturing

This table is not intended to be exhaustive, but rather a guide regarding entities likely to be regulated by this action. If you have any questions about whether this action applies to a particular entity, consult the person listed in the preceding section, **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of Related Information?

1. Docket

EPA has established an official public docket for this action under Docket ID No. OAR–2002–0064 (continuation of Docket A–2001–07). The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Hard copies of documents from prior to the public comment period are found under Docket ID No. A–2001–07. 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 Air and Radiation Docket 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) 566–1742, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

2. Electronic Access

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

Certain types of information will not be placed in the EPA Dockets.Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.1. above.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in section 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 below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OAR–2002–0064. 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.

Comments may be sent by electronic mail (e-mail) to *A-And-R-*

Docket@epa.gov, Attention Docket ID No. OAR–2002–0064. 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.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.B.1. 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 two copies of your comments to: Air and Radiation Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington DC, 20460, Attention: Docket ID No. OAR–2002–0064.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OAR–2002–0064. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.B.1.

4. *By Facsimile.* Fax your comments to: 202–566–1741, Attention: Docket ID No. OAR–2002–0064.

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. Send or deliver information identified as CBI only to the following address: Margaret Sheppard, U.S. EPA, 4th floor, 501 3rd Street NW., Washington DC 20001, via delivery service. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

E. Acronyms and Abbreviations Used in the Preamble

Below is a list of acronyms and abbreviations used in this document.

1,1,1—the ozone-depleting chemical 1,1,1-trichloroethane, CAS Reg. No. 71–55–6; also called TCA, methyl chloroform, or MCF

1–BP—the chemical 1-bromopropane, C_3H_7Br, CAS Reg. No. 106–94–5; also called n-propyl bromide or nPB

2–BP—the chemical 2-bromopropane, C_3H_7Br, CAS Reg. No. 75–26–3; also called isopropyl bromide or iPB

2–D—two-dimensional

3–D—three dimensional

ACGIH—American Congress of Governmental Industrial Hygienists

AEL—acceptable exposure limit

AFEAS—Alternative Flurocarbon Environmental Acceptability Study

AIC—Akaike Information Criterion

AIHA—American Industrial Hygienists Association

ANPRM—Advance Notice of Proposed Rulemaking

ASTM—American Society for Testing and Materials

BMD—benchmark dose

BMDL—benchmark dose lowerbound, the lower 95%-confidence level bound on the dose/exposure associated with the benchmark response

BMR—benchmark response

BSOC—Brominated Solvents Consortium

CAA—Clean Air Act

CAS Reg. No.—Chemical Abstracts Service Registry Identification Number

CBI—Confidential Business Information

CERHR—Center for the Evaluation of Risks to Human Reproduction

CFC–113—the ozone-depleting chemical trifluorotrichloroethane, $C_2Cl_3F_3$, CAS Reg. No. 76–13–1

CFCs—chlorofluorocarbons

CFR—Code of Federal Regulations

CNS—Central nervous system

EPA—the United States Environmental Protection Agency

FR—**Federal Register**

GLP—Good Laboratory Practice

GWP—global warming potential

HCFC–123—the ozone-depleting chemical 1,2-dichloro-1,1,2-trifluoroethane, CAS Reg. No. 306–83–2

HCFC–141b—the ozone-depleting chemical 1,1,1-trichloro-2-fluoroethane, CAS Reg. No. 1717–00–6

HCFC–225ca/cb—the commercial mixture of the two ozone-depleting chemicals 3,3-dichloro-1,1,1,2,2-pentafluoro-propane, CAS Reg. No. 422–56–0 and 3,3-dichloro-1,1,2,2,3-pentafluoropropane, CAS Reg. No. 507–55–1

HCFCs—hydrochlorofluorocarbons

HEC—human equivalent concentration

HESIS—Hazard Evaluation System and Information Service of the California Department of Health Services

HFC–245fa—the chemical 1,1,3,3,3-pentafluoropropane, CAS Reg. No. 460–73–1

HFC–365mfc—the chemical 1,1,3,3,3-pentafluorobutane, CAS Reg. No. 405–58–6

HFC–4310mee—the chemical 1,1,1,2,3,4,4,5,5,5-decafluoropentane, CAS Reg. No. 138495–42–8

HFCs—hydrofluorocarbons

HFEs—hydrofluoroethers

HHE—health hazard evaluation

HSIA—Halogenated Solvents Industry Alliance

IARC—International Agency for Research on Cancer

ICF—ICF Consulting

ICR—Information Collection Request

iPB—isopropyl bromide, C_3H_7Br, CAS Reg. No. 75–26–3, an isomer of n-propyl bromide; also called 2-bromopropane or 2-BP

IPCC—International Panel on Climate Change

IRTA—Institute for Research and Technical Assistance

LOAEL—Lowest Observed Adverse Effect Level

MF—modifying factor

MSDS—Material Safety Data Sheet

NAICS—North American Industrial Classification System

NESHAP—National Emission Standards for Hazardous Air Pollutants

NIEHS—National Institute of Environmental Health Services

NIOSH—National Institute for Occupational Safety and Health

NOAEL—No Observed Adverse Effect Level

NOEL—No Observed Effect Level

nPB—n-propyl bromide, C_3H_7Br, CAS Reg. No. 106–94–5; also called 1-bromopropane or 1–BP

NPRM—Notice of Proposed Rulemaking

NTP—National Toxicology Program

NTTAA—National Technology Transfer and Advancement Act

ODP—ozone depletion potential

ODS—ozone-depleting substance

OMB—U.S. Office of Management and Budget

OSHA—U.S. Occupational Safety and Health Administration
PCBTF—parachlorobenzotrifluoride, CAS Reg. No. 98–56–6
PEL—Permissible Exposure Limit
PERC—perchloroethylene, also called tetrachloroethylene; C_2Cl_4, CAS Reg. No. 127–18–4
POD—point of departure
ppm—parts per million
RCRA—Resource Conservation and Recovery Act
RFA—Regulatory Flexibility Act
RfC—reference concentration
RfD—reference dose
SBREFA—Small Business Regulatory Enforcement Fairness Act
SNAP—Significant New Alternatives Policy
STEL—short term exposure limit
TCA—the ozone-depleting chemical 1,1,1-trichloroethane, CAS Reg. No. 71–55–6; also called 1,1,1, methyl chloroform, or MCF
TCE—trichloroethylene, C_2Cl_3H, CAS Reg. No. 79–01–6
TEAP—Technical and Economic Assessment Panel of the United Nations Environmental Programme
TSCA—Toxic Substances Control Act
TWA—time-weighted average
UF—uncertainty factor
UMRA—Unfunded Mandates Reform Act
UNEP—United Nations Environmental Programme
VMSs—volatile methyl siloxanes
VOC—volatile organic compound

II. How Does the Significant New Alternatives Policy (SNAP) Program Work?

A. What Are the Statutory Requirements and Authority for the SNAP Program?

Section 612 of the Clean Air Act (CAA) authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances, referred to as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.
- *Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. We must publish a corresponding list of acceptable alternatives for specific uses.
- *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substitute to or delete a substitute from the lists published in accordance with section 612(c). EPA has 90 days to grant or deny a petition. Where the Agency grants the petition, we must publish the revised lists within an additional six months.
- *90-day Notification*—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's health and safety studies on such substitutes.
- *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.
- *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. How Do the Regulations for the SNAP Program Work?

On March 18, 1994, EPA published the original rulemaking (59 FR 13044) that described the process for administering the SNAP program and issued our first acceptability lists for substitutes in the major industrial use sectors. These sectors include: Refrigeration and air conditioning; foam blowing; solvents cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consumed large volumes of ozone-depleting substances.

Anyone who produces a substitute for an ODS must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to chemical manufacturers, but may include importers, formulators or end-users when they are responsible for introducing a substitute into commerce.

The Agency has identified four possible decision categories for substitutes: acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; and unacceptable.

Use conditions and narrowed use limits are both considered ''use restrictions'' and are explained below. Substitutes that are deemed acceptable with no use restrictions (no use conditions or narrowed use limits) can be used for all applications within the relevant sector end-use. Substitutes that are acceptable subject to use restrictions may be used only in accordance with those restrictions. It is illegal to replace an ODS with a substitute listed as unacceptable.

After reviewing a substitute, the Agency may make a determination that a substitute is acceptable only if certain conditions of use are met to minimize risks to human health and the environment. We describe such substitutes as ''acceptable subject to use conditions.'' If you use these substitutes without meeting the associated use conditions, you use these substitutes in an unacceptable manner and you could be subject to enforcement for violation of section 612 of the Clean Air Act.

For some substitutes, the Agency may permit a narrowed range of use within a sector (that is, we may limit the use of a substitute to certain end-uses or specific applications within an industry sector), to allow alternatives to be used in specific uses that would otherwise be deemed unacceptable. We describe these substitutes as ''acceptable subject to narrowed use limits.'' If you use a substitute that is acceptable subject to narrowed use limits, but use it in applications and end-uses which are not specified as acceptable in the narrowed use limit, you are using these substitutes in an unacceptable manner and you could be subject to enforcement for violation of section 612 of the Clean Air Act.

The Agency publishes its SNAP program decisions in the **Federal Register**. For those substitutes that are deemed acceptable subject to use restrictions (use conditions and/or narrowed use limits), or for substitutes deemed unacceptable, we first publish these decisions as proposals to allow the public opportunity to comment, and we publish final decisions as final rulemakings.

In contrast, we publish substitutes that are deemed acceptable with no restrictions in ''notices of acceptability,'' rather than as proposed and final rules. As described in the rule implementing

the SNAP program (59 FR 13044), we do not believe that rulemaking procedures are necessary to list alternatives that are acceptable without restrictions because such listings neither impose any sanction nor prevent anyone from using a substitute.

Many SNAP listings include ''comments'' or ''further information.'' These statements provide additional information on substitutes that we determine are either unacceptable, acceptable subject to narrowed use limits, or acceptable subject to use conditions. Since this additional information is not part of the regulatory decision, you are not required to follow these statements to use a substitute unless they specifically reference regulatory requirements. The further information does not necessarily include all other legal obligations pertaining to the use of the substitute. However, we encourage users of substitutes to apply all statements in the ''Further Information'' column in their application of these substitutes, regardless of any regulatory requirements. In many instances, the information simply refers to sound operating practices that have already been identified in existing industry and/or building-code standards. Thus, many of the comments, if adopted, would not require the affected industry to make significant changes in existing operating practices.

C. Where Can I Get Additional Information About the SNAP Program?

For copies of the comprehensive SNAP lists of substitutes or additional information on SNAP, look at EPA's Ozone Depletion World Wide Web site at *http://www.epa.gov/ozone/snap/lists/index.html.* For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044), codified at Code of Federal Regulations at 40 CFR part 82, subpart G. You can find a complete chronology of SNAP decisions and the appropriate **Federal Register** citations at *http://www.epa.gov/ozone/snap/chron.html.*

III. Is EPA Listing n-Propyl Bromide as an Acceptable Substitute for Ozone-Depleting Substances?

A. What Is EPA Proposing Today?

EPA is proposing today to list n-propyl bromide (nPB) acceptable, subject to use conditions, for use as a substitute for CFC–113 and methyl chloroform [1] in metals, precision and electronics cleaning, and acceptable, subject to use conditions, for use as a substitute for CFC–113, methyl chloroform and HCFC–141b in adhesives and aerosol solvent end uses. The use conditions for each end use provide that nPB not contain more than 0.05% isopropyl bromide (iPB)[2] by weight before adding stabilizers or other chemicals. By this, we mean the chemical n-propyl bromide that is produced by the manufacturer or reclaimed by a recycler before other substances are added, such as stabilizers, other solvents, or adhesive solids. End users would need to keep documentation for two years from the date on the documentation to show that the nPB-based product that they are using contains no more than 0.05% iPB in the nPB. EPA's decision is based upon comparing environmental and health risks associated with the use of nPB in specific applications in the United States, compared to other available alternatives. Based on our review, the impact of using nPB in the U.S. does not warrant listing the chemical as an unacceptable substitute under the SNAP program.

We recommend, but do not require, that users in all industrial sectors adhere to EPA's recommended guideline for worker exposure of 25 parts per million (ppm) over an eight-hour time-weighted average. While we believe it is possible to achieve the recommended exposure limit of 25 ppm in the kinds of applications listed above, we are concerned about potentially high emissions and exposure levels of nPB in adhesive applications in particular. Consequently, EPA intends to work with the National Institute for Occupational Safety and Health (NIOSH) to develop information for employers and workers at facilities that use, or could use, nPB. NIOSH and state occupational safety and health agencies will provide technical assistance to help ensure a safe workplace environment if owners or workers request it.

EPA strongly recommends that users follow responsible use practices suggested by the manufacturer when using nPB. You can also reduce risk in the workplace by monitoring workers' levels of exposure to nPB. These practices will reduce the risk of toxic effects to workers, as well as reducing the impact of emissions on the environment.

[1] Methyl chloroform is also referred to as 1,1,1-trichloroethane, TCA, or 1,1,1.

[2] iPB is also referred to as 2-bromopropane, 2-propyl bromide, or 2-BP. Its CAS registration number is 75–26–3.

B. What Is n-Propyl Bromide?

n-propyl bromide (nPB), also called 1-bromopropane, is a non-flammable organic solvent with a strong odor. Its chemical formula is C_3H_7Br. Its identification number in Chemical Abstracts Service's registry (CAS Reg. No.) is 106–94–5. nPB is used to remove wax, oil, and grease from electronics, metal, and other materials. It also is used as a carrier solvent in adhesives. Some brand names of products using nPB are: Abzol®, EnSolv®, and Solvon® cleaners, and Whisper Spray and Fire Retardant Soft Seam 6460 adhesives.

C. What Industrial Sectors Are Included in Our Proposed Decision?

EPA has received petitions under CAA Section 612(d) to add nPB to the list of acceptable alternatives for CFC–113, methyl chloroform, and HCFC–141b in the solvent cleaning sector for general metals, precision, and electronics cleaning, as well as in aerosol solvent and adhesive applications.[3] Today's proposal does not list nPB as a substitute for HCFC–141b for the solvent cleaning sector, but does list nPB as an acceptable substitute for HCFC–141b, subject to use conditions, for aerosol solvents. This is because EPA previously listed HCFC–141b as unacceptable for use in non-aerosol solvent cleaning applications because of the availability of safer alternatives (59 FR 13090; March 18, 1994), and listed HCFC–141b as acceptable for use in aerosol solvents. No one may legally use HCFC–141b for non-aerosol solvent cleaning and, therefore, no one would substitute for its use.

The proposal for aerosol solvents only applies to a limited number of aerosol solvent applications because of the Nonessential Products Ban promulgated under Section 610 of the Act which prohibits the sale, distribution, or offer for sale or distribution in interstate commence of many products containing CFCs and HCFCs. All aerosol products, pressurized dispensers and foam products containing or manufactured with CFCs and HCFCs—except those specifically exempted by the regulations at 40 CFR part 82, subpart C, and those that are listed as essential medical devices by the Food and Drug Administration at 21 CFR 2.125(e)—are banned from sale and distribution in the

[3] EPA also received petitions for using nPB in the foam blowing and fire suppression sectors. Because the information in these petitions about the use of nPB is incomplete, EPA was unable to consider them. Therefore, today's action does not address nPB's use in the foam blowing and fire suppression sectors.

United States. Users of aerosol solvents can purchase them only for those applications that are exempted from the Non-Essential Products Ban. The SNAP program applies to the use of substitutes for ODSs, and thus, applies only to those applications where ODSs may be used. Therefore, today's proposed listing only applies to those specific aerosol solvent applications where ODSs are allowed to be sold. This list of permissible uses is subject to change. Of the allowable applications for aerosol solvents, it is most likely that nPB would be used as a solvent in:

- Lubricants, coatings, or cleaning fluids for electrical or electronic equipment;
- Lubricants, coatings, or cleaning fluids for aircraft maintenance; or
- Spinnerrette lubricants and cleaning sprays used in the production of synthetic fibers.

In addition, no one has specifically stated that they use, or intend to use, nPB in coatings or inks. Thus, our proposed ruling only addresses nPB use in the adhesives end use, in the adhesives, coatings, and inks sector. We would require a separate SNAP submission and additional information on nPB use and exposure data in coatings and inks to consider its acceptability in those applications.

EPA notes that the SNAP program currently does not cover some uses of solvents, such as manual cleaning, carriers for flame retardants, dry cleaning, or paint stripping. Ozone-depleting solvents were never used in significant quantities in these applications, compared to applications that are covered by the SNAP program, such as vapor degreasing or cold batch cleaning. For further discussion, see the original SNAP rule (March 18, 1994; 59 FR 13089–13090 and 59 FR 13117–13120).

We summarize our proposed actions by sector and end use in Table 2 below.

TABLE 2.—SUMMARY OF PROPOSED ACTIONS BY SECTOR AND END USE

For this industrial sector...	in this end use...	we propose to list nPB as follows...	as a substitute for these ozone depleting substances:		
			CFC–113	methyl chloroform	HCFC–141b
Solvents Cleaning	Metals Cleaning	Acceptable, subject to use conditions[1]	X	X	
	Electronics Cleaning	Acceptable, subject to use conditions[1]	X	X	
	Precision Cleaning	Acceptable, subject to use conditions[1]	X	X	
Aerosols	Aerosol Solvents	Acceptable, subject to use conditions[1]	X	X	X
Adhesives, Coatings, and Inks.	Adhesives	Acceptable, subject to use conditions[1]	X	X	X

[1] In order to use nPB, the nPB would have to contain no more than 0.05% iPB by weight before adding stabilizers or other chemicals.

At the end of today's action, you will find language that we are proposing to add as Appendix L to subpart G of 40 CFR part 82 to summarize our proposed listing decisions. Information contained in the ''Further Information'' column of those tables provides additional information on nPB. Although EPA expects nPB users to conform to all information shown in Appendix L, the ''further information'' is not part of the regulatory decision, and, therefore, is not mandatory. Also, there may be other legal obligations pertaining to the manufacture, use, handling, disposal of nPB that are not included in the comments listed in Appendix L.

IV. What Did EPA Consider for Today's Acceptability Decision?

To assess the acceptability of any substitute, including nPB, EPA reviews the environmental and health risks potentially posed by the substitute, including ozone depletion potential, global warming potential, flammability, and toxicity. Today's action on nPB follows the publication of an Advanced Notice of Proposed Rulemaking (ANPRM) published in the **Federal Register** on February 18, 1999, at 64 FR 8043. The ANPRM provided the public an opportunity to review the information available to the Agency at that time, and requested additional information and comment to assist in the development of regulatory options. In particular, the ANPRM asked for information on those key parameters where information was limited—that is, the toxicity, ozone depletion potential, and market potential of nPB. The Agency also issued a notice on December 18, 2000 which provided the public with an update on the information EPA had received regarding nPB's ODP and toxicity, and provided a summary of anticipated next steps in developing regulations under SNAP for nPB (65 FR 78977).

Based on all information now available, EPA is proposing to find nPB acceptable subject to use conditions. The Agency is concerned that excessive exposure to nPB can pose risks of adverse health effects and is recommending a workplace exposure guideline that we believe will protect workers who are exposed to this chemical. EPA is basing this recommendation on several factors, including a review of the toxicological literature and a subsequent risk evaluation conducted according to EPA guidelines (adjusted to represent workplace exposure), and consideration of risk management principles. EPA finds that it is possible to reduce workplace exposure to nPB to acceptable levels with commonly available control equipment or ventilation equipment. Thus, the Agency has concluded that it is appropriate to list nPB as acceptable because there is evidence that it can be used in a way that does not present greater risk than other substitutes.

Based on these data, the Agency is proposing to list nPB as acceptable, subject to a use condition, for the non-aerosol solvents cleaning sector, aerosol solvents end use, and adhesives end use because we believe it is feasible to meet the recommended AEL of 25 ppm in the solvents cleaning sector, the aerosol solvents end use, and the adhesives end use. However, EPA expects users to defer to any permissible exposure limit ultimately established by OSHA. We note that section 6 of the Occupational Safety and Health Act requires OSHA to make specific legal findings to support a standard. Specifically, under the case law OSHA can set a standard only where there is ''substantial evidence'' that the particular standard will provide

''significant'' risk reduction of a ''material'' adverse health effect to workers. Because OSHA operates under a different statute, employs different methodology, and will presumably have additional data at some point in the future, OSHA's derivation of a permissible exposure limit (PEL) may result in a different number than the AEL we set using EPA's own methodology and the data available today.

Today's proposed decision to find nPB acceptable under the SNAP program is based in part on its relatively low ozone depletion potential when emitted within the continental United States. However, the ODP of nPB varies with latitude; therefore, this decision should not guide decisions of other countries. For example, nPB emitted closer to the equator has a significantly higher ozone depleting potential than nPB emitted from the middle and northern latitudes, which include the continental United States (for a further discussion, see section IV.B. below on Ozone Depletion Potential). EPA recommends that any decisions on the use of nPB outside the U.S. should be based on latitude-specific ODPs and volumes of the chemical projected to be used in those regions.

A. Toxicity

A primary concern regarding nPB use in the United States is its potential adverse health effects to exposed workers. Since EPA recommended a preliminary exposure guideline in 1999, additional studies have been conducted on the toxicity of nPB and its isomer, iPB. EPA has reviewed available toxicity data in order to develop a contamination limit for iPB and an Acceptable Exposure Limit (AEL)[4] for occupational exposure to nPB that are protective of human health. EPA has also reviewed workplace exposure measurements from several facilities where nPB has been used.

1. What Acceptable Exposure Limit Is EPA Recommending for n-Propyl Bromide, and Why?

Today, EPA is recommending an AEL for nPB of 25 ppm as an eight-hour time-weighted average. Based upon currently available data, EPA believes that workers can be exposed to an average nPB concentration of 25 ppm without appreciable risk of adverse health effects. In addition, like many halogenated solvents, nPB has the potential to be absorbed through the skin, so we recommend avoiding skin exposure to nPB by wearing protective clothing and flexible laminated gloves. The discussion below describes the derivation of the recommended AEL of 25 ppm for workplace exposure.

a. Summary of toxicity studies. EPA reviewed all the studies listed in docket numbers A–2001–07 and A–91–42 and the studies cited as references in Section XI at the end of this preamble. The epidemiological data on nPB are limited. An anecdotal report by Sclar described neurotoxic effects seen in one patient who used an nPB-based solvent (Sclar, 1999). Another recently published paper describes three women exhibiting signs of peripheral and central nervous system toxicity, such as stumbling, numbness, urinary incontinence, diarrhea, nausea, difficulty in concentrating, dizziness, and headaches which was attributed to nPB exposure (Ichihara, 2002a). Because detailed exposure data are not available in either of these papers, it is difficult to use this information in a risk assessment. Vibration sense deficits, decreased nerve conduction, and reduced scores on neurological functional tests were reported in female workers in China exposed to nPB between <1 ppm and 49 ppm (Ichihara *et al.*, 2002b). The study authors concluded that their findings suggest that exposure to nPB at levels below or around 50 ppm may affect peripheral and central nervous system function. However, because only an abstract of the study was available to EPA, it was not possible to determine if the exposures and effects were well-characterized or if the sample was large enough to draw reliable conclusions. As discussed below in section IV.A.1.e, ''Feasibility of meeting the AEL for nPB in each industrial sector,'' NIOSH has performed a number of health hazard evaluations with measured workplace exposures to nPB. However, only one of these studies attempted to assess health effects (NIOSH, 2002). In this study, NIOSH conducted a voluntary medical survey and performed a complete blood count on those workers who chose to participate (43 out of 70 workers participated). The medical survey included questions on whether workers had headaches at least once per week, and whether workers had difficulty having children. No exposure-response relationship could be identified from these data. The survey was not designed to fully characterize effects on the reproductive system, nor did the study employ a control group (a group of workers who were not exposed to nPB), further limiting the utility of this data for risk assessment.

The acute toxicity of nPB has been studied in Sprague-Dawley rats for inhalation (Elf Atochem, 1997), oral (Elf Atochem, 1993), and dermal (Elf Atochem, 1995b) routes of exposure. The 4-hour LC50 (lethal concentration for 50% of the test animals) for inhalation of nPB was 35,000 mg/m3 (Elf Atochem, 1997), with death resulting from pulmonary edema. The LD50 (lethal dose for 50% of the test animals) for gavage dosing of nPB was greater than 2,000 mg/kg (Elf Atochem, 1993).

Animals receiving 2,000 mg/kg nPB dermally (with occlusion of the exposure area) showed no cutaneous reactions and no evidence of toxicity (Elf Atochem, 1995b). A skin sensitization test in Guinea pigs was also negative (Elf Atochem, 1995c).

Key chronic and subchronic toxicological studies on nPB include a 28-day inhalation study (ClinTrials, 1997a), a 90-day inhalation study (ClinTrials, 1997b), a two-generation reproductive toxicity study (WIL, 2001), and various papers and abstracts published in peer-reviewed scientific journals (Ichihara, 1998, 1999, 2000a, 2000b; Kim, 1999; Wang, 1999; Yu, 2001; Ichihara 2002a, 2002b). The results of these studies consistently show that sensitive health endpoints[5] (*i.e.*, the biological effects occurring at the lowest levels of nPB exposure) include effects on the liver (centrilobular vacuolation—cellular changes in the central area of the liver) and on the male reproductive system (decreases in absolute and relative seminal vesicle weights, and reduced sperm count, motility and maturation, and effects on sperm shape).

The ClinTrials 90-day inhalation study showed liver effects at exposures of 400 ppm and above, which is consistent with the effects seen by Kim *et al.* (1999). Effects of nPB on the central and peripheral nervous system have also been reported, including peripheral nerve degeneration and axonal swelling in the spinal cord at 1000 ppm (Yu, 2001), degeneration of the myelin of peripheral nerves at 800 ppm (Ichihara, 1999), and significantly decreased hind limb grip strength (a measure of motor nerve function) at 400 ppm (Ichihara, 2000b).

Concerns over potential reproductive toxicity associated with nPB were initially raised because exposure to iPB,

[4] An AEL is the SNAP program's generic term for an eight-hour time-weighted average occupational exposure limit.

[5] An endpoint is an observable or measurable biological event or chemical concentration (*e.g.*, metabolite concentration in a target tissue) used as an index of an effect of a chemical exposure.

a structural analog of nPB, was associated with significant reproductive effects in both male and female workers (Kim, 1996; Park, 1997; Ichihara, 1997). In animal studies, iPB has been shown to induce estrous cycle alterations, decreases in accessory sex gland weights (*e.g*, seminal vesicle, prostate), reductions in sperm counts and sperm motility, and changes in sperm morphology (Yu, 1997; Ichihara, 1997; Kamijima, 1997). Results presented by Ichihara and colleagues indicated that nPB exerts some level of reproductive toxicity in rats (Ichihara *et al.*, 1998, 1999; Wang, 1999).

More recently, two studies have reported effects of nPB on the female reproductive system in rats. In the first study, female rats were dosed at 0, 200, 400, and 800 ppm for eight hours a day for 7 weeks. Tests of vaginal smears showed a significant increase in the number of irregular estrous cycles with extended diestrus [6] in the 400 and 800 ppm dose groups, and dose dependent reduction of the number of normal antral follicles in the 400 ppm group (Yamada, 2003). In the second study, female rats were exposed to 1000 ppm nPB for 7 days per week for three weeks. The ratio of the number of estrous cycles of 6 days or longer to the total number of estrous cycles was calculated for the 1000 ppm exposure group and the control group. This ratio was two times higher in the exposed animals than controls, however, this difference was not statistically significant (Sekiguchi, 2002).

In 1999, the Brominated Solvents Consortium (BSOC), a group of several nPB manufacturers, initiated a two-generation study (WIL, 2001) designed to investigate thoroughly the reproductive toxicity of nPB, as well as to provide additional information on other toxic endpoints of concern, including liver effects, and effects on the central nervous system (CNS). In this study, groups of 25 male and female rats were exposed to nPB via whole-body inhalation. The F0, or first generation, animals were exposed to target air concentrations of 0, 100, 250, 500, or 750 parts per million (ppm) of nPB for 6 hours/day, 7 days/week for at least 70 days prior to mating. The F1, or second generation, animals were exposed to 0, 100, 250, or 500 ppm nPB (infertility in the F0 750 ppm group precluded having an F1 750 ppm group). Exposure of male animals in both generations continued throughout mating to the day prior to study termination. Exposure for female animals in both generations continued throughout mating and gestation through gestation day 20. After birth of the pups, the females' exposure continued on lactation day 5 through the day prior to study termination.

In this study, fertility was compromised significantly at 500 ppm, and no live offspring were produced at 750 ppm. There was strong evidence of dose-response in both the parent (F0) and offspring (F1) generations for a constellation of reproductive effects in both males and females, including decreases in sperm motility and changes in sperm morphology, reduced numbers of implantation sites and changes in estrous cycles, and reduced litter size. There were slight decreases (only some of which were statistically significant) at 250 ppm, and even 100 ppm for some reproductive endpoints. Statistically significant effects were observed at 250 ppm for reduced prostate weight in F0 males and increased estrous cycle length F1 females. Sperm motility in the 250 ppm group of F1 males was slightly reduced (84.8%) compared to the control group (88.9%). The difference was statistically significant ($p<0.05$). The study authors noted, however, that the sperm motility percentage for F1 males was slightly higher than the mean value in the WIL Research Laboratories historical control data (83.2%). Therefore, the authors did not attribute the reduction in sperm motility to exposure to nPB at 250 ppm. Male reproductive effects were consistent with those identified in the Japanese studies previously cited (Ichihara *et al.*, 1998, 1999, 2000a; Wang, 1999).

Liver effects similar to those reported in the ClinTrials (1997b) 90-day inhalation study were observed in males and females in both generations. Increases in liver weights occurred in both sexes following exposure to 500 ppm; corresponding increases in the incidence of minimal to mild hepatocellular vacuolation were observed at 250 ppm in males and 500 ppm in females. The adverse effects on the central and peripheral nervous system reported by Yu (2001) and Ichihara (1999, 2000b) occurred at higher doses than those associated with reproductive and liver effects in the two-generation study.

Carcinogenicity/Mutagenicity. Limited *in vitro* screening assays testing for mutagenicity and potential carcinogenicity have been conducted on nPB. Two studies have been performed investigating the potential mutagenicity of nPB in bacterial strains. Barber *et al.* (1981) exposed five *S. typhimurium* strains (TA98, TA100, TA1535, TA1537 and TA1538) to five different vapor concentrations of nPB ranging from 1.1 to 20.3 μmol/plate (135–2497 μg/plate). Exposures were performed in a closed incubation system in the presence and absence of liver S9 fraction (from Arochlor-induced rats). Increases in revertants were observed in only strains TA100 and TA1535 in both the absence and presence of S9; increases were not reported in the other strains. Elf Atochem (1994) exposed the same bacterial strains to nPB concentrations of 100 to 100,000 μg/plate in both the absence and presence of liver S9 (from male Sprague-Dawley rats induced with Arochlor 1254). This protocol also used a closed system (closed stainless-steel vessels). The highest concentration was slightly cytotoxic; however, this assay did test up to the limit dose (5,000 μg/plate) recommended for bacterial reversion assays. Appropriate positive and negative controls were used to determine spontaneous background revertant frequency. No increases in revertants were reported in any strain or condition. Given these conflicting studies, the current data regarding mutagenicity of nPB in bacterial strains are equivocal. Unpublished studies of in vivo micronucleus formation (Elf Atochem 1995a) indicate that nPB is not clastogenic, and a published dominant lethal assay with NPB was negative (Saito-Suzuki *et al.* 1982).

In a cell death bioassay using cultured human liver cells (HepG2 hepatoma), the cytotoxicity of nPB was evaluated at concentrations ≤500 ppm (SLR 2001a). Results of the bioassay indicated that nPB was cytotoxic (measured as decreased cell viability) at the highest concentration tested (500 ppm). There were no positive responses reported at any concentration for tests that evaluated enzyme function, DNA damage, or DNA damage and repair when tested at concentrations up to 500 ppm. A closely related compound, ethyl bromide, is weakly carcinogenic in rodents (Haseman and Lockhart 1994), and iPB has been shown to induce reverse mutations in bacteria (Maeng and Yu 1997). Results from these screening assays for short-term genotoxicity do not suggest significant concerns regarding nPB's potential carcinogenicity, although more data are needed.

The National Institute of Environmental Health Sciences' National Toxicology Program (NTP) is planning to conduct carcinogenicity studies in both sexes of rats and mice, which will allow for more definitive conclusions. To date, the NTP has not initiated new experimental studies on nPB, and the data will not be available for several years.

[6] Diestrus is a period of sexual inactivity during the estrous cycle.

b. Derivation of an AEL for nPB.

Benchmark Dose Modeling Background. EPA considered two methods to derive a recommended acceptable exposure level for workplace exposure: (1) The use of the no-observed-adverse-effect level (NOAEL) to define the starting point of departure (POD) for the computation of a reference value, and (2) the use of benchmark dose-response (BMD) modeling to define the POD. Both methods are essentially a two-step process, the first step defining a POD, and then the second extrapolating from the POD to a lower, environmentally relevant exposure level. EPA's in-depth analysis uses the BMD modeling approach, for reasons explained below; however, under either approach, one arrives at a similar value.

The traditional approach to derive safe exposure limits for numerous chemicals regulated in a variety of programs, including the SNAP program, has been to first determine the NOAEL (or LOAEL if a NOAEL cannot be identified), use the NOAEL as the POD, and then apply uncertainty factors based on EPA's guidelines to determine an appropriate reference value. Using the NOAEL to determine a reference value has long been recognized as having limitations in that it: (1) Is limited to one of the doses in the study; (2) does not account for variability in the estimate of the dose-response, which is due to the characteristics of the study design; (3) does not account for the slope of the dose-response curve; and (4) cannot be applied when there is no NOAEL, except through the application of an additional uncertainty factor (Crump, 1984; Kimmel and Gaylor, 1988).

A newer analytic approach is to use benchmark dose modeling to define a point of departure for deriving a reference value or slope factor that is more independent of study design. For risk assessment of nPB, EPA followed the BMD guidelines to develop an AEL. The EPA Risk Assessment Forum has written guidelines for the use of the BMD approach in the assessment of non-cancer health risk (USEPA, 1995b), and the EPA Benchmark Dose Workgroup is in the process of drafting technical guidance for the application of the BMD approach in cancer and non-cancer dose-response assessments. Use of BMD methods involve fitting mathematical models to dose-response data and using the results to select a BMD that is associated with a predetermined benchmark response (BMR) at the low end of the observed range in the studies used, such as a 10% increase in the incidence of a particular lesion or a 10% decrease in body weight gain. The BMD derived from mathematical modeling is the central estimate of the dose/exposure associated with the BMR. The point of departure derived from BMD modeling, however, is the Benchmark Dose Lowerbound (BMDL), or the lower 95% bound on the dose/exposure associated with the BMR. Using the lower bound accounts for the uncertainty inherent in a given study (*e.g.*, small sample size), and assures (with 95% statistical confidence) that the desired BMR is not exceeded.

The advantage of the benchmark dose approach is that it considers response data across all exposure groups. For example, a benchmark dose can be calculated even in studies where a NOAEL could not be identified, *i.e.*, in studies where responses even in the lowest exposure group tested were considered adverse. Unlike the NOAEL/LOAEL, the benchmark dose does not have to be one of the exposure levels (dose groups) chosen in the experimental design. In a hypothetical experiment where groups of rats are exposed to a chemical at 0 ppm, 100 ppm, 500 ppm and 1,000 ppm, the NOAEL or LOAEL must be either 100 ppm, 500 ppm, or 1,000 ppm simply because those were the only levels tested in the experiment. However, the benchmark dose derived from the data in the same experiment could be 200 ppm, 750 ppm, or even 997 ppm depending on the shape of the dose response curve described by the data. EPA uses the BMD approach whenever possible because it provides a more quantitative alternative to identification of a point of departure than the traditional NOAEL/LOAEL approach (US EPA 1995b).

Dosimetric adjustments and application of uncertainty factors. Under either approach—NOAEL/LOAEL or BMD modeling—an adjustment to the point of departure for the calculation of a reference value may be necessary to calculate a ''human equivalent concentration'' (HEC) if there are differences between the exposure regime used in the toxicity studies and a typical workweek of 8 hours per day and 5 days per week. Once a POD and the corresponding HEC is identified, uncertainty factors (UFs) are applied to account for extrapolation uncertainties that could underestimate the chemical's toxicity potential for exposed humans (in this case, workers using nPB). According to standard risk assessment methods as delineated in Agency guidance (US EPA, 1994), UFs of up to 10 may be applied for each of the following conditions:

(1) Data from animal studies are used to estimate effects on humans;

(2) Data on healthy people or animals are adjusted to account for variations in sensitivity among members of the human population (*e.g.*, interindividual variability);

(3) Data from subchronic studies are used to provide estimates for chronic exposure;

(4) Studies that only provide a lowest observed adverse effect level (LOAEL) rather than a no observed adverse effect level (NOAEL) or benchmark dose; or

(5) An incomplete data base of toxicity information exists for the chemical (US EPA, 1995b).

Finally, a modifying factor (MF), which is an additional uncertainty factor that is greater than zero and less than or equal to 10, may be used. The magnitude of the MF depends upon the professional assessment of scientific uncertainties of the study and data base not explicitly treated above, *e.g.*, the completeness of the overall data base and the number of species tested. The default value for the MF is 1.

It is important to note that EPA does not have specific guidelines for occupational studies. As such, EPA is applying its general risk assessment principles and adapting its methodologies, as appropriate to consider risk in an occupational setting. For example, as mentioned above, EPA is adjusting its exposure scenario to derive a human equivalent concentration (HEC) that is representative of workplace exposure, rather than continuous lifetime exposure.

Selection of Endpoints for Benchmark Dose Modeling. Based on EPA guidance, endpoints were selected for BMD analysis and for potential use as a point of departure using the following principles:

- Toxicological significance of the endpoint
- Relevance to humans
- Quality of study and dose-response data
- Reproducibility of effects across multiple studies.

EPA selected reduced sperm motility and increased liver vacuolation for BMD analysis because they met the above criteria, and because these effects were seen consistently throughout the toxicological database at low exposures. EPA guidance states that endpoints selected as appropriate for risk assessment should be modeled if their LOAEL is up to 10-fold above the lowest LOAEL. This ensures that no endpoints with the potential to have the lowest BMDL are excluded from the analysis. The selection of the most appropriate

BMDs to use for determining the point of departure must be made by the risk assessor using scientific judgement and principles of risk assessment, as well as the results of the modeling process.

Toxicological Evaluation for AEL Derivation. Benchmark dose modeling was conducted following EPA guidelines. EPA modeled six data sets for liver vacuolation and reduced sperm motility based on results from two studies to identify the lowest BMDL as a point of departure (POD).[7] EPA selected these endpoints for BMD analysis because they were consistently found to be the most sensitive effect across the many studies that were conducted on the compound. Further, these particular studies provided robust data on these endpoints so that BMD analysis could be conducted. Based on this analysis, sperm motility in the F1 males from the WIL (2001) study was selected as the POD as it would be protective for all effects of nPB. SLR conducted a BMD analysis using data sets for numerous endpoints from 5 studies, including the WIL (2000) and ClinTrials (1997b) studies used by EPA (SLR International Corp., 2001b).[8] SLR also identified sperm motility in F1 males from the WIL (2001) study as the lowest BMDL. The SLR BMD analysis is discussed further in section IV.A.1.d. The methods used in development of the AEL based on sperm motility are described below. It is important to note that the animals in the 2-generation study were dosed every day for six hours. As such, the dosing scenario used for the testing procedure does not exactly mirror the human exposure scenario in the workplace of 8 hours per day 5 days per week. However, it is still appropriate to consider the data because they address the most sensitive health endpoints, and because the BMDL is adjusted by deriving a HEC to account for workplace exposures. A more complete discussion of EPA's adjustment of the BMDL is contained in ICF, 2002a.

EPA did not use neurotoxic effects as endpoints for deriving an AEL value since we did not consider this to be one of the most sensitive endpoints. No neurotoxic effects were reported in the 2-generation reproductive toxicity assay (WIL, 2001), and no adverse effects were observed in the functional observational battery analysis, either in an abbreviated form in the 28-day study at exposure concentrations of 400 and 1,000 ppm (ClinTrials, 1997a), nor in the 90-day study at concentrations of 400 and 600 ppm (ClinTrials, 1997b). Although the NIOSH voluntary medical survey performed in 1999 attempted to assess symptoms of neurotoxic effects, no exposure-response trend for headache or other neurological effects could be identified from the data.

The vacuolation of the white brain matter that was observed in the 28-day study at all exposure concentrations was not observed in the 90-day study, indicating that this effect may be a transient response and not adverse. Further, the vacuolation was not dose-dependent and did not correlate with other gross CNS effects observed at 1,600 ppm in the 28-day study. In the 2-generation study, clinical signs were monitored and CNS effects were not observed at any exposure concentration (0, 100, 250, 500, and 750 ppm) in the F0 or F1 animals, nor were histopathologic lesions observed in the brain, spinal cord or peripheral (sciatic) nerve of rats in the 750-ppm group of the F0 generation in the 2-generation study or in the F1 population.

EPA's Benchmark Dose Software (BMDS) was used for model fitting and BMD and BMDL estimation. To derive a BMD and BMDL for reduced sperm motility in the F0 and F1 males from WIL (2001), the data were modeled as continuous effects. Following EPA's Benchmark Dose guidelines, BMDs and BMDLs were defined based on benchmark responses (BMRs) of 10% extra risk—that is, the level at which 10% of the animals would show adverse effects for a particular endpoint. BMDLs were defined as the 95% lower confidence bound on the corresponding BMD estimates. Confidence bounds were calculated by BMDS using a likelihood profile method. The data sets for the reduced sperm motility endpoint were quantitatively summarized by group means and measures of variability (standard errors or standard deviations). The models used to represent the dose-response behavior of these continuous endpoints are those implemented in EPA's Benchmark Dose Software which are the Power model, the Hill model, and the polynomial model. Goodness-of-fit for each model for a given data set was determined based on a likelihood ratio statistic. In particular, maximized log-likelihoods associated with the modeling were sequentially compared.

Based on the criteria below, the most appropriate mathematical model and its corresponding BMDL was chosen as the best fit for each of the data sets modeled:

1. Models with an unacceptable fit (including consideration of local fit in the low-dose region) were excluded. Visual fit, particularly in the low-dose region, was assessed for models that had acceptable global goodness-of-fit.

2. If the BMDL values for the remaining models for a given endpoint were within a factor of 3, no model dependence was assumed, and the models were considered indistinguishable in the context of the precision of the methods. The models were then ranked according to the Akaike Information Criterion (AIC), which is reported by the BMDS software to aid in comparing the fit of different models. The model with the lowest AIC (within the family of models) was chosen as the basis for the BMDL.

3. If the BMDL values were not within a factor of 3, some model dependence was assumed, and the lowest BMDL was selected as a reasonable conservative estimate, unless it was an outlier compared to the results from all of the other models. Note that when outliers are removed, the remaining BMDLs may then be within a factor of 3, and so the criteria given in item 2 would be applied.

BMDs for reduced sperm motility in F1 and F0 males were 276 ppm and 362 ppm respectively, and BMDLs were 169 ppm and 282 ppm. Consistent with EPA risk assessment guidance, the BMDL of 169 ppm for reduced sperm motility in F1 males (WIL, 2001) was selected as the POD. EPA considered whether a BMDL derived from the F1 generation should be used to determine a workplace exposure limit, particularly in relation to the potential mechanisms by which nPB exerts its effects on the reproductive system. While some mechanistic data are available on this subject, they are inconclusive and limited. The available data do not rule out the possibility that the effects on the F1 generation occurred as a result of effects on parental germ cells (sperm or ova) or effects mediated by changes to the endocrine system. Because of the lack of mechanistic data on developmental and potential transgenerational effects, it is most appropriate and protective, as well as consistent with EPA risk assessment

[7] Data sets that were modeled from the WIL study include sperm motility and liver vacuolation in the F0 and F1 generations. Data sets modeled from ClinTrials (1997b) were liver vacuolation in both males and females.

[8] SLR International Corp. (2001b) conducted BMD modeling on the following studies: ClinTrials (1997a), ClinTrials (1997b), Ichihara, *et al.* (2000a and b), and WIL (2001). Reproductive endpoints modeled included sperm count, retained sperm in seminiferous tubules, sperm deformities, sperm motility, epididymal sperm count, fertility index, litter viability, and plasma glucose levels. Other toxicological endpoints modeled included forelimb strength, hind limb strength, motor conduction velocity, distal latency time, plasma creatinine phosphokinase levels, brain cell vacuolation, liver vacuolation in males, and analysis in various parameters associated with effects on blood formation.

guidelines, to use the endpoint observed at the lowest effect level to derive the AEL. In this case, that endpoint is decreased sperm motility in the F1 generation.

The BMDL was multiplied by 6/8 and 7/5 in order to derive the HEC, which accounts for temporal differences between the exposure duration used in the study (6 hours per day, 7 days per week) and an 8-hour per day, 5-day work week. This results in a HEC for spermatic effects of 177 ppm. Uncertainty factors were then applied to the HEC, taking into account the following considerations listed below.

(1) An uncertainty factor is needed to account for physiological differences between humans and rats. EPA reference concentration (RfC) guidelines describe the factors that must be considered and state that an uncertainty factor 10 may be used for potential differences between study animals and humans. This factor of 10 is often thought to consist of two uncertainty factors of 3—the first to account for differences in pharmacokinetics [9] and another uncertainty factor to account for differences in pharmacodynamics [10] between the study animal and humans. (The value of 3 is the closest whole number to the square root of 10.) According to EPA RfC guidelines, no adjustment for differences in pharmacokinetics is necessary in this case since the blood/air partition coefficient [11] for nPB in the human (7.1) is less than in the rat (11.7), indicating that the delivered dose of nPB into the bloodstream in rats is slightly higher than in humans.

However, EPA recognizes that the lack of an uncertainty adjustment for pharmacokinetic differences between animals and humans rests on a default approach applied to category 3 gases described in Appendix J of its guidelines for deriving an inhalation RfC. This default approach assumes that the pharmacokinetics of nPB conform to a model that requires several assumptions, in particular: (1) The toxicity is directly related to the inhaled parent compound in the arterial blood, and (2) the critical metabolic pathways scale across species, with respect to body weight, in the same way as the ventilation rate (*e.g.*, $BW^{3/4}$). Given the hypothesized metabolic pathways for nPB (ICF, 2002a; CERHR, 2002a), it is plausible that toxicity in rats may be related to a reactive metabolite in the target tissue rather than the blood level of the parent compound. EPA is not aware of any quantitative data on nPB metabolism in humans, or evidence implicating the biologically active agent or mode of action. EPA requests additional data and comment from the public on nPB pharmacokinetics, metabolism, and mode of action that will help determine whether an interspecies uncertainty factor greater than 1 is appropriate to account for pharmacokinetics. If data become available indicating that nPB does not conform to the constraints assumed by the default pharmacokinetic model in the RfC guidelines, EPA would refine its risk assessment for nPB as necessary, and apply an uncertainty factor for pharmacokinetics in extrapolating from animal to humans. We would also revise our acceptability determinations accordingly.

With regard to the UF for pharmacodynamics, no data exist to compare the effect of nPB on human spermatocytes and rat spermatocytes. EPA does not have data suggesting that the default of 3 for pharmacodynamics should not be used. Thus, the full uncertainty factor of 3 for differences in pharmacodynamics was applied. EPA also requests comments and data on this uncertainty factor.

(2) Although workers employed in the types of industrial sectors that are part of this SNAP review likely represent a generally healthy population, pre-existing reproductive conditions as well as general variability in fertility would not impact a worker's overt health or employment status, and would be largely unobserved. It is estimated that 6% of adult males are infertile (Purves, 1992), and that 40%–90% of these cases are due to deficient sperm production of unidentifiable origin (Griffin, 1994). Given this information, EPA concludes that a significant portion of the male population has pre-existing reproductive deficits. EPA's risk guidelines for deriving community-based reference concentrations recommend a factor of 10 in accounting for intraspecies variability. EPA believes that in the case of nPB, a lower uncertainty factor is appropriate to account for variability within the worker population. This UF is intended to protect for potential ''unobserved'' reproductive medical conditions (*e.g.*, decreased sperm motility, aberrant sperm formation) that are known to exist among otherwise healthy males of working age. Because we are concerned about exposures in the workplace, not exposures to the full population, and because exposures would not be continuous, such as would be expected when developing an RfC, we employed an UF of three as an upper bound instead of the full uncertainty factor of 10 for intrahuman variability.

The following equation describes how EPA derives 18 ppm as a starting point in the development of a recommended AEL using a UF of 3 for variations in the human population, and 3 for pharmacodynamics:

$$169 \text{ ppm} * 6/8 * 7/5 * 1/3 * 1/3) = 18 \text{ ppm}$$

This derivation rests on assumptions that some may consider conservative, including the use of the F1 generation as the point of departure for workplace exposure, and the fact that reduced sperm motility may be a particularly sensitive endpoint for male reproductive effects. For a further discussion, see the next section below, ''AEL adjustment based on risk management principles.''

AEL adjustment based on risk management principles. Risk management uses risk characterization, along with directives of the enabling regulatory legislation and other factors, to decide whether to control exposure to the suspected agent and the level of control. Risk management decisions also consider socioeconomic, technical, and political factors (EPA Reproductive Risk Assessment Guidelines, 1996). Unlike many other chemicals being reviewed by SNAP, nPB is already in use. Therefore, a decision on the AEL that incorporates risk management considerations may be appropriate. Doing so is consistent with one of the original ''Guiding Principles'' of the SNAP program (59 FR 13046, March 18, 1994):

> EPA does not intend to restrict a substitute if it poses only marginally greater risk than another substitute. Drawing fine distinctions concerning the acceptability of substitutes would be extremely difficult given the variability in how each substitute can be used within a specific application and the resulting uncertainties surrounding potential health and environmental effects. The Agency also does not want to intercede in the market's choice of available substitutes, unless a substitute has been proposed or is being used that is clearly more harmful to human health and the environment than other alternatives.

If EPA adopted 18 ppm as the AEL, we would likely propose that use of nPB be listed as unacceptable in adhesives applications, based on data indicating that exposure to nPB in such uses regularly exceed 18 ppm on average. However, EPA has determined that adhesive operations can meet an AEL of 25 ppm with proper ventilation and

[9] Pharmacokinetics refers to the activity or fate of chemicals in the body, including the processes of absorption, distribution, localization in tissues, biotransformation, and excretion.

[10] Pharmacodynamics refers to the biochemical and physiological effects of chemicals in the body and the mechanisms of their actions.

[11] A ratio of a chemical's concentration between blood and air when at equilibrium.

controls (see Section IV.A.1.e., ''Feasibility of meeting the AEL for nPB in each industrial sector''). The AEL of 18 ppm was derived using assumptions that some may consider conservative. Following the SNAP principle referenced above, some slight adjustment of the AEL may be warranted after applying judgment based on the available data, and after considering alternative derivations.

To assess how much of an adjustment may be appropriate that would still be protective of human health, EPA considered potential sources of conservatism in the AEL derivation—specifically, the use of the BMDL in the F1 generation as a point of departure. To assess the magnitude of this conservatism, we derived an AEL based on the BMDL for reduced sperm motility in the F0 generation (282 ppm), the second most sensitive endpoint found in the 2-generation study. Deriving an HEC (296 ppm), and applying the same uncertainty factors as applied to the F1 generation (3 for intraspecies variability and 3 for differences in pharmacodynamics), would result in an occupational exposure limit of approximately 30 ppm. A derivation based on F0 data could be considered as a reasonable and protective upper bound for the occupational exposure limit. EPA requests comment on whether it appropriate to interpret 30 ppm as an upper bound for an occupational exposure limit.

EPA has determined that 18 ppm is a reasonable but possibly conservative starting point, and that exposure to 25 ppm would not pose substantially greater risks, while still falling below an upper bound on the occupation exposure limit. An AEL of 25 ppm would reduce overall risk to worker health while adhering to EPA's SNAP guiding principle of not finding a substitute unacceptable unless the proposed substitute is clearly more harmful than other alternatives. EPA specifically requests comment on this approach.

Dermal Exposure. EPA believes that workers should use good workplace practices and proper handling procedures to avoid unnecessary dermal exposure to all industrial solvents, including nPB. Similar to other halogenated solvents, nPB may defat the skin and may cause local irritation due to this characteristic. A skin notation is applied to those chemicals where ''dermal absorption contributes substantially to the overall systemic toxicity'' (skin notation documentation for methyl chloride; ACGIH, 1991). As described previously, the available acute dermal toxicity study in rats (Elf Atochem, 1995) indicates that acute dermal exposure to nPB does not result in systemic toxicity. Because significant dermal absorption of nPB was not demonstrated in this study, EPA is not including a skin notation for nPB along with our recommended AEL in the comments section of the regulatory text. The database regarding dermal toxicity for nPB is not as conclusive as the data for chemicals that have a skin notation, (*e.g.*, methyl chloride, dichlorvos). To apply a skin notation to nPB would imply that the dermal toxicity of this compound is similar to that of these other compounds. It is also noteworthy that there is no skin notation for other halogenated solvents such as methylene chloride or perchloroethylene, and there is no evidence that absorption through the skin is greater for nPB than for the other halogenated compounds. Thus, in EPA's judgement the database currently does not support the need for a skin notation for nPB.

However, we note that the acute dermal study did not provide information regarding chronic dermal absorption. Further, NIOSH evaluated the potential of nPB to permeate skin and promote chronic, systemic toxicity using a mathematical model and the log octanol::water coefficient for nPB, which is approximately 2. This evaluation found that nPB dermal exposure may be an additional source of exposure to workers if the unprotected skin of both hands is exposed (NIOSH, 2003). Given the above information, EPA specifically requests comment on whether to add a skin notation to our recommended AEL in the final rule if there are data that support this change.

c. Overview of the Evaluation of Risks to Human Reproduction (CERHR) Expert Panel Report on nPB. In December 1999, NIOSH submitted an assessment nomination to the National Toxicology Program's (NTP) Center for the Evaluation of Risks to Human Reproduction (CERHR) for both nPB and iPB. The NTP and the National Institute of Environmental Health Sciences (NIEHS) established CERHR in June 1998. CERHR's purpose is to provide timely, unbiased, scientifically sound evaluations of human and experimental evidence for adverse effects on reproduction, including development, caused by agents to which humans may be exposed.

nPB (1-Bromopropane) was nominated by NIOSH and selected for evaluation by the CERHR based primarily on documented evidence of worker exposures and published evidence of reproductive and developmental toxicity in rodents (this evidence is reviewed above in section IV.A.1.a). The evaluation of nPB was a four-month effort by a ten-member Expert Panel of academic, private and government scientists that culminated in a public meeting in December 2001. At that meeting, the Expert Panel reviewed the scientific evidence on nPB and reached conclusions regarding its potential effects on human reproduction and development. The Expert Panel Report on nPB was issued in March 2002 (CERHR, 2002a). An Expert Panel Report on iPB was issued at the same time and is discussed in section IV.A.4. of this preamble (CERHR, 2002b).

The Expert Panel Report on nPB is intended to: (1) Interpret the strength of scientific evidence that a given exposure or exposure circumstance may pose a hazard to reproduction and the health and welfare of children; (2) provide objective and scientifically thorough assessments of the scientific evidence that adverse reproductive/developmental health effects are associated with exposure to specific chemicals or classes of chemicals, including descriptions of any uncertainties that would diminish confidence in assessment of risks; and (3) identify knowledge gaps to help establish research and testing priorities.

NTP–CERHR sought public comment on the Expert Panel Report through a Federal Register notice on March 8, 2002 (67 FR 10734). The NTP has issued a final report, and has published all the public comments that were received on that report. These documents may be accessed through the CERHR Web site at *http://cerhr.niehs.nih.gov/news/bromo/index.html.*

The conclusions of the March 2002 Expert Panel Report on nPB were as follows:

- Available human data are insufficient to draw conclusions on the potential for reproductive or developmental toxicity.
- Available toxicological data were sufficient to conclude that nPB exposure can induce developmental and reproductive toxicity in rats. In evaluating the potential effects on human reproduction, the rat data are assumed to be relevant for humans.
- The mechanisms that lead to reproductive or developmental toxicity are unknown.
- There are no relevant kinetic or metabolism data for nPB to compare human and animal exposure levels.

The Expert Panel identified LOAELs from the body of animal data as follows:

- A LOAEL for male reproductive effects of 200 ppm based on decreases in absolute and relative seminal vesicle weight reported in Ichihara (2000b). A

NOAEL of 100 ppm was identified based on decreases in prostate weight observed at 250 ppm in WIL (2001).

- A LOAEL of 250 ppm, and a NOAEL of 100 ppm for female reproduction based on increased estrous cycle length in WIL (2001).
- A LOAEL of 250 ppm and a NOAEL of 100 ppm for mineralization of the kidney pelvis in both F0 and F1 generations, based on WIL (2001).

EPA agrees with the panel's conclusions that the available human data are insufficient to draw conclusions on the reproductive or developmental toxicity of nPB and that the mechanisms that lead to reproductive or developmental toxicity are unknown. EPA also agrees with the panel that a NOAEL for reproductive effects (male) would be considered to be 100 ppm under a traditional risk assessment analysis. However, based on the criteria described previously for selecting endpoints for BMDL analysis, we believe the CERHR endpoints are not appropriate for developing the AEL for nPB, as explained below.

Reduced seminal vesicle weight. EPA did not conduct BMD analysis for reduced seminal vesicle weight observed in the Ichihara (2000b) study because there is no consistency of effect across available studies for this endpoint. Reduced seminal vesicle weight was not found to be a sensitive endpoint in WIL (2001). In fact, a statistically significant reduction in seminal vesicle weight was only seen in the 750 ppm group in the F0 generation, and there were no statistically significant effects on seminal vesicle weight in the F1 generation. Because there were other endpoints that were more sensitive in the WIL study, we regard those endpoints to be of greater toxicological importance. Further, EPA believes that because the Ichihara study was not performed according to GLP guidelines, and there were conflicting reports regarding the exposure regime and the number of animals used, it is not appropriate to use this study in quantitative risk assessment.

Reduced absolute prostate weight. Based on the WIL study, the CERHR Expert Panel identified a NOAEL of 100 (with a LOAEL of 250) for reduced absolute prostate weight in the F0 males. The toxicological relevance of absolute prostate weight reduction is questionable since this endpoint may be associated with reduction in overall weight gain. To assess the significance of this particular endpoint, EPA calculated the mean relative prostate weights for exposed dose groups from the WIL (2001) study. Relative prostate weights (organ weight/body weight) in F0 males were 0.0040, 0.0039, 0.0036, 0.0035, and 0.0035 at 0, 100, 250, 500, and 750 ppm respectively, revealing that relative prostate weight at exposures greater than or equal to 250 ppm decreased only 10% relative to controls. Because the dose-response relationship in other endpoints was more pronounced, EPA did not conduct BMD modeling on this endpoint.

Increased estrous cycle length. The Expert Panel identified 250 ppm as a LOAEL for females based on increased estrous cycle length in the F1 generation of the WIL (2001) study. EPA agrees that the slight increase in estrous cycle length may be a result of nPB exposure. However, because the estrous cycle length of 4.9 days at 250 ppm is within the range of historical controls, the effect cannot be conclusively attributed to exposure without statistical analysis. The study report also notes lack of cycling in some females, which may have caused difficulty in accurately determining the average estrous cycle length for each affected group. Because these data are lacking, this endpoint should not be used for developing the AEL.

Mineralization of the kidney pelvis. The Expert Panel concluded that mineralization of the pelvis of the kidneys at 250 ppm was an adverse effect. EPA notes that mineralization of the kidney was not consistently associated with nPB exposure across different studies, and that in WIL (2001) the severity of mineralization did not increase above a category of minimal except at 750 ppm where it was mild. Therefore, EPA did not consider using this endpoint as useful for developing the AEL.

Sperm Motility. The Expert Panel identified 500 ppm as the LOAEL for reduced sperm motility. The Panel agreed with the WIL (2001) study authors that the slight but statistically significant reduction in the percentage of motile sperm in the F1 males at 250 ppm (85% vs. 89% in concurrent control animals) could not be attributed to nPB exposure since the percentage of motile sperm in this dose group slightly exceeded that of historic controls (83%). The data indicate that the small changes observed at 250 ppm are consistent with larger changes in sperm motility observed at 500 and 750 ppm. Thus, results for sperm motility in F0 and F1 males exhibited dose-related trends, and conformed to other principles for the selection of endpoints for BMD analysis (See earlier discussion in section IV.A.1.b.). Thus, regardless of whether a LOAEL of 500 ppm or 250 ppm is assigned to this particular endpoint, the Agency determined that reduction in the percentage of motile sperm in the F1 males is a good candidate for BMD analysis. In addition, it is important to note that the Panel did not have access to either the ICF or SLR International benchmark dose analyses. As discussed in section IV.A.1.b, benchmark dose modeling overcomes the issue of drawing a ''bright line'' in the form of a LOAEL or NOAEL and instead uses the full set of data across all exposure levels (ICF, Inc., 2002a; SLR International, 2001b). Using the results of benchmark dose modeling, it becomes clear that sperm motility is a sensitive effect, and is an appropriate effect upon which to base an AEL.

d. AELs suggested by other reviewers and outside parties. In the draft final nPB risk screen conducted for EPA in preparation for today's proposal, ICF Consulting states that ''Given the strength of the data base and the extrapolation of the data to occupational exposures, a range of uncertainty factors to account for variability in the human population of 2 to 3 is considered appropriate.'' (ICF, 2002a). EPA recognizes that the choice of UF relates to a wide range of considerations including the strength of the data base. Applying a range of UFs between 2 and 3 to account for intrahuman variability would yield a range of occupational exposure limits between 18 and 30 ppm. ICF suggested that the midpoint of this range, 25 ppm, was an appropriate occupational limit value for the purposes of the risk screen for nPB. EPA requests comment on this recommended approach in deriving an occupational exposure limit, including the application of uncertainty factors.

EPA's Office of Atmospheric Programs solicited comments regarding ICF Consulting's analysis and derivation of a recommended AEL from EPA's Office of Research and Development (ORD), external toxicologist William Brock, external toxicologist Darol Dodd, and the State of California, Department of Health Services, Hazard Evaluation System & Information Service (HESIS). The comments are available in docket A–2001–07.

ORD's comments focused on the WIL Research Laboratories two-generation study and its use in identifying sensitive endpoints. ORD noted that the study's results indicated dose-related trends, that a number of endpoints were significantly affected at 500 ppm in both generations, and there were slight—though in most cases not statistically significant—decreases at 250 ppm and even 100 ppm for some endpoints. They also stated that ''[i]n the absence of evidence of dominant lethality or trans-generational effects typical of endocrine

disrupting chemicals, it is reasonable to conclude that the effects of [nPB] are elicited in both sexes via their exposure as adults.'' They also noted that ''the modest degree of change in the 250 ppm F1 sperm motility endpoint (and lack of significance in the F0 at this dose) compared to the collective more robust changes at 500 ppm, in both the F0 and F1, indicates that 250 ppm could reasonably be considered a NOAEL for nPB, with 500 ppm being a LOAEL.'' Finally, ORD noted that ''even if the F1 data may not be directly applicable for occupational exposures in males, it certainly is applicable to occupational exposures of pregnant women.'' They conclude with suggestions for further research (Klinefelter and Darney, 2002).

EPA asked William Brock to review the draft AEL report from a general toxicological point of view. Dr. Brock is currently a senior manager with Environ Corporation. In his review, Dr. Brock noted that several subchronic studies in rats have been conducted with nPB with concentrations ranging from approximately 100 ppm to 1800 ppm. Biological effects have been on liver, male reproductive tissue, and, to some extent, hematological parameters. Although some of the studies have not been conducted according to GLP, this fact does not necessarily limit the usefulness of the studies to recommend an exposure limit. Overall, the sperm effect observed at 400 ppm and the effects on fertility at 500 ppm with hepatic vacuolation at 250 represent the PODs for setting exposure limits for nPB. The NOAEL for these effects would be 200 ppm. Dr. Brock notes that ''exposure limits that have historically been established are generally, but no[t] always, an order of magnitude below the NOAEL. Taking this approach would result in an occupational limit of 20 ppm (200/10). Although the ICF report could be improved by being more specific on effects and concentrations, the logic provided in the report and the end result, *i.e.*, a 25 ppm exposure limit, is certainly justified'' (Brock, 2002).

EPA asked Darol Dodd to review and comment on the draft AEL report (ICF, 2000a). Dr. Dodd is currently the Laboratory Director for ManTech Environmental Technology, Inc. In his comments, Dr. Dodd stated that the ICF report provided logical and consistent explanations for selection of the BMDL and uncertainty factors. He noted that several of the studies show LOAEL or NOAEL values at 200 ppm to 250 ppm. In his opinion, ''a recommended AEL value that is about one order of magnitude lower than LOAELs/NOAELs in a number of laboratory rodent studies does not appear to be overly protective'' (Dodd, 2002).

HESIS provided comments on the AEL derivation for nPB that focused on the available studies useful for low-dose risk assessment, identifying the LOAELs and NOAELs from these studies, and identifying their disagreements with the ICF evaluation. Overall, HESIS took issue with the approach used by ICF to derive an AEL: ''ICF repeatedly ignores or discounts effects seen with low-level exposures. At most points where a decision based on professional judgment must be made, ICF makes the choice that leads to the highest possible AEL.'' HESIS states that, contrary to the ICF approach, an appropriate risk assessment methodology would take a NOAEL, LOAEL or appropriate BMDL, and apply uncertainty factors of 10 for each of the following conditions: (1) Interspecies variation, (2) intraspecies variation, (3) reliance on a LOAEL rather than a NOAEL where necessary, and (4) extrapolation from acute or subchronic exposure to chronic exposure. The total uncertainty factor would be between 1,000 and 10,000. HESIS stated that appropriate endpoints and points of departure would be reduced pup weight seen in the Huntingdon (2001) study at 103 ppm, the neurotoxicity seen in Ichihara (2000a) at 200 ppm, reduced seminal vesicle weight and increase in tailless sperm seen at 200 ppm in Ichihara (2001a), reduced sperm motility at 200 ppm in Wang (1999), CNS pathology (vacuolation of white matter) at 400 ppm seen in ClinTrials (1997a), and from the WIL (2001) study, reduced fertility observed at 100 ppm and other adverse reproductive and kidney effects observed at 250 ppm or the lowest BMDL calculated from all studies. Using any of these points of departure, HESIS suggests that a reasonable AEL could range from less than 0.05 ppm to less than 5 ppm, and recommends an AEL of 1 ppm.

HESIS stated that, in deriving the AEL for the liver vacuolation, ICF used no uncertainty factor for interspecies pharmacokinetic variation, assuming ''without any basis, that gas exchange within the lung constitutes the entire pharmacokinetic variation between the species, simply because the blood-air partition coefficient is lower in humans than in rats.'' HESIS also disagreed with the use of no uncertainty factor for intraspecies variation for liver vacuolation. With regard to ICF's derivation of an AEL for sperm motility, HESIS disagreed with ICF's use of no uncertainty factor for interspecies pharmacokinetic variation for the same reason given for liver vacuolation. HESIS also stated that there ''is no data base at all on which to determine the likelihood and degree of interhuman variability in sensitivity to the spermatotoxic effect of [nPB] * * * .'' Finally, HESIS stated that nPB ''is an organic solvent that is probably well absorbed through the skin and should be listed with a skin notation * * * .''

A response from ICF Consultants to HESIS's comments is included in the docket (ICF 2002c). EPA concluded that the issues HESIS raises are, in fact, questioning EPA's risk assessment guidelines that were the basis for the AEL report, rather than comments unique to the AEL for nPB. For example, EPA's risk assessment guidelines allow use of a default uncertainty factor of 1 instead of 3 for pharmacokinetics for nPB and other inhaled gases where the toxicity is from the parent compound, rather than metabolites. As discussed above in section IV.A.1.b, we request comment and data that would confirm or refute the appropriateness of the assumptions in Appendix J of EPA's risk assessment guidelines. In addition, EPA disagrees that the uncertainty factor for variability in the worker population should be the same as that for variability in the general population (10). Because the working population does not include children or the elderly, as is the case for the general population, we do not believe that a full UF of 10 for sensitive subpopulations is necessary. Further, workers are only potentially exposed during a 40-hour workweek and not continuously, as would be expected for the general population. Finally, because of the length of the WIL Laboratories study, we do not believe that it is necessary to add an uncertainty factor to extrapolate from subchronic to chronic exposures.

Various chemical manufacturers and solvent formulators have derived their own recommended industrial exposure limits. Albemarle Corporation and Dead Sea Bromine Group, both of whom continue to produce nPB, recommend an AEL of 25 ppm in their Material Data Safety Sheets. Great Lakes Chemical and Atofina recommended AELs of 10 ppm and 5 ppm respectively, although neither of these companies currently sells nPB. Petroferm produces nPB formulations and recommends an exposure limit of 25 ppm. Finally, Enviro Tech International, Poly Systems International, TULSTAR Products, and Amity International, all of whom produce nPB formulations, recommend an exposure limit of 100 ppm.

In a November 6, 2000, meeting with EPA, Albemarle explained that its derivation of a workplace exposure guideline of 25 ppm is based upon raw

data from the two-generation reproductive study (WIL, 2001). In the fall of 2000, Albemarle analyzed preliminary data from the two highest exposure groups in two-generation study, 750 ppm and 500 ppm, and found evidence of reproductive effects. As a proactive measure while completing analysis of the data, Albemarle started with an exposure level of 250 ppm and divided by a safety factor of 10, yielding an exposure guideline of 25 ppm. EPA has not seen the derivation of Great Lakes Chemical Corporation's workplace exposure guideline of 10 ppm or Atofina's guideline of 5 ppm.

The AEL recommended by Enviro Tech International is based on two separate analyses. In the first analysis, Rozman and Doull (2001) recommend an AEL of 60–90 ppm based on the results obtained from a health questionnaire administered as a part of a NIOSH Health Hazard Evaluation at a site where nPB is used as an adhesive (NIOSH, 1999). This AEL derivation was subsequently published in *Applied Occupational Environmental Hygiene,* the ACGIH's journal, in 2002 (Rozman and Doull, 2002).

In their analysis, Rozman and Doull identified the most sensitive endpoint for nPB toxicity as peripheral/central neurotoxicity followed by reproductive toxicity and then liver toxicity. This ranking was based on a subchronic inhalation study by Ichihara (2000b) in which decreased hind limb strength in mice was observed following 4 weeks of exposure at 200 ppm. Rozman and Doull concluded that rats are more sensitive to reproductive effects of nPB than humans based on the NIOSH health survey (NIOSH 2002b), which did not identify any statistically significant reproductive effects in humans exposed to nPB. Based on the NIOSH health survey data, conducted at a facility where nPB was used as an adhesive solvent, Rozman and Doull identified 170 ppm as a no observed effect level (NOEL) in workers who reported having a headache more than once per week. They then applied a safety of 2 to protect nearly all workers, and a safety factor of 3 to provide a larger margin of safety from this adverse effect. This approach resulted in a recommended industrial exposure guideline for nPB of 60–90 ppm.

EPA does not agree with Rozman and Doull's AEL recommendation. First, their ranking of neurotoxicity as the most sensitive toxicological endpoint fails to take into account that in the Ichihara study, rats were dosed 8 hours per day for 12 weeks, while in the two-generation study, animals were exposed to nPB for 6 hours per day. Therefore, the exposure levels in the Ichihara study must be adjusted by a factor of 0.75 in order to directly compare doses to the 2 generation study. If this adjustment is made, the LOAEL for the Ichihara study becomes 266 ppm, higher than the LOAEL of 250 ppm for reproductive and liver effects identified in the two-generation study. Further, the results of the Ichihara study conflict with the results of the 90-day inhalation study (ClinTrials, 1997b), in which decreases in grip strength were not observed in rats exposed to levels up to 600 ppm nPB for 6 hours/day for 5 days/week. In fact, in the ClinTrials study, there were no consistent treatment-related changes reported in the rats following 4, 8, or 13 weeks of exposure in any parameter evaluated in a full functional observational battery (a suite of tests designed to assess a full spectrum of neurotoxic effects). Because the LOAEL for neurotoxic effects in Ichihara *et al.* (2000b) is actually higher than the LOAEL identified in the two-generation study, and because the findings on neurotoxicity from the Ichihara study conflict with the results of the 90-day ClinTrials (1997b) study, it is erroneous to conclude that neurotoxicity is the most sensitive endpoint for nPB exposure.

Second, the NIOSH medical survey used by Rozman and Doull is not a suitable basis for deriving an AEL. Use of epidemiological data for a quantitative risk assessment requires that the exposures be well-characterized, that the sample size be large enough to allow for the detection of subtle effects in a statistically significant way, and that comparisons to an unexposed control group be made. The data provided in the NIOSH evaluation do not fit these criteria: (1) The sample size in this study was relatively small (46 participants); (2) the health survey was not given to an unexposed control population for comparison; (3) no obvious exposure-response trend for headache was seen, since the low and medium exposure groups had similar prevalence of headache. For each of the neurological symptoms evaluated in the NIOSH health survey, air concentrations of nPB were not statistically different between those employees reporting the symptom compared to those not reporting the symptom (NIOSH 2002).

Finally, EPA disagrees with Rozman and Doull's conclusion that reproductive toxicity did not occur in workers exposed to up to 190 ppm of nPB, which is the basis for their assertion that humans are less sensitive to reproductive health effects of nPB compared to rats (Rozman and Doull, 2001). The NIOSH report states that 3 workers (2 male and 1 female) who had been exposed to between 110 and 157 ppm of nPB reported difficulty in having a child. However, as noted by the authors of the NIOSH report, due to the small sample size and the personal nature of the questions, there were significant limitations in the ability of the NIOSH medical survey to detect reproductive or fertility problems. The data from the NIOSH medical survey should not be used to conclude that rats are more sensitive than humans to reproductive effects of nPB, or to draw any general conclusions regarding the potential reproductive toxicity of nPB in humans.

In the second analysis submitted by Enviro Tech, SLR International Corporation derived an AEL for nPB of 156 ppm (SLR International, 2001b). We understand that this derivation is currently undergoing peer review for potential publication in a scientific journal. This analysis used benchmark dose-response modeling using data sets for several effects taken from the various animal toxicity tests that have been conducted with nPB. SLR derived a BMDL at a 10% response level of 156 ppm, based on reduced sperm motility in F1 males from the WIL (2001) study. This BMDL is similar to EPA's BMDL for sperm motility of 169 ppm. SLR stated that ''Due to the relative completeness of the toxicological database on nPB, including data on human *in vitro* bioassays, use of a UF is likely not considered necessary for this chemical.'' Thus, SLR's recommended AEL is equivalent to their BMDL. EPA maintains that an uncertainty factor is necessary for protection of sensitive individuals since low sperm count is a condition that can occur in otherwise healthy workers. There are no data indicating that human sperm are less sensitive than rat sperm. In fact, sperm production is less efficient in humans, suggesting that human males are likely to be more susceptible than rats to nPB (Amann, 1986). Further, based on EPA's RfC guidelines, an uncertainty factor of 3 is necessary to account for interspecies differences in pharmacodynamics between rats and humans. Had SLR applied what EPA considers appropriate uncertainty factors, their recommended AEL would have been 17 ppm.

In a memorandum submitted to Poly Systems International, Joel Charm, a certified industrial hygienist, supported the analyses by both SLR and Rozman and Doull. Mr. Charm suggested that establishing an occupational exposure level of 100 ppm as a ceiling value (i.e.,

a level not to be exceeded during any part of the working day), coupled with an effective Product Stewardship program, would help companies maintain exposure to their workers as low as reasonably achievable. He suggests that a Product Stewardship program focused on: (1) Training material on how nPB can be handled and used safely; (2) conducting industrial hygiene evaluations as a service to customers, to develop actual exposure level information for a variety of end uses under varying circumstances; and (3) monitoring the health (including reproductive parameters) of workers would, over time, aid in assessing the validity of the occupational exposure limit selected. He also states that through the Product Stewardship program and the regulatory reporting requirements of the Toxic Substances Control Act (TSCA), Section 8, corrective actions could be taken if necessary.

While we do not agree with the AELs derived by Rozman and Doull or by SLR, EPA agrees that producers and formulators of nPB should engage in responsible Product Stewardship programs. Albermarle Corporation has been conducting an extensive stewardship program for nPB involving air sampling and workplace practice evaluation for customers to help ensure exposures below 25 ppm. We also note that, in order to verify if exposure levels are below a ceiling value, it would be necessary to monitor workplace exposure continuously. Periodic evaluations of exposure levels would be sufficient for determining long-term exposure to workers. EPA recommends that workplace exposures should be controlled to levels at or below the AEL in order to avoid risk of adverse health effects.

e. Feasibility of meeting the AEL for nPB in each industrial sector. Each of the three sectors EPA is considering in today's proposal could potentially expose workers to nPB in different ways. Therefore, we considered separately whether it is feasible to meet the AEL in each of the three sectors. If EPA becomes aware of further information showing that nPB use is likely to pose unacceptable risks to human health in particular applications or end uses, we will find nPB unacceptable in those applications or end uses.

Solvents cleaning. When using industrial cleaning equipment, workers are likely to be exposed to solvent vapors continually over the course of a workday. However, users can control nPB emissions from vapor degreasers by changes to the equipment, as well as changes in operating practice. For example, a user can install an additional set of condensation coils to prevent vapor from leaving the vapor degreaser or defluxer. An operator can tilt pieces to be cleaned to allow the solvent to drain off inside the vapor degreaser instead of evaporating outside of the degreaser where workers will breathe the vapors.

Exposure data on nPB used in vapor degreasers indicate that it is possible to maintain exposure levels from 2 to 24 ppm over an 8-hour average, as measured using personal samplers (Albemarle, 1997). In 1998, Albemarle Corporation also collected workplace monitoring data from metal cleaning operations. Many, although not all, of the samples collected showed concentrations that, extrapolated to an 8-hour period, would remain under 25 ppm. In addition, another manufacturer and distributor of nPB-based solvents stated that, ''For a properly designed, installed, operated, and maintained traditional open-top vapor degreaser, experience has shown that eight-hour time weighted operator exposure levels will be < 20 ppm. For enclosed and automated degreasers, lower exposures can be achieved'' (Amity UK Ltd, 2001).

EPA has only one set of direct exposure data for equipment that cleans using nPB below its boiling point (''cold cleaning''). These data are from a NIOSH Health Hazard Evaluation for a company that produces instrumentation and components for radio and microwave frequency communications. In this study, NIOSH measured exposures to nPB from a cold batch cleaner that was in a special enclosed room with a local exhaust ventilation system. The highest exposure level was 8.4 ppm (NIOSH, 2000b). However, the type of enclosure and ventilation used at this site is not typical of most facilities using cold cleaning equipment.

In general, it is expected that it will be more difficult to control emissions from cold cleaning equipment than from vapor degreasers. The design of vapor degreasers reduces emissions from the equipment by boiling the solvent and then causing it to condense, rather than allowing solvent vapors to be emitted. Because cold cleaning equipment may expose workers to high levels of nPB, we recommend that nPB not be used in cold cleaning equipment unless additional engineering controls are instituted to keep worker exposure to levels below the recommended AEL of 25 ppm.

The limited data available on manual cleaning indicate that it may be difficult to attain exposures less than 50 ppm when wiping with nPB by hand (Albemarle, 2001). The SNAP program currently does not regulate manual cleaning with solvents. However, we recommend that nPB not be used for manual cleaning because of the likelihood of high exposures.

Aerosol Solvents. Only limited data are available on exposure levels to nPB from aerosol solvent usage. Four measurements on a single user showed exposures to nPB that ranged from 5 to 14 ppm over an 8-hour time-weighted average (Albemarle, 2001). Since the user was cleaning brakes on public works equipment, it is possible that the mechanic was working outdoors, or in an area that was only partially enclosed. EPA expects that these data are not representative of the diverse conditions under which aerosol solvents are used. Confidential data from another facility revealed that exposures vary greatly and in some instances can be higher than 200 ppm. In contrast to vapor degreasers, aerosol solvents tend to be used intermittently for short periods of 1–2 minutes. In some cases, aerosols containing nPB are used in confined spaces without ventilation ducts and fans where workers could be exposed to high levels over a short time. Emissions from aerosols are typically not controlled with equipment that captures the nPB vapor, although aerosol users can improve ventilation and reduce exposure levels through a variety of approaches (e.g., fume hoods). Given this information, EPA requests further workplace exposure data on nPB's use as an aerosol solvent. In addition, we request comment on whether nPB should be acceptable for use as an aerosol solvent, or if its use should be limited in this end use (e.g., use limit restricting nPB only to applications with ventilation equipment).

EPA believes that users should adhere to a short-term exposure limit (time weighted average over 15 minutes) of three times the AEL. We recommend this short-term exposure limit, which would equal 75 ppm over 15 minutes, in addition to the 8-hour time weighted average of 25 ppm. We believe that limiting short-term exposure to 75 ppm in a 15 minute period of exposure is feasible with proper ventilation and/or low use volumes. We also recommend only using aerosols containing nPB in open or well-ventilated areas. This procedure is recommended for use of any aerosol solvent, compared to use in enclosed, unventilated areas.

Adhesives. In adhesives applications, exposures are expected to vary depending upon the particular kind of application. For example, in the foam-fabrication industry, workers generally are exposed to evaporating solvents on

a long-term basis. When adhering tops on counters or tables, workers are more likely to have breaks between exposure, with short-term exposure being of greater concern (HSIA, 2001).

EPA is aware that it may be difficult to meet the recommended 25 ppm AEL in adhesive applications that are highly emissive. Exposure data from nPB used in adhesives in the foam-fabrication industry show high nPB concentrations within the workplace. At three different foam-fabrication facilities, NIOSH investigators reported that mean exposures to nPB ranged from 60 to 381 ppm (8-hour time weighted averages) (NIOSH, 1999, 2000a, 2000c, 2001). In one facility, average nPB exposures were reduced from 169 ppm to 19 ppm, following installation of ventilation equipment recommended by NIOSH (NIOSH, 2000c). Although use of spray booths at this facility had a dramatic effect of reducing average exposures to nPB, a significant percentage of workers whose jobs required direct use of spray adhesive containing nPB continued to have exposures in excess of 25 ppm. Among sprayers and assemblers working in the Assembly area, 2 of 10 (20%) full-shift samples exceeded 25 ppm, and among sprayers working in the Covers department, 9 of 11 (81%) of samples exceeded 25 ppm, with a maximum of 58 ppm (time-weighted average, TWA). These findings indicate that it may be necessary for employees to wear appropriate respiratory protection where engineering controls do not reduce exposures to or below the AEL. Where respirators are used to protect workers against nPB, employers should be aware that OSHA's Respiratory Protection standard (29 CFR 1910.134) would apply.

Because there is evidence that workplace exposures to nPB can be reduced to levels close to or below the recommended AEL, the Agency has concluded that it is appropriate to find the use of nPB acceptable in adhesive applications. Nevertheless, EPA expects that businesses using nPB in adhesive applications may have difficulty meeting the recommended exposure limit without some form of engineering controls such as confining operations to spray booths with ducts and a fan providing ventilation. Further, although use of spray booths at this facility had a dramatic effect of reducing exposures to nPB, as discussed above, some workers whose jobs required direct use of spray adhesive containing nPB continued to be exposed to nPB in excess of 25 ppm. Given this information, EPA requests comment on whether nPB should be acceptable for use in adhesives.

EPA conducted a detailed risk screen for nPB use in adhesives applications in the foam fabrication industry (ICF, 2001a , Attachment C) since this represents the most emissive use, and the use where workers and the general population have the highest exposures. Because this highly emissive use passed our risk screen, we did not conduct a formal risk screen for the solvents cleaning sector and aerosol solvents sectors end use, because emissions and worker exposures in these uses are expected to be lower than the adhesives end use.

2. Are There Other Entities That May Set or Recommend Workplace Standards?

Under the National Technology Transfer and Advancement Act of 1995, Section 12(d), Public. Law. 104–113, Federal agencies are required to consider using technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities. No such standards for occupational exposure to nPB currently exist. In comparison, the American Conference of Governmental Industrial Hygienists (ACGIH) has established threshold limit values (TLVs) for the primary chlorinated solvents used in the same applications as nPB. The most current TLVs for these solvents—25 ppm for perchloroethylene, and 50 ppm for trichloroethylene and methylene chloride—are identical or moderately higher than our proposed recommended guideline for nPB. It is possible that the American Industrial Hygiene Association (AIHA) or the ACGIH will review the toxicity of nPB in the future and set a voluntary standard. AIHA may develop a Workplace Environmental Exposure Limit (WEEL) for nPB. Further, in 2002, the ACGIH listed 1-Bromopropane and 2-Bromopropane (nPB and iPB, respectively) in its list of ''Chemical substances and other issues under study.'' If either of these standard-setting bodies recommends an exposure limit on nPB, we would make that information available to the public for comment.

In the future, OSHA may develop a mandatory exposure limit for nPB use in the workplace. The result of OSHA's review could result in a permissible exposure limit (PEL) different from EPA's recommended exposure limit of 25 ppm. Unlike nPB, the chlorinated solvents are regulated by OSHA and have been regularly re-evaluated by OSHA, NIOSH, and EPA (*e.g.*, as a National Emission Standard for Hazardous Air Pollutants). The most current permissible exposure limits for these solvents established by OSHA are 25 ppm for methylene chloride and 100 ppm for perchloroethylene and trichloroethylene. The OSHA permissible exposure levels for perchlorethylene and trichloroethylene of 100 ppm were originally issued on 1971 based on the 1968 threshold limit values established by the ACGIH. Since then, ACGIH has issued TLVs of 25 ppm for perchloroethylene and 50 ppm for trichloroethylene and OSHA has issued a PEL of 25 ppm for methylene chloride; as such, the Agency does not believe that a 25 ppm recommended AEL for nPB would result in a significant competitive advantage for any of these solvents. As stated earlier in this preamble, EPA defers to OSHA in regulating workplace safety. The recommended AEL in today's proposal is an interim measure in the absence of an OSHA PEL. Thus, any PEL that OSHA sets would supersede EPA's recommended AEL.

3. Is the General Population Exposed To Too Much nPB?

As a part of the SNAP review process for alternative chemicals, EPA also considers exposure to the general population. Near facilities that use nPB in non-emissive applications such as vapor degreasing, exposure is expected to be insignificant. For emissive applications of nPB, such as an adhesive solvent in foam fabrication, we conducted a more detailed assessment of potential exposure to people living in the immediate vicinity of a facility. We first estimated a community exposure guideline, using EPA's Methods for Derivation of Reference Concentration Guidelines (1994) as a risk index to compare against potential community exposure. This community exposure guideline is an estimate of a continuous inhalation exposure (averaged over 24 hours per day, 7 days per week) to the general public (including sensitive subgroups) that is likely to be without an appreciable risk of adverse health effects during a lifetime. Community exposure guidelines can be derived from a NOAEL, LOAEL, or benchmark concentration, with uncertainty factors generally applied to reflect limitations of the data used. Average daily exposures of people living close to facilities where nPB is used in an emissive application were then estimated and compared to the community exposure guideline to determine whether nPB exposure presents an appreciable risk to the general population.

EPA derived the community exposure guideline for nPB using the same critical

studies and BMDLs for spermatic effects and liver effects that were used in developing the AEL. Adjustments were made to account for continuous lifetime exposure and sensitive subpopulations. The lowest BMDL of 110 ppm was based on the incidence of liver effects (centrilobular vacuolation) in the two-generation reproductive study (WIL, 2001). Using EPA's dosimetry guidelines for a category 3 gas (US EPA, 1994), and making adjustments to account for continuous exposure, the human equivalent concentration (HEC) is 110 ppm * (6 hours/24 hours) = 27.5 ppm. No adjustment for differences in pharmacokinetics was necessary based on EPA's RfC guidelines. EPA applied an UF of 3 for extrapolation from rat to human pharmacodynamics. An additional factor of 10 was applied for intrahuman variability including the protection of sensitive subpopulations (*e.g.*, individuals with liver disease, children, or the elderly). Therefore, the total uncertainty factor was 30 (3 for differences in pharmacodynamics, 10 for sensitive subpopulations). The application of the uncertainty factor of 30 to the HEC of 27.5 ppm results in a community exposure guideline of approximately 1 ppm. EPA requests comment on the appropriate use of uncertainty factors for the community exposure guideline.

The next lowest BMDL (169 ppm) was for the effects on sperm motility in the second generation of male rats in the two generation study. In the derivation of a community exposure guideline RfC for this endpoint, EPA adjusted the BMDL to account for continuous exposure averaged over 24 hours a day, resulting in an HEC of 42 ppm. An uncertainty factor of up to 10 may be applied for animals to human extrapolation in consideration of potential differences in pharmacokinetics and pharmacodynamics. However, for the reasons listed earlier, we did not consider an uncertainty factor necessary to account for differences in pharmacokinetics. The results of the in vitro studies conducted with liver cells do not allow us to draw any conclusions regarding the relative sensitivity of the human and rat spermatocyte to nPB. Consequently, EPA applied a factor of 3 for differences in pharmacodynamics. Finally, an uncertainty factor of 10 was applied for intrahuman variability including the protection of sensitive individuals in the general population (*e.g.,* children whose sex organs are in development, pregnant women, and individuals with low fertility). An overall uncertainty factor of 30 results (3 for differences in pharmacodynamics, and 10 for the protection of sensitive individuals). The application of the overall uncertainty factor (30) to the HEC (42 ppm) results in a community exposure guideline an RfC of approximately 1 ppm. The estimated community exposure guideline values are identical for both liver and reproductive effects. Consequently, EPA estimated that a RfC community exposure guideline of 1 ppm would be protective for all health endpoints—that is, someone exposed to an average of 1 ppm of nPB, 24 hours of every day during a lifetime, would not be at appreciable risk for adverse health effects during their lifetime.

The next step was to determine whether people living close to sites where nPB is used in emissive applications could potentially be exposed to levels above the estimated RfC community exposure guideline of 1 ppm. Data collected from actual facilities (CCPCT, 2001) used to characterize two scenarios: (1) A typical large, high-use adhesive application facility where the closest resident is 100 meters away; and (2) a smaller facility with average-use adhesive application in an urban area, where the nearest resident is only 3 meters away.

EPA's SCREEN3 (US EPA, 1995a) air dispersion model was used to assess the likely maximum-potential concentration of nPB from single sources. This technique is typically used to evaluate air quality impacts of sources pursuant to the requirements of the Clean Air Act, such as New Source Review and air toxic regulations. The approach applied here was the initial-phase approach used to determine if either: (1) The source clearly poses no air quality problem or (2) the potential for an air quality problem exists. If a potential problem exists, then a more refined analysis is necessary.

The results from our screen indicated that modeled exposures in either scenario did not exceed the RfC of 1 ppm. The urban scenario where a facility uses fans to ventilate nPB horizontally (through windows or other openings in the walls as opposed to openings in the roof), modeled exposures of 0.24 ppm at a distance of 3 meters away from the source, 0.19 ppm at 5 meters from the source, and 0.13 ppm at 10 meters from the source. These levels were by far the highest concentrations of nPB exposures modeled. The majority of modeled exposures were at least an order of magnitude lower, and ranged from 0 ppm to 0.08 ppm. Because the community exposure guideline was not exceeded for any of the exposure scenarios in this conservative screening approach, EPA has concluded that nPB exposure to populations living close to adhesive application sites is not a major concern. A memo describing the risk screen in detail may be found in the public docket (ICF, 2002a).

4. What Limit Is EPA Proposing on Isopropyl Bromide Contamination of nPB as a Condition of Acceptability, and Why?

Isopropyl bromide (iPB or 2-bromopropane), an isomer of nPB (1-bromopropane), is a contaminant that is created to different degrees in the manufacture of some nPB formulations. In reviewing the toxicological risks of iPB, EPA initially was concerned that its molecular structure was similar to chemicals that are potent reproductive toxins and carcinogens. This concern focused on the position of the halogen atom within the compound. There are toxicological data that indicate that when the halogen atom is located on the second carbon, there may be increased potential for the compound to cause cancer when compared to the compound with the halogen atom on carbon number 1. One example of this is the differential toxicity of 1-nitropropane and 2-nitropropane. Inhalation exposure to 2-nitropropane has been linked to liver toxicity in humans and has resulted in liver, and to a lesser extent, lung toxicity in male and female Sprague-Dawley rats (US EPA, 1991); it has also been shown to induce liver cancer in both Sprague-Dawley (IARC, 1992) and Fischer rats (Fiala, 1995). 1-Nitropropane has shown no carcinogenic potential to date.

Direct data on the carcinogenic potential of iPB are limited, although it has been shown to induce reverse mutations in bacteria (Maeng and Yu, 1997). Further, iPB was shown to be more cytotoxic and genotoxic to human liver cells than nPB and other toxins, including methylene chloride and trichloroethylene (SLR, 2001a). The combination of the position of the bromine atom in iPB (and its relationship to the carcinogenic potential of the compound) and the genotoxicity of the compound in bacterial and human cells indicate that caution is necessary when recommending an acceptable exposure concentration for iPB.

In the limited animal testing data available, iPB has been shown to be inherently more toxic than nPB on reproductive and hematopoietic endpoints. In two separate studies, significant disruptions in the estrous cycles and abnormal growth in uterine cells were reported in female rats

exposed to iPB daily for 9 weeks (Kamijima, 1997a, 1997b; Yu, 2001). Daily exposure of male rats to iPB at 300, 1000, and 3000 ppm was associated with effects ranging from reduced body and organ (e.g., kidneys, liver, testis) weight, reduced sperm counts and sperm motility, abnormal sperm, reduced red blood cell and platelet counts, and hemoglobin volume (Ichihara, 1997). A recent study has been published (Sekiguchi, 2002) in which the effects of iPB exposure on the reproductive physiology of female F344 rats were investigated. The rats were exposed to air (in the control group, the number of animals, n, is 7) or 50 (n=6), 200 (n=7), or 1000 (n=9) ppm of iPB via whole-body inhalation for 8 hours/day for 21–24 days (exact number of days not specified in the article). A larger number of females at the high concentration exhibited an estrous cycle of >6 days (7 of 9 animals) than those at the control, low- and mid-concentration (4, 2, and 3, respectively) which corresponded to the greater number of estrous cycles lasting >6 days (9 of 34 animals) in the high-concentration group as compared to the other groups (4 of 31, 4 of 30, 3 of 30). A dose-dependent increase in the number of days/cycle was observed in rats at 200 and 1000 ppm. These increases did not reach statistical significance, however. A smaller number of females per group was analyzed for uterine and ovary weights because only rats showing the estrous stage upon vaginal smear test were chosen for autopsy (5, 5, 5, and 7, respectively in the low-, mid-, and high-concentration groups). No changes were noted in the weights of ovaries or uterus, or in the number of ovulated ova among any of the female groups (exposed or controls). Although this study indicates that iPB was not a strong reproductive toxin in the female rat, the small number of animals exposed is a significant limitation to the study. The dose dependent increase in estrous cycles observed at 200 and 1000 ppm suggest the potential for reproductive failure from exposure to this compound. These results also indicate the need for additional studies using greater numbers of exposed animals.

Both male and female workers occupationally exposed to iPB have been found to exhibit some of the same effects reported in animal toxicological studies. Ichihara (1999) reported low sperm motility, low semen volume, abnormal sperm cells, and decreased blood cell count, hemoglobin and hematocrit in otherwise healthy Chinese male workers exposed to a wide range of iPB concentrations (2.5–111 ppm). Abnormal or an absence of menstruation was associated with iPB exposure in several female workers, as well as reduced blood cell count, hemoglobin, and hematocrit. Employees of an electronics factory in South Korea showed similar effects following exposure to iPB (Kim, 1996). In female workers, disrupted or absent menstruation, abnormal hormone levels, hot flashes, and abnormal bone marrow were found, while male workers exhibited significantly reduced sperm counts and sperm motility.

CERHR convened an Expert Panel to consider existing toxicological studies on effects of both nPB and iPB. (See section IV.A.1.c. for a discussion of CERHR review process and the Expert Panel Report.) The CERHR Expert Panel came to the following conclusions on the existing studies on iPB (CERHR, 2002b, p. 44):

- Available human and animal data are insufficient to draw conclusions on the potential for developmental toxicity due to iPB.
- There is sufficient evidence that iPB is a reproductive hazard in men and women, particularly based upon the epidemiological data from Korea.
- At low levels (less than 0.004 ppm), there is minimal concern for human reproduction. At higher levels up to 1.35 ppm, there is some concern.
- For reproductive data from male rats, the panel identified a NOAEL of 100 ppm.

The toxicological studies on male reproductive endpoints for iPB have limitations which (*e.g.*, small number of dose groups) make them inappropriate for use in quantitative risk assessment. Although the occupational exposure studies also are limited, given the mutagenicity of the compound and that human exposures have resulted in significant health effects consistent with those reported in the available animal studies, the Agency considers it appropriate to limit the amount of iPB exposure resulting from nPB use to the maximum extent feasible.

Today's action proposes to limit SNAP acceptability of nPB to those formulations of nPB that contain concentrations less than 0.05% iPB by weight before adding stabilizers or other chemicals. The current American Society for Testing and Materials (ASTM) standard for vapor degreasing grade and general grade nPB specifies that unstabilized nPB must have less than 0.1% of iPB as a contaminant. EPA believes that this level should be reduced to 0.05% given the toxicity of iPB, and the fact that achieving a level of 0.05% is technologically feasible and would not cause significant economic impacts (US EPA, 2003). The Agency also requests comment on the appropriateness of alternative concentration limits for iPB in nPB, including 0.1%. If this provision is finalized, the iPB concentration limit would be a condition that all users in the U.S. must observe in all sectors and end uses where nPB is listed as acceptable.

In order to show compliance with the use condition, end users would need to keep records to demonstrate that the nPB used in the product contains no more than 0.05% iPB by weight before adding stabilizers or other chemicals. Documentation could involve, for example, keeping a certificate of analysis or purity provided by the manufacturer or formulator for two years from the date of creation of that record. Such records are customary business information that chemical companies provide to their customers, so we do not expect that this requirement will impose an additional paperwork burden.

B. Ozone Depletion Potential

The ozone depletion potential (ODP) of a chemical compound provides a measure of its impact on stratospheric ozone levels relative to the impact of an equal mass emission of CFC–11. The Parties to the Montreal Protocol have used the ODP benchmark index as a means of characterizing the relative risks associated with the various ozone-depleting compounds subject to the requirements of the Protocol and to calculate the total allowable production and consumption of different classes of ozone depleting substances. Every four years the World Meteorological Organization publishes the *Scientific Assessment of Ozone Depletion*. These assessments are authored by leading experts in the fields of atmospheric science and atmospheric chemistry, and include the most current research findings relevant to the science of ozone depletion. These assessments, along with other studies in the field of atmospheric chemistry, have traditionally focused on compounds with relatively long atmospheric lifetimes (in excess of 3 months).

Two-dimensional (2–D) models that base calculations on latitude and altitude are sufficient for calculating the ODP of long-lived chemicals. However, 2–D models cannot simulate the complex atmospheric transport pathways that are necessary to determine the ODP of short-lived compounds like nPB (Wuebbles, 2000). nPB is estimated to remain in the atmosphere for only 11 to 20 days after

emission.[12] The short lifetime of nPB complicates the calculation of its ODP because it is not valid to make the standard simplifying assumption that concentrations are ''well mixed'' in the troposphere. Thus, a meaningful comparison can be made between the ODP of nPB and the longer-lived compounds already controlled under the Montreal Protocol only by using the results from a 3–D model that bases calculations on longitude, latitude, and altitude to augment the ODP calculation using a 2–D model.

Generally, a compound emitted in the troposphere travels toward the equator and into the tropics before rising convectively into the stratosphere. As a result, a compound emitted at high latitudes, such as the northern United States or the southern tip of Brazil, will take longer to reach the stratosphere than one emitted in the tropics. For a long-lived chemical, this difference in travel time is insignificant. But for a short-lived compound such as nPB, which is subject to degradation in the troposphere, the latitude of emission can have a significant impact on the amount of ozone-destroying bromine that is delivered to the stratosphere.

Using a combination of 2–D and 3–D models, Wuebbles *et al.* (2001) estimated the ODP to be between 0.016 and 0.019 for nPB emissions over the United States. In the tropical latitudes, over India, Southeast Asia and Indonesia, nPB emissions have a larger ODP of 0.087 to 0.105. A more recent paper by Wuebbles found that the ODP of nPB emissions from the United States would be closer to 0.013–0.018, while nPB emissions in the tropics would have an ODP of 0.071 to 0.100 (Wuebbles, 2002).

In proposing to list nPB as an acceptable substitute for CFC–113, methyl chloroform and HCFC–141b, EPA has considered that the ODP for nPB at the latitude of the continental U.S. is substantially less than the ODPs for the chemicals it would replace (0.8 for CFC–113, 0.1 for methyl chloroform, and 0.11 for HCFC–141b). Given that fact, we do not believe that nPB's ODP is a compelling reason to list it as an unacceptable substitute for CFC–113, methyl chloroform, and HCFC–141b for use in the U.S.

While advances in modeling are producing more specific methods to better estimate nPB's ODP, the value will never be pinpointed to a single number that may be applied to all latitudes. EPA notes that if the ODP were as high in the U.S. as it is in the tropics (0.071 to 0.100), we would have found it unacceptable as a substitute. When making regulatory determinations, governments or users in other latitudes should consider the ODP at their latitude as well as the toxicity of other solvents available for use. For example, users in other counties may find nPB preferable to carbon tetrachloride, which has a high ODP (1.1) and is highly toxic. On the other hand, users in the tropics should realize that nPB at their latitude has an ODP comparable to substances controlled by the Montreal Protocol (methyl chloroform or HCFC–141b). EPA also recommends that any decisions on the use of nPB outside the U.S. should be based on latitude-specific ODPs and volumes of the chemical projected to be used in those regions.

Few commenters on the ANPRM discussed the ODP of nPB. However, the Agency agrees with two commenters who stated that nPB's low ODP should be balanced against the much longer atmospheric lifetime of other choices.

We have attempted to gather and assess all available information from the full range of experts on nPB's ODP. EPA continues to be interested in receiving from the public any other information pertaining to the atmospheric effects and ODP of short-lived atmospheric chemicals, especially nPB. In the event that data become available after final rulemaking that are contrary to the current scientific understanding, section 612 of the CAA allows the Agency to reconsider our decision under the SNAP program.

C. Global Warming Potential

The global warming potential (GWP) index is a means of quantifying the potential integrated climate forcing of various greenhouse gases relative to carbon dioxide. Thus, the GWP of carbon dioxide is, by definition, equal to one. Since GWP is a measure of the climate forcing integrated over time, the value of the index depends on the choice of time horizon. The standard GWP used for making climate-related policy decisions is based on a 100-year time horizon (called the 100yr GWP).[13]

The 100yr GWP of nPB is 0.31 (Atmospheric and Environmental Research, Inc., 1995). This is a relatively low GWP, representing a climate forcing approximately one third that of carbon dioxide, by weight. Estimations of the net climate impact must take into consideration the amount of the compound expected to be emitted. As will be discussed in section V.B. below, nPB will most likely be emitted in small enough quantities worldwide that there should not be a concern about its causing climate change. Additionally, the GWP of nPB is considerably lower than that of the chemicals it potentially replaces. (100yr GWP values are 6000 for CFC–113, 140 for methyl chloroform and 700 for HCFC–141b.)[14] Therefore, we conclude that the use of nPB as a substitute for CFC–113, HCFC–141b, or methyl chloroform should not be restricted based on its GWP.

D. Flammability

nPB forms flammable mixtures in air within only a narrow range. All estimates that EPA reviewed fall somewhere within the range of 3.5%–9%. Most, but not all, of the material safety data sheets we reviewed state that nPB has no flashpoint. The 1998 Report of the United Nations Environment Programme's Solvents, Coatings and Adhesives Technical Option Committee stated that ''under certain test conditions, using standard flash point testing apparatus, pure nPB has demonstrated a flash point at −10°C * * * [O]ther ASTM test methods have resulted in no observed flash point'' (UNEP, 1999). In response to information requests in the nPB ANPRM, various commenters asserted that nPB has a flashpoint of 10°C, 14°C, and 21°C–25°C, 70°F (21°C), and 70°C. These data are inconclusive about the flashpoint of nPB and whether nPB is likely to be flammable under normal use conditions.

In addition, we are aware that many manufacturers of foam cushions use adhesives containing nPB because it is essentially non-flammable compared to many other solvents used in adhesives, such as acetone or heptane. Also, one company has submitted a fire suppressant containing nPB as the active ingredient for review by the SNAP program. (We are not addressing this incomplete submission in today's proposed rule.) It is not surprising that nPB would have little or no flammability, given that many organic compounds containing bromine have little or no flammability, such as halons or hydrobromofluorocarbons.

Based on the full range of available information, we do not currently believe that the use of nPB as a substitute for CFC–113, methyl chloroform, or HCFC–141b should be restricted because of flammability. EPA, however, invites

[12] Wuebbles *et al.*, 1998; Wuebbles *et al.*, 2000.

[13] The 100yr GWP is the index recommended by the Intergovernmental Panel on Climate Change (IPCC) for comparing the climate impacts of various global warming gases. The United States employs the standard 100yr GWP index for making climate policy decisions and reporting of greenhouse gases.

[14] All GWPs (other than that of nPB) discussed in this NPRM are taken from the *Scientific Assessment of Ozone Depletion: 1998* (WMO, 1999).

commenters to submit more specific information concerning the flashpoint of pure nPB. We are aware that nPB blends may have flashpoint characteristics different from that of pure nPB, depending on the nature of the additives or stabilizers. In this rulemaking, EPA is evaluating only pure nPB as a substitute for CFC–113 and methyl chloroform. We therefore are not interested in receiving information concerning the flashpoints of blends that contain nPB. Commenters providing information on nPB's flashpoint should refer to the specific test methodology and apparatus used to determine the flashpoint, such as ISO 1523, American Society of Testing Materials (ASTM) E–681, D92, D93–85—Pensky-Martens closed cup, or D56–96—Tag closed cup. EPA also invites readers to submit information concerning any potential fire or explosion hazards that may result from the use in solvent cleaning of compounds that have flashpoints within the range of normal atmospheric pressures and temperatures.

E. Other Environmental Concerns

Because nPB breaks down in the atmosphere within 21 days, and is not particularly soluble in water, it is unlikely that ''rain out'' from nPB released into the atmosphere could cause contamination of water supplies. However, as with all chemicals, significant contamination of soil and water can result when directly introduced into water or onto the ground. Thus, EPA expects that users will dispose of nPB in accordance with relevant regulations under the Resource Conservation and Recovery Act, and with applicable state and local regulations. Compliance with these regulations will mitigate the possibility that nPB might enter water supplies or top soil.

nPB is a volatile organic compound (VOC). VOCs are associated with the formation of ground-level ozone, a respiratory irritant. Therefore, nPB use currently is controlled under state and local regulations implementing Federal clean air requirements at 40 CFR part 51. These regulations are intended to bring areas into compliance with the National Ambient Air Quality Standards for ground-level ozone. Users located in ozone non-attainment areas may need to consider using other alternatives for cleaning that are not VOCs or control emissions.

F. Comparison of nPB to Other Solvents

Section 612 of the Clean Air Act directs EPA to determine the acceptability of a replacement substance (''substitutes'') for class I and class II ozone depleting substances based on whether such substitute creates an overall greater risk to human health and the environment than other substitutes that are available. Section 612(c) specifically states that the Administrator shall issue regulations:

> providing that it shall be unlawful to replace any class I or class II substance with any substitute substance which the Administrator determines may present adverse effects to human health or the environment, where the Administrator has identified an alternative to such replacement that—
>
> (1) reduces the overall risk to human health and the environment; and
>
> (2) is currently or potentially available.

Thus, EPA must compare the risks to human health and the environment of a substitute to the risks associated with other substitutes that are currently or potentially available. In addition, EPA also considers whether the substitute for class I and class II ODSs ''reduces the overall risk to human health and the environment'' compared to the ODSs being replaced, consistent with the safe alternatives policy of § 612.

In our evaluation, we considered the substitutes available within a given end use. In other words, we compared nPB as a metal cleaning solvent against other metal cleaning alternatives, and we compared nPB as a carrier solvent in adhesives to other adhesive alternatives. Because of the large amount of overlap in the alternatives available in the different end uses, the discussion below will mention alternatives from multiple end uses where nPB is used.

Although EPA does not judge the effectiveness of alternatives, this factor is an additional one that we consider when determining what alternatives are available in a particular application within an end use. For example, aqueous cleaners are the substitute of choice for many in the metal cleaning end use and many electronics applications now use the ''no clean'' technology. However, some types of soils are especially difficult to remove and some applications require a high degree of cleanliness; thus, in some applications, particularly in precision cleaning, there may still be a need for organic solvents for cleaning. Depending on the particular application, it may be necessary to use an aggressive cleaning solvent such as nPB.

nPB has an ODP of 0.013 to 0.018 at the latitudes of the continental U.S. Thus, nPB reduces risk compared to CFC–113, methyl chloroform, and HCFC–141b, the ODSs it replaces, which have ODPs of 0.8, 0.1, and 0.11, respectively. HCFC–225ca/cb has an ODP of approximately 0.03. HCFC–225ca/cb is acceptable in metals cleaning and aerosol solvents, and acceptable subject to use conditions in precision cleaning and electronics cleaning. Although HCFC–141b has been phased out of production in the U.S., its use is currently acceptable in aerosol solvents; HCFC–141b has a higher ODP than nPB. HCFC–123 has an ODP of 0.0124, which is comparable to that of nPB. HCFC–123 is acceptable in precision cleaning. There are other acceptable cleaners that essentially have no ODP (aqueous cleaners, hydrofluoroethers (HFEs), hydrofluorocarbon (HFC)-4310mee, HFC–365mfc, HFC–245fa, hydrocarbons, volatile methyl siloxanes (VMSs), methylene chloride, trichloroethylene (TCE), perchloroethylene (PERC), and parachlorobenzotrifluoride (PCBTF).

nPB has a GWP of only 0.31, which is lower than or comparable to that of the lowest GWP solvents. Acceptable HCFC, HFC and HFE solvents all have GWPs that are two to four orders of magnitude higher than that of nPB (55 to 1700 on a 100 year time horizon compared to CO_2).

nPB is a volatile organic compound for purposes of EPA regulations, although there are petitions with EPA requesting its exemption. Thus, nPB currently is subject to regulations for ground-level ozone and local air quality. nPB is not currently regulated as a hazardous air pollutant and is not listed as a hazardous waste under RCRA.

nPB is less flammable than many acceptable substitutes, such as ketones, alcohols, terpenes, and hydrocarbons. nPB is comparable in its low flammability to chlorinated solvents, HCFCs, HFEs, HFC–245fa, HFC–4310mee, and aqueous cleaners.

EPA used an acceptable exposure limit of 25 ppm as the basis for comparison with measured exposure levels in the workplace to determine whether nPB could be used safely, and thus, to determine the acceptability of nPB. EPA found that nPB could be used as safely at 25 ppm as other acceptable solvents when they are used at their AELs or other relevant occupational exposure limits, such as OSHA PELs or ACGIH TLVs.[15] Based on the

[15] The recommended AEL for nPB is lower than that for many acceptable solvents (HFEs, ketones, HFCs, HCFC–225ca/cb, hydrocarbons), but is higher or comparable to the AEL for some acceptable solvents (d-limonene, VMSs, dichlorobenzotrifluoride, HCFC–123, methylene chloride, PCBTF). However, a direct comparison between two compounds with different AELs does not necessarily mean that using a compound with a higher AEL is more risky. Actual exposure levels will vary based upon factors other than the AEL,

assumption that most users will attain exposure levels at or below the AEL of 25 ppm, EPA finds nPB acceptable in terms of its human health risks. As discussed in section IV.A.4, ''What limit is EPA proposing on isopropyl bromide contamination of nPB as a condition of acceptability, and why?'' iPB is a contaminant in nPB formulations that is considerably more toxic than nPB. Therefore, in order for nPB formulations to ''reduce overall risk to human health and the environment,'' EPA finds it necessary for users to use nPB formulations that have minimal levels of iPB. Hence, the Agency's proposed decision of acceptability depends on the condition that users use nPB formulations that limit the amount of iPB. EPA's proposes that this limit be 0.05% before other chemicals are added.

Balancing these different factors, it is not clear that nPB poses greater risks than other substitutes in the same end uses, so long as nPB is used consistent with the use condition and recommended AEL. Further, it appears that nPB reduces overall risk compared to the ozone depleting substances being replaced. Thus, EPA proposes to find that nPB is acceptable, subject to a use condition.

V. What Other Factors Did EPA Consider That Are Unique to nPB?

A. Review of nPB by Other Federal and International Programs

In proposing to find nPB acceptable in solvents cleaning, and as a solvent in adhesive and aerosol applications, we have sought to avoid overlap with other existing regulatory authorities. EPA's mandate under the CAA is to list agents that ''reduce overall risk to human health and the environment'' for ''specific uses.'' In light of this authorization, EPA is recommending an occupational exposure limit which, if adhered to, would result in the safe use of nPB in the workplace. This is an interim measure until OSHA issues a PEL for nPB. EPA defers to OSHA on workplace safety standards, and is not in any way assuming that agency's responsibility for regulating workplace safety.

As stated in a footnote in today's proposed rule language at the end of this document, ''In accordance with the limitations provided in section 310(a) of the Clean Air Act (42 U.S.C. 7610(a)), nothing in this [rule] shall affect the Occupational Safety and Health Administration's authority to enforce standards and other requirements under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*).'' EPA's recommended workplace exposure guidelines, which are not regulatory, and use requirements, which are not expressly related to use in the workplace, will not bar OSHA from regulating under authority of the Occupational Safety and Health Act.

As mentioned above in section IV.E, nPB is a VOC. Two companies have petitioned EPA to exempt nPB from VOC regulations. To date, EPA has not received sufficient information on photochemical reactivity of nPB and thus, has no plans to exempt it. In contrast to other solvents, nPB is not controlled as a hazardous air pollutant under the CAA and generates wastes that are not considered hazardous under regulations implementing the Resource, Conservation and Recovery Act (RCRA). Several commenters on the ANPRM argued that because no U.S. environmental authorities regulate nPB use, EPA's SNAP program has all the more obligation to establish an acceptable exposure limit for the workplace, even if it is recommended rather than mandated (IRTA, 1999). With today's proposed rule, EPA is recommending a workplace exposure limit to protect workers exposed to nPB in the absence of OSHA regulations.

While the Montreal Protocol currently does not control the production and distribution of nPB worldwide, nPB may be controlled by the Protocol in the future. At the Thirteenth Meeting of the Parties to the Montreal Protocol in Colombo, Sri Lanka, the Parties made a decision regarding nPB. Decision XIII/7 states:

> Noting the Technology and Economic Assessment Panel's report that n-propyl bromide (nPB) is being marketed aggressively and that nPB use and emissions in 2010 currently projected to be around 40,000 metric tonnes,
>
> A. To request Parties to inform industry and users about the concerns surrounding the use and emissions of nPB and the potential threat that these might pose to the ozone layer;
>
> B. To request Parties to urge industry and users to consider limiting the use of nPB to applications where more economically feasible and environmentally friendly alternatives are not available, and to urge them also to take care to minimize exposure and emissions during use and disposal;
>
> C. To request the Technology and Economic Assessment Panel to report annually on nPB use and emissions.

B. Potential Market for nPB

There are varying estimates of the total market for nPB. The Brominated Solvents Consortium, which consists of producers of nPB, estimated in 2001 that approximately 9.2 million pounds of nPB were sold worldwide in 2000, with that number expected to rise to 15 million pounds in 2002 (Biles, 2001). In contrast, the Technology and Economic Assessment Panel (TEAP) of the United Nations Environment Programme (UNEP) estimated that the ''most likely'' amount of nPB use in 2010 would be between 44 million and 132 million pounds worldwide, pending the result of toxicity testing and price trends of various solvents (UNEP, 2001). EPA believes that the actual market size in 2010 may be lower than the 44–132 million pounds cited by the TEAP report. Further, since the TEAP report was published, some manufacturers and blenders of nPB have withdrawn their products from the market.

EPA notes that the TEAP report based its estimates of how much nPB would be used by assuming that nPB will displace significant amounts of chlorinated solvents and HCFCs in the marketplace. The report states, ''If occupational exposure limits for nPB were 2–4 times higher than exposure limits of methylene chloride, nPB would replace a substantial portion of methylene chloride solvent use even if nPB had a significantly higher price. High rates of market penetration will require U.S. EPA SNAP listing, a favorable AEL, and market confidence'' (UNEP, 2001). Given that today's proposal recommends an AEL equivalent to that for methylene chloride (OSHA PEL) and perchloroethylene (ACGIH TLV) and slightly lower than that for trichloroethylene (ACGIH TLV = 50 ppm, 8 hour TWA), it is likely that the TEAP's estimates for market penetration of nPB are too high.

In addition, we note that producers of HCFC–141b, a solvent with slightly lower cost and similar solvency to nPB, never sold more than 36 million pounds per year as a solvent, even at the height of its usage (AFEAS, 2002). HCFC–141b has recently been phased out of production in the U.S. and the Agency expects nPB to be only one of several alternative solvents that will substitute for it. Further, experience with the growth of the market for HCFC–141b suggests that the growth in the market for nPB is unlikely to continue at its current pace for more than a few years. The most recent information from suppliers of nPB indicates that in 2001, sales were approximately 9 million pounds, similar to the level in 2000 (Biles, 2002).

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such as emission controls in place, work practices, ventilation, rate of spraying, and vapor pressure of the solvent.

C. Estimated Economic Impacts on Businesses

As part of our rulemaking process, EPA estimated potential economic impacts of today's proposed regulation. In our analysis, we assumed that capital costs are annualized over 10 years and that the discount rate for determining net present value is 7.0%. We found the following impacts from the regulatory use condition on the iPB content in nPB formulations:

• In general, users in the solvent cleaning sector and aerosol solvent end use are already using nPB formulations containing less than 0.05% iPB by weight, and will experience little or no rise in prices. Most of the costs of compliance would fall upon adhesives users, since some of them currently use nPB formulations containing as much as 1% iPB.

• If today's proposed rule were to become final, the cost of the regulatory condition to the user community would be in the range of $2 to $3 million per year.

EPA also considered potential costs end users could incur if they implemented the recommended acceptable exposure limit. Qualitatively, EPA found that those users using nPB-based solvents in a vapor degreaser would save money by reducing solvent losses, and that the savings would recover the costs of emissions controls (*e.g.*, secondary cooling coils, automated lifts or hoists) within a year of installation. Based on evidence from solvent suppliers, EPA believes that some of those users would have chosen to use nPB in order to avoid meeting requirements of the national emission standard for halogenated solvents cleaning and that they would only become aware of the potential savings due to reduced solvent usage as a result of today's proposal (Ultronix, 2001; Albemarle, 2003). Based on the experience of companies that assist their customers in meeting an exposure limit of 25 ppm for nPB, we assumed that 75% to 90% of nPB users in the non-aerosol solvent cleaning sector already have exposure levels of 25 ppm or less. Of those nPB users with exposure levels above 25 ppm, we examined the cost associated with reducing emissions by 50% to 75%. EPA also found:

• Balancing the savings due to reduced solvent loss and the cost of emission controls on vapor degreaser, the range of costs for solvent cleaning ranged from a net savings of $83,900 to a cost of $2000 per user.

• Installing ventilation equipment was a minor expense for aerosol solvent users ($124 to $1230 annualized cost per user).

• The more extensive ventilation equipment necessary for adhesive users was more expensive ($24,000 to $39,000 annualized cost per user).

• EPA estimated that full implementation of the recommended workplace exposure guideline across all nPB users in all three industrial sectors would range in cost from a potential net savings up to $1.9 million to a cost of $5.5 million dollars per year. The value will depend on the number of users that attempt to meet the recommended exposure guideline, the initial exposure level of cleaning solvent users, the price of nPB, and the amount of emission control equipment or ventilation equipment installed. The high end of the range likely would be an overestimate of actual impacts because, among other things, it does not consider that some users may choose to switch to other alternatives.

• When the potential costs of compliance with the regulatory use condition and implementation of the recommended acceptable exposure limit are considered together, EPA found the total cost to range from a savings of $0.1 million to a cost of $8.1 million.

For purposes of comparison with these costs numbers, average values of shipments as a proxy for revenues for different types of businesses are as follows:

TABLE 3.—EXAMPLES OF nPB USERS BY NAICS CODE OR SUBSECTOR AND AVERAGE ANNUAL VALUE OF SHIPMENTS

NAICS code for subsector code	NAICS description	Example Uses of nPB	Average annual value of shipments by each company in subsector (million)
326150	Urethane and other foam product (except polystyrene) manufacturing.	Carrier solvent in adhesivs to stick together foam pieces in foam fabrication.	10.1
332	Fabricated Metal Product Manufacturing.	Metals cleaning to remove oil, grease, and wax from metal parts.	3.9
333	Machinery Manufacturing	Metals cleaning to remove oil, grease, and wax from metal parts.	8.9
334	Computer and Electronic Product Manufacturing.	Electronics cleaning, and aerosol solvent use to remove solder flux from circuit boards.	25.2
336	Transportation Equipment Manufacturing.	Aerosol solvent use for cleaning aerospace equipment; carrier solvent in adhesives for aircraft seating.	44.6
337	Furniture and Related Product Manufacturing.	Carrier solvent in adhesives for cushions or kitchen countertops; metals cleaning to remove grease from metal furniture parts.	3.1

For more detailed information, see section X.C. below and EPA's analysis in the docket (US EPA, 2003).

VI. How is EPA Responding to Comments on the Advance Notice of Proposed Rulemaking (ANPRM) and December 18, 2000 Notice of Data Availability?

EPA received 66 comments on the February 18, 1999, Advance Notice of Proposed Rulemaking (64 FR 8043) from 61 commenters. Forty-eight commenters advocated listing nPB as an acceptable substitute for CFC–113 and methyl chloroform under SNAP; ten commenters opposed listing nPB as acceptable; and three commenters responded to the information requests contained in the ANPRM without taking a position on the acceptability of nPB. Close to one-third of the commenters were manufacturers of products that require solvent cleaning. Other commenters included chemical manufacturers, solvent and lubricant distributors, consultants, academicians, adhesive manufacturers, product repair companies, vapor degreaser manufacturers, an aerosol manufacturer, an adhesive distributor, a machinery distributor, the U.S. Army, the U.S. Department of Energy, a solvent

blender, a printed circuit board repair facility, and a labor union. Almost all of the comments focused on the use of nPB in solvent cleaning, although the Agency did receive a few comments on the use of nPB in adhesives and aerosols applications. No commenter suggested using nPB in coatings or inks.

Many of the commenters described the complex task of searching for an optimal substitute for CFC–113 or methyl chloroform. Factors they have considered include maintaining superior performance, minimizing contamination, maintaining cost-effective and efficient processes, complying with local and other national regulatory requirements, assuring employee safety, and meeting exacting customer standards. These commenters often described their specific experiences using nPB, and compared nPB with other solvents and with other cleaning processes such as aqueous cleaning. Proponents of nPB listed as its chief advantages its lower cost compared to some alternatives (*e.g.*, HFCs, HFEs), lack of corrosiveness, potency as a solvent, low conductivity, minimal residues, and quick drying time. They also noted its ODP, short atmospheric lifetime and low GWP.

One commenter stated that because of its expense, users may use nPB more efficiently than they would use other, less expensive solvents. The commenter, a manufacturer of precision electromagnetic relays, formerly used about 5,000 pounds of methyl chloroform each year, and now uses about 1,500 pounds of nPB. Another commenter noted that nPB's bad odor provides users with an incentive to minimize evaporative losses. Commenters who oppose listing nPB as an acceptable substitute cited its instability, reactivity, and toxicity. Several commenters argued that nPB should not be used in solvent cleaning because it is largely uncontrolled and relatively little is known about its health effects.

In response to the Agency's December 18, 2000, SNAP notice and update on nPB (65 FR 78977), one commenter expressed concern about the use of nPB in cleaning and adhesive applications because of data showing that nPB is a reproductive toxin. The commenter also noted that the chemical sold as nPB contains fairly high quantities of iPB, a potent reproductive toxin. In addition, the commenter expressed concern that one manufacturer of nPB had recently left the market, and asked EPA to seek input on setting the proper exposure level from NIOSH, OSHA, and toxicologists who are not from industry or EPA.

Our proposal today reflects the Agency's agreement with those commenters who stated that there are some cleaning operations for which only nPB (and presumably, the CFC–113 or methyl chloroform that it replaced) meets all of the criteria necessary for the success of those operations. However, we also agree that some, but not all, cleaning operations that formerly relied on CFC–113 or methyl chloroform can use alternative cleaning agents, or alternative processes such as aqueous or semi-aqueous cleaning. EPA has discussed the results of the 2-generation reproductive study (WIL, 2001) and the recommended exposure limit with NIOSH as well as outside toxicologists not involved with the solvent industry or EPA, as one commenter suggested. We agree that the quantity of iPB in nPB is of concern. In response, we are proposing today to limit the iPB content in nPB to 0.05% by weight. We also are recommending an acceptable exposure limit for nPB of 25 ppm as an eight-hour time-weighted average, and recommending that users employ controls to minimize worker exposure to nPB to the lowest levels reasonably possible. The Agency believes that today's proposed rule takes into account environmental and workplace safety concerns associated with nPB, and that adhering to the recommended AEL of 25 ppm will protect against adverse health effects.

VII. What Should I Include in My Comments on EPA's Proposal?

In your comments, please explain what you think EPA should do in this rulemaking and why you think your suggested approach is appropriate. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number, OAR–2002–0064 in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

EPA invites comment on all aspects of today's proposed rule. A number of specific issues are raised throughout the **SUPPLEMENTARY INFORMATION** section of today's preamble. We request your comments on the following issues in particular:

(1) Is it appropriate for EPA to find nPB acceptable for use in the solvents metals, electronics and precision cleaning, aerosol solvents, and adhesives, coatings, and inks sectors? Why or why not? Should EPA have different decisions for different sectors or end uses? In particular, given that the CERHR Expert Panel expressed concern about ''poorly controlled spray adhesive applications,'' should EPA find nPB acceptable, subject to use conditions, for use in spray adhesives? Should the Agency find nPB acceptable, subject to use conditions, for use in aerosol solvents, or should nPB's use be limited to certain applications in this end use? (See section III of today's notice and CERHR, 2002a, p. 50.)

(2) What is an appropriate and achievable limit on the content of isopropyl bromide (iPB) in unstabilized nPB? Should this impurity limit be 0.1%, 0.05%, or 0.025% iPB by weight? Why? How much does each of these purity levels add to the cost of cleaning solvents or adhesives made using nPB, in terms of $/drum and as a percentage of the current cost? (See section IV.A.4. of today's notice.)

(3) What is an appropriate acceptable exposure limit for EPA to recommend, and why? If you disagree with the proposed recommended exposure limit of 25 ppm, why do you disagree? Should EPA consider risk management principles in developing a recommended AEL? Please cite specific points of concern (*e.g.*, studies considered, endpoints considered in BMD analysis, uncertainty factors applied). (*See* sections IV.A.1.a through d. of today's notice.)

(4) Should nPB be listed acceptable with a skin notation? (*See* section IV.A.1.b of today's notice.)

EPA also invites commenters to submit any new, relevant data pertaining to nPB and iPB beyond what is discussed in today's notice. Under EPA guidelines, there is a preference for peer reviewed data because of the potential to improve the quality and credibility of the product. Peer-reviewed data are studies/analyses that have been reviewed by qualified individuals (or organizations) who are independent of those who performed the work, but who are collectively equivalent in technical expertise (*i.e.*, peers) to those who

performed the original work. A peer review is an in-depth assessment of the assumptions, calculations, extrapolations, alternate interpretations, methodology, acceptance criteria, and conclusions pertaining to the specific major scientific and/or technical work products and of the documentation that supports them (US EPA, 2000b).

To ensure that we have time to consider your comments, please submit them to EPA's Air Docket by the date in the **DATES** section at the beginning of this document. You may submit them via e-mail to *A-And-R-Docket@epa.gov.* Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. Follow the detailed instructions provided in sections I.B through I.D. To give us more time to consider your comments, please also send a copy via e-mail to our staff directly at *sheppard.margaret@epa.gov*. EPA's responses to comments, whether the comments are written or electronic, will be in a final rule published in the **Federal Register** or in a response-to-comments document placed in the rulemaking docket. We will not reply to respondents electronically other than to seek clarification of electronic comments that may be disrupted in transmission or during conversion to paper form.

VIII. What Is the Federal Government Doing To Help Businesses Use nPB Safely?

EPA is concerned that careless use of nPB will place those exposed at risk of serious adverse health effects. We are also concerned that some users perceive nPB as a ''path of less resistance'' because it has similar properties to methyl chloroform, but, unlike methyl chloroform, OSHA has not issued a permissible exposure limit (PEL) for nPB. In particular, the adhesives industry widely used methyl chloroform and then methylene chloride as carrier solvents. Since the introduction of OSHA workplace regulations for methylene chloride, some companies appear to prefer nPB-based adhesives because nPB is not yet regulated, and because nPB is not flammable under normal conditions. Because of these concerns, EPA is working with NIOSH to develop outreach materials to share with facilities that use, or could use, nPB to inform them of good workplace practices.

Further, EPA recommends that users contact OSHA's consultation service. OSHA funds confidential consultation services to users through state government staff. Employers can find out about potential hazards at their worksites, improve their occupational safety and health management systems, and even qualify for a one-year exemption from routine OSHA inspections. The consultation service is separate from inspections and enforcement. To request a consultation, telephone or write to the appropriate state consultation service, listed on the web at *http://www.osha.gov/oshdir/consult.html*. For example, if you have a facility in North Carolina, call the North Carolina Department of Labor at (919) 807–2899. See OSHA's web site at *http://www.osha.gov/html/consultation.html* for further information on consultation services.

IX. How Can I Use nPB as Safely as Possible?

As discussed above in section IV.A.1.e, EPA believes that the AEL of 25 ppm can be met in all the industrial sectors being reviewed today, including solvent cleaning applications, adhesives applications, and aerosol solvents applications, as long as appropriate controls are put in place. However, EPA also realizes that this exposure guideline is relatively low and that in many cases, users will have to implement additional emissions control measures to reach this level. Below are actions that will help nPB users meet the exposure guideline recommended in today's proposed rule:

- All users of nPB should wear appropriate personal protective equipment, including chemical goggles, flexible laminate protective gloves and chemical-resistant clothing. Special care should be taken to avoid contact with the skin since nPB, like many halogenated solvents, can be absorbed through the skin.
- Follow guidelines in the National Emission Standard for Hazardous Air Pollutants (NESHAP) for halogenated solvents cleaning if you are using nPB for non-aerosol solvent cleaning. The equipment and procedural changes described in the halogenated solvents NESHAP can reduce emissions, reduce solvent losses and lower the cost of cleaning with organic solvents. For more information on the halogenated solvents NESHAP, visit *http://www.epa.gov/ttn/atw/eparules.html* and *http://www.epa.gov/ttn/atw/degrea/halopg.html.*
- Use the employee exposure monitoring programs and product stewardship programs where offered by manufacturers and formulators of nPB-based solvents and adhesives.
- Follow all recommended safety precautions specified in the manufacturer's Material Safety Data Sheets (MSDSs).
- Use sufficient ventilation and emissions controls to meet the 25 ppm AEL in adhesives or aerosol applications (or, once developed, the applicable OSHA PEL). Examples of ventilation equipment for aerosol uses include ventilation hoods and fans. Adhesive appliers can use spray booths, ventilation hoods or ducts, and fans to reduce exposure.
- Request a confidential consultation from your State government. You can contact the appropriate state agency that participates in OSHA's consultation program. These contacts are on OSHA's Web site at *http://www.osha.gov/oshdir/consult.html.* For further information on OSHA's confidential consultancy program, visit OSHA's web page at *http://www.osha.gov/html/consultation.html.*
- If the manufacturer or formulator of your nPB-based product does not have an exposure monitoring program, we recommend that you start your own exposure monitoring program, and/or request a confidential consultation from your State government.
- A medical monitoring program should be established for the early detection and prevention of acute and chronic effects of exposure to nPB. The workers' physician(s) should be given information about the adverse health effects of exposure to nPB and the workers' potential for exposure.
- Workers should receive safety training and education that includes potential health effects of exposure to nPB, covering information included on the appropriate material data safety sheets, as required by OSHA's Hazard Communication Standard (29 CFR 1910.1200).

We note that these steps are useful for reducing exposure to any industrial solvent, and not just nPB.

X. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735; October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal

governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB notified EPA that it considers this action a ''significant regulatory action'' within the meaning of the Executive Order, and EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations have been documented in the public record.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. Today's proposal is an Agency determination. It contains no new requirements for reporting. The only new recordkeeping requirement involves customary business practice. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations in subpart G of 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2060–0226 (EPA ICR No. 1596.05). This ICR included five types of respondent reporting and record-keeping activities pursuant to SNAP regulations: submission of a SNAP petition, filing a SNAP/TSCA Addendum, notification for test marketing activity, record-keeping for substitutes acceptable subject to use restrictions, and record-keeping for small volume uses. Today's proposed rule, if finalized, would require minimal record-keeping for two years from the date of creation of the record to demonstrate that the nPB contains no more than 0.05% iPB. Because it is customary business practice that chemical companies provide certificates of analysis to their customers, we believe this requirement will not impose an additional paperwork burden.

Copies of the ICR document(s) may be obtained from Sandy Farmer, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at *farmer.sandy@epa.gov,* or by calling (202) 566–1676. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.* Include the ICR and/or OMB number in any correspondence.

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.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has fewer than 500 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. EPA has consulted with the Small Business Administration's Office of Advocacy on the alternate small business definition of 500 employees. For today's rule, we chose to use 500 employees, rather than use the individual size standards for the numerous NAICS subsectors and codes to simplify the economic analysis. Furthermore, this size standard was set by SBA for all NAICS codes for businesses using nPB-based adhesives, which is the end use that could experience the greatest cost impacts under today's rule. We solicit comments on the choice of this alternate definition for this analysis.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Types of businesses that would be subject to today's proposed rule, if it became final, would include:

- Manufacturers of computers and electronic equipment that clean with nPB cleaning solvents (NAICS subsector 334).
- Manufacturers of fabricated metal parts, including plating, ball and roller bearings, machined parts, and other metal parts that require oil and grease to be cleaned off (NAICS subsectors 332 and 333).
- Manufacturers of transportation equipment, such as aerospace equipment that requires cleaning either in a tank or with aerosols, and aircraft seating, which is assembled using adhesives containing nPB as a carrier solvent (NAICS subsector 336).
- Manufacturers of furniture, including various kinds of furniture with cushions and countertops assembled using adhesives containing nPB as a carrier solvent (NAICS subsector 337).
- Foam fabricators, who assemble foam cushions using adhesives containing nPB as a carrier solvent (NAICS code 326150).

EPA estimates that up to 7330 small industrial end users currently use nPB and thus could be subject to this rule. This number includes approximately 500 to 2300 users of nPB industrial cleaning solvents (*e.g.*, cleaning with vapor degreasers), 900 to 4750 users of nPB-based aerosol solvents, and 40 to 280 users of nPB-based adhesives.

In order to consider the resources that affected small businesses have available to operate and to respond to regulatory requirements, EPA compared the cost of meeting regulatory requirements to small businesses' annual sales. In our analysis for today's proposal, we used the average value of shipments for the products manufactured by the end user as a proxy for sales or revenues, since these data are readily available from the U.S. Department of Commerce. The following tables display the average value of shipments for different sizes of business and different NAICS subsectors or codes in the affected industrial sectors. EPA then used data from these sources to determine the potential economic impacts on small businesses of today's proposed rule.

TABLE 4.—AVERAGE VALUE OF SHIPMENTS IN NAICS SUBSECTORS PERFORMING SOLVENT CLEANING [1], BY NUMBER OF EMPLOYEES AT BUSINESS

Number of employees at business	Average value of shipments per company ($) by NAICS subsector code				
	332, Fabricated metal products	333, Machinery	334, Computer and electronic products	336, Transportation equipment	337, Furniture and related products
1–4	174,832	230,806	279,683	d [2]	141,654
5–9	d [2]	766,045	903,756	d [2]	501,193
10–19	1,393,019	d [2]	1,925,077	1,897,347	1,102,104
20–49	3,596,222	d [2]	4,270,554	4,190,678	2,744,633
50–99	9,283,654	10,429,360	10,440,847	10,140,871	6,908,332
100–249	24,566,631	25,781,244	d [2]	27,861,502	17,898,851
250–499	55,392,738	64,822,617	d [2]	69,529,351	d [2]
Average—All Small Businesses in Subsector	3.2 million	4.2 million	2.4 million	8.9 million	1.7 million
Average—All Businesses in Subsector	3.9 million	8.9 million	25.2 million	44.6 million	3.1 million

[1] Aerosol solvents are used in NAICS subsectors 334 and 336. Non-aerosol solvents are used in all five NAICS subsectors.
[2] ''d'' designates ''Data withheld to avoid disclosing data of individual companies; data are included in higher level totals.'' The average value of shipments for small businesses does not include those values marked with ''d,'' and thus may be overestimated or underestimated.

TABLE 5.—AVERAGE VALUE OF SHIPMENTS IN NAICS CATEGORIES USING nPB AS A CARRIER SOLVENT IN ADHESIVES, BY NUMBER OF EMPLOYEES AT BUSINESS

Number of employees at business	Average Value of Shipments per Small Company ($) by NAICS Code				
	337121, Upholstered household furniture	337110, Wood kitchen cabinet and counter tops	326150, Urethane and other foam products (except polystyrene)	336360, Motor vehicle seating and interior trim	337124, Metal household furniture
1–4	135,545	135,046	287,744	174,500	170,820
5–9	428,646	457,310	1,211,200	532,875	582,725
10–19	913,225	1,015,967	2,537,028	2,490,455	1,299,671
20–49	2,582,340	2,326,857	5,892,653	3,901,979	3,730,479
50–99	5,680,148	5,655,585	11,608,984	8,981,786	7,522,129
100–249	14,832,151	16,139,988	26,480,552	44,153,730	16,911,474
250–499	d	47,943,433	59,104,111	100,579,000	33,330,714
Average—All Small Businesses in NAICS Code	3.3 million	0.9 million	9.4 million	18.3 million	4.1 million
Average—All Businesses in NAICS Code	4.9 million	1.1 million	10.1 million	29.1 million	6.0 million

Today's proposed rule would require that users use nPB that contains no more than 0.05% iPB by weight. Most chemical manufacturers and solvent formulators already make products that meet this requirement. Some users of adhesives containing nPB use formulations that do not meet the proposed limit on iPB content. These users may need to purchase a more expensive grade of nPB-based adhesives that contains less iPB. Many users of adhesives containing nPB are small businesses that fabricate foam to be used in cushions for furniture.

If the requirements of today's proposed rule were to be finalized, we estimate that between 0 and 13 small businesses using nPB-based adhesives, or less than 5% of the 280 or so small businesses that use nPB-based adhesives, would experience a cost increase (*i.e.*, an impact) of greater than 1.0% of annual sales. Because solvent and aerosol solvent formulations of nPB already contain less than 0.05% iPB by weight, there were no impacts on end users in the non-aerosol solvent cleaning sector and aerosol solvents end use; only the 0 to 13 adhesive end users experienced a significant impact. An even smaller percentage of all 7330 or so small businesses choosing to use nPB would experience an impact of greater than 1.0% of annual sales. In addition, we estimate that no small businesses would experience an impact of greater than 3.0% of annual sales. We conclude that no small business subject to today's rule would go out of business as a result of the rule's requirements, if they were to become final. Because of the small total number and small percentage of affected businesses that would experience an impact of greater than either 1.0% or 3.0% of annual sales, EPA does not consider this rule to have a significant impact on a substantial number of small businesses.

The recommended acceptable exposure limit is only a recommendation and not an enforceable requirement of today's rule, and thus, EPA is not required to analyze the cost associated with implementing the recommended exposure limit. Nevertheless, the Agency did analyze the cost impacts of the combination of implementing the exposure limit and complying with the regulatory use condition in order to provide additional information about potential effects on small businesses. We found that, when the costs to comply with the regulatory use condition and to implement the recommended acceptable exposure limit are considered together, at most 47 small businesses choosing to use nPB would experience an impact of greater

than 1.0% of annual sales, and none would experience an impact of greater than 3.0% of annual sales. All of the small businesses that would experience significant impacts are users of nPB-based adhesives. Thus, slightly less than 17% of the 280 or so small businesses choosing to use nPB-based adhesives would experience significant impacts, and less than 1% of all 7330 or so small businesses choosing to use nPB would experience significant impacts. Based on the relatively small number and percentage of small businesses that would experience significant impacts, EPA concludes that even if costs of implementing the recommended exposure limit were considered together with costs of complying with the regulatory use condition, today's rule would not have a significant impact on a substantial number of small entities.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. Before selecting the regulatory options proposed today, we considered a number of regulatory options that would have had greater impacts on small businesses, such as:

- Finding nPB unacceptable for use in adhesives. This approach would require hundreds of small businesses to use other types of adhesives, with no option to improve ventilation to reduce worker exposure. Although small businesses could potentially save money by using a less expensive adhesive, such as a flammable adhesive, the capital costs of fire-proofing currently discourage small businesses from using inexpensive flammable adhesives. In addition, requirements of the Federal Aviation Administration for aircraft seating cushions effectively require either using nPB-based or methylene chloride-based adhesive or receiving a special waiver from the Administration. Recent regulations for hazardous air pollutants disallow use of methylene chloride in foam fabrication facilities. Thus, it is useful for adhesive users to have the option of nPB-based adhesives.
- Placing a narrowed use limit on the use of nPB in adhesives that would allow its use only in those cases where alternatives are technically infeasible due to performance or safety issues.
- Requiring that users clean metal, electronics, or other parts with nPB in vapor degreasing equipment that meets the requirements of the national emission standards for halogenated solvent cleaning.

In developing our regulatory options, we considered information we learned from contacting small businesses using or selling nPB. EPA staff visited the site of a small business using nPB for cleaning electronics. We contacted several fabricators of foam cushions that have used adhesives containing nPB. We participated in meetings with a number of adhesive manufacturers and users of adhesives in furniture construction. We have developed a fact sheet and have updated our program web site to inform small businesses about this proposed rule and to request their comments. We continue to be interested in the potential impacts of the proposed rule on small entities and request comments on issues related to such impacts.

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 rules 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 one 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. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's proposed rule does not affect State, local, or tribal governments. The enforceable requirements of the rule for the private sector affect only a small number of manufacturers and importers of nPB in the United States, and most of them already claim to meet the proposed standard prior to regulation. Therefore, the impact of this rule on the private sector is less than $100 million per year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This regulation applies directly to facilities that use these substances and not to governmental entities.

E. Executive Order 13132: Federalism

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

This proposed 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. This regulation applies directly to facilities that use these substances and not to governmental entities. Thus, Executive Order 13132 does 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.'' ''Policies that have tribal

implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed 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.

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments, because this regulation applies directly to facilities that use these substances and not to governmental entities. Thus, Executive Order 13175 does not apply to this proposed rule.

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

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The exposure limits and acceptability listings in this proposed rule apply to the workplace. These are areas where we expect adults are more likely to be present than children, and thus, the agents do not put children at risk disproportionately.

Further, today's proposed rule provides both regulatory restrictions and recommended exposure guidelines based upon toxicological studies in order to reduce risk of exposure to reproductive toxins, both iPB and nPB. This rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assessed results of early life exposure to nPB or iPB.

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

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action would impact manufacturing of various metal, electronic, medical, and optical products cleaned with solvents containing nPB and products made with adhesives containing nPB. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking involves technical standards since EPA is proposing to limit the amount of iPB as a contaminant of nPB formulations to 0.05%, which is lower than the 0.1% limit set by the ASTM standard for vapor degreasing grade and general grade nPB. Based on the relatively potent toxicity of iPB (see discussion in section IV.A.4 of the preamble), EPA believes it is prudent to reduce the level of iPB to 0.05% to protect worker health. EPA has consulted with producers and formulators of nPB products, and all have stated that an iPB limit of 0.05% is achievable. EPA requests comment on this aspect of the proposed rulemaking and, specifically, invites the public to comment on the level of iPB contamination that EPA should set, and to explain why such limits should be set in this regulation.

XI. References

The documents below are referenced in the preamble. All documents are located in the Air Docket at the address listed in section I.B.1 at the beginning of this document. Unless specified otherwise, all documents are available in hard copy in docket number A–2001–07 (legacy docket number for Docket ID No. OAR–2002–0064). Numbers listed after the reference indicate the item number within the docket.

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List of Subjects in 40 CFR Part 82

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

Dated: May 21, 2003.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, 40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Subpart G is amended by adding the following appendix M to read as follows:

Subpart G—Significant New Alternatives Policy Program

* * * * *

Appendix M to Subpart G—Substitutes Subject to Use Restrictions and Unacceptable Substitutes Listed in the [publication date of final rule] final rule

SOLVENT CLEANING SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS

End use	Substitute	Decision	Use condition	Further information
Metals cleaning	n-propyl bromide (nPB) as a substitute for CFC–113 and methyl chloroform.	Acceptable subject to use conditions.	nPB in this end use shall not contain more than 0.05% isopropyl bromide by weight before adding stabilizers or other chemicals. End users must keep records documenting compliance with this condition for up to two years from the date on the documentation.	EPA expects that all users of nPB will adhere to a voluntary acceptable exposure limit of 25 ppm on an 8-hour time-weighted average. nPB is Number 106–94–5 in the CAS Registry.
Electronics cleaning.	nPB as a substitute for CFC–113 and methyl chloroform.	Acceptable subject to use conditions	nPB in this end use shall not contain more than 0.05% isopropyl bromide by weight before adding stabilizers or other chemicals. End users must keep records documenting compliance with this condition for up to two years from the date on the documentation.	EPA expects that all users of nPB will adhere to a voluntary acceptable exposure limit of 25 ppm on an 8-hour time-weighted average. nPB is Number 106–94–5 in the CAS Registry.
Precision cleaning	nPB as a substitute for CFC–113 and methyl chloroform.	Acceptable subject to use conditions.	nPB in this end use shall not contain more than 0.05% isopropyl bromide by weight before adding stabilizers or other chemicals. End users must keep records documenting compliance with this condition for up to two years from the date on the documentation.	EPA expects that all users of nPB will adhere to a voluntary acceptable exposure limit of 25 ppm on an 8-hour time-weighted average. nPB is Number 106–94–5 in the CAS Registry.

Note: In accordance with the limitations provided in section 310(a) of the Clean Air Act (42 U.S.C. 7610(a)), nothing in this appendix shall affect the Occupational Safety and Health Administration's authority to enforce standards and other requirements under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*)

AEROSOLS SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS

End use	Substitute	Decision	Use condition	Further information
Aerosol solvents ...	n-propyl bromide (nPB) as a substitute for CFC–113, HCFC–141b, and methyl chloroform.	Acceptable subject to use conditions.	nPB in this end shall not contain more than 0.05% isopropyl bromide by weight before adding stabilizers or other chemicals. End users must keep records documenting compliance with this condition for up to two years from the date on the documentation.	EPA expects that all users of nPB will adhere to a voluntary acceptable exposure limit of 25 ppm on an 8-hour time-weighted average. nPB is Number 106–94–5 in the CAS Registry.

Note: In accordance with the limitations provided in section 310(a) of the Clean Air Act (42 U.S.C. 7610(a)), nothing in this appendix shall affect the Occupational Safety and Health Administration's authority to enforce standards and other requirements under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*)

ADHESIVES, COATINGS, AND INKS SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS

End use	Substitute	Decision	Use Condition	Further information
Adhesives	n-propyl bromide (nPB) as a substitute for CFC–113, HCFC–141b, and methyl chloroform.	Acceptable subject to use conditions.	nPB in this end use shall not contain more than 0.05% isopropyl bromide by weight before adding stabilizers or other chemicals. End users must keep records documenting compliance with this condition for up to two years from the date on the documentation.	EPA expects that all users of nPB will adhere to a voluntary acceptable exposure limit of 25 ppm on an 8-hour time-weighted average. nPB is Number 106–94–5 in the CAS Registry.

Note: In accordance with the limitations provided in section 310(a) of the Clean Air Act (42 U.S.C. 7610(a)), nothing in this appendix shall affect the Occupational Safety and Health Administration's authority to enforce standards and other requirements under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*)

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Federal Register

Tuesday,
June 3, 2003

Part IV

Department of Education

Community Technology Centers Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.341]

Community Technology Centers Program

AGENCY: Office of Vocational and Adult Education, U.S. Department of Education.

ACTION: Notice of final priorities, program requirements, and selection criteria for Fiscal Year (FY) 2003.

SUMMARY: The Assistant Secretary for Vocational and Adult Education has established priorities, selection criteria, and program requirements under the Community Technology Centers (CTC) program. The Assistant Secretary will use these priorities, selection criteria, and program requirements for competitions in FY 2003. The Department takes this action to target Federal resources on improving the academic achievement of low-achieving students enrolled in, or entering, grades 9 through 12 at low-performing secondary schools. The Department intends the priorities, selection criteria, and program requirements to support the goal of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), that all students will attain, at a minimum, proficiency on challenging State academic achievement standards and State academic assessments, particularly in the core academic subjects of reading or language arts, and mathematics.

EFFECTIVE DATE: These priorities, program requirements, and selection criteria are effective May 30, 2003.

FOR FURTHER INFORMATION CONTACT: If you have questions pertaining to the application, need further assistance, or need to speak with someone in the CTC program, you may contact Gisela Harkin, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW., Mary E. Switzer Building, Room 4324, Washington, DC 20202 7100, Telephone: (202) 205–4238 or via e-mail: *commtech.center@ed.gov.* Please type ''CTC Notice Correspondence'' as the subject line of your electronic message.

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

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Note: This notice does not solicit applications. A notice inviting applications under this competition is published elsewhere in this issue of the **Federal Register**. The notice inviting applications specifies the deadline date by which applications for an award must be received or hand-delivered to the Department if a waiver to the electronic submission requirement is granted.

SUPPLEMENTARY INFORMATION:

General

As authorized by Title V, Part D, Subpart 11, Section 5511–13 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act (NCLB) of 2001, the purpose of the CTC Program is to assist eligible applicants to create or expand community technology centers that will provide disadvantaged residents of economically distressed urban and rural communities with access to information technology and related training. Eligible applicants are community-based organizations (including faith-based organizations), State and local educational agencies, institutions of higher education, and other entities such as foundations, libraries, museums, public and private nonprofit organizations, and for-profit businesses, or consortia thereof. To be eligible, an applicant must also have the capacity to significantly expand access to computers and related services for disadvantaged residents of economically distressed urban and rural communities who would otherwise be denied such access.

The focus of the CTC program competition has changed to give absolute priority to those applicants who will focus on improving the academic achievement of low-achieving high school students while continuing to provide a community technology center for all members of their community. Thus, grant recipients must meet this priority as they use grant funds to create or expand community technology centers that expand access to information technology and related training for disadvantaged residents of distressed urban or rural communities and to evaluate the effectiveness of their projects. Funds may be used to provide services and activities that use technology to improve academic achievement, such as academic enrichment activities for children and youth, career development, adult education, and English language instruction for individuals with limited English proficiency. Other authorized activities include, among other things, support for personnel, equipment, networking capabilities, and other infrastructure costs. No funds may be used for construction.

Improving the academic achievement of our nation's secondary school students has become an urgent need. Current National Assessment of Educational Progress (NAEP) data indicate that, despite some slow and steady progress in secondary student achievement over the past few decades, many of our nation's secondary students are still not attaining the academic skills and knowledge required for graduation, postsecondary education, or careers. This is particularly true among students who are entering secondary school, with two in ten scoring below basic levels in reading, over three in ten scoring below basic levels in math, and four in ten scoring below basic levels in science. Moreover, as students move through secondary school, their academic progress wanes. Except in the area of science, students actually make greater academic gains between grades 4 and 8 than between grades 8 and 12.

To support the goal of the NCLB that all students attain proficiency in challenging State academic achievement standards, the Assistant Secretary has established priorities, selection criteria, and program requirements for the CTC program that will focus program resources on providing effective supplemental instruction to low-achieving students who are entering or enrolled in grades 9 through 12 at high-poverty, low-performing secondary schools.

Application Procedures

The Government Paperwork Elimination Act (GPEA) of 1998 (Public Law 105–277) and the Federal Financial Assistance Management Improvement Act of 1999 (Public Law 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, the Department is taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our processes.

The Department is requiring that applications for the FY 2003 Community Technology Centers program competition be submitted electronically using e-Application through the U.S. Department of Education's e-GRANTS system. The e-GRANTS system is accessible through its portal page at *http://e-grants.ed.gov.*

Applicants who are unable to submit an application through the e-GRANTS systems may apply for a waiver to the

electronic submission requirement. To apply for a waiver, applicants must explain the reason(s) that prevent(s) them from using the Internet to submit their applications. The reason(s) must be outlined in a letter addressed to: Gisela Harkin, U.S. Department of Education, Office of Vocational and Adult Education, 330 ''C'' Street, S.W., Washington, D.C., 20202–7100. Please mark your envelope ''CTC competition waiver request.'' The letter requesting the waiver is to be submitted no later than two (2) weeks before the deadline for transmittal of applications; last minute requests will not be considered.

Any application that receives a waiver to the electronic submission requirement will be given the same consideration in the review process as an electronic application.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula programs and additional discretionary grant competitions. The Community Technology Centers (CTC) program (CFDA 84.341) is one of the programs included in the pilot project. If you are an applicant under the CTC Program, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of the Electronic Grant Application System (e-Application, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We shall continue to evaluate its success and solicit suggestions for improvement.

Please note the following:

—Do not wait until the deadline date for the transmittal of applications to submit your application electronically. If you wait until the deadline date to submit your application electronically and you are unable to access the e-Application system, you must contact the Help Desk by 4:30 p.m. EST on the deadline date.

—Keep in mind that e-Applications is not operational 24 hours a day, 7 days a week. Click on ''Hours of Web Site Operation'' for specific hours of access during the week.

—You will have access to the e-Application Help Desk for technical support: 1(888)336–8930 (TTY: 1[866]697–2696, local [202]401–8363). The Help Desk hours of operation are limited to 8 a.m.–6 p.m. EST Monday through Friday.

You must submit all documents electronically, including the Application for Federal Education Assistance (ED424), Budget Information—Non-Construction Programs (ED524), and assurances, certifications, and appendices, as appropriate.

—After you electronically submit your application, you will receive an acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

—Within three (3) working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED424) to the Application Control Center after following these steps:

(1) Print the ED424 from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED424.

(4) Fax the signed ED424 to the Application Control Center at (202) 260–1349.

—The Department may request that you give us original signatures on all other forms at a later date.

Closing Date Extension in Case of System Unavailability

If you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one (1) business day in order to transmit your application electronically, by mail, or by hand delivery.

For us to grant this extension:

(1) You must be a registered user of e-Application and have initiated an e-Application for this competition; and (2)(A) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m. EST, on the deadline date; or (B) The e-APPLICATION system must be unavailable for any period of time during the last hours of operation (that is, for any period of time between 3:30 and 4:30 p.m. EST) on the deadline date. The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension, you must contact the e-Grants Help Desk at 1(888) 336–8930.

You may access the electronic grant application for CFDA No. 84.341 at *http://e-grants.ed.gov*.

Page Limit: The application narrative (Part VI of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part VI to the equivalent of no more than 25 pages, using the following standards:

• A ''page'' is 8.5″ x 11″ on one side only, with 1'' margins on the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

In addition, you must limit Part VII (budget narrative) to four (4) pages and Part X (Appendices) to 15 pages, using the aforementioned standards. We will reject your application if:

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

Scoring of Applications

Applications received under this notice will be screened for eligibility and scored according to the criteria that follow in this notice. Each application under this competition must meet Absolute Priority 1 and Absolute Priority 2 in order to be eligible for funding. An application that does not meet both priorities will not be evaluated and scored under the selection criteria, which are the same for both competitions. Once eligibility is established, each application may earn up to 100 points under the selection criteria. In addition, each application may earn up to an additional five (5) points for satisfying the competitive preference priority. The highest possible score is 105 points.

Waiver of Rulemaking

It is the Secretary's practice, in accordance with the Administrative Procedure Act (5 U.S.C. 553), to offer interested parties the opportunity to comment on proposed rules that are not taken directly from statute. Ordinarily, this practice would have applied to the priorities and requirements of this notice. However, section 437(d)(2) of the General Education Provisions Act (GEPA) exempts from this requirement rules that would cause extreme hardship to the intended beneficiaries of the program that would be affected by those rules. In accordance with section 437(d)(2) of GEPA, the Secretary has decided to forgo public comment with respect to the rules in this grant competition in order to ensure timely and high-quality awards. The rules

established in this notice apply only to the FY 2003 grant competition.

Discussion of Priorities

When inviting applications, we designate each priority as absolute or competitive preference. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Priorities: Applicants must meet both Absolute Priority 1 and Absolute Priority 2 to be considered for funding under this notice. Eligible applicants may be either State or local entities.

Absolute Priority 1: Each application must be submitted by an eligible applicant. In addition, each proposed project must include a partnership with a community-based organization and a local educational agency (or school). The application must clearly identify the partnering agencies and must include a detailed plan of their working relationship. Thus, under 34 CFR 75.105(c)(3), the Secretary gives an absolute priority to projects in which the delivery of instructional services includes:

1. a Community-Based Organization (CBO), which may include a faith-based organization, and
2. a Local Educational Agency (LEA) (or school, including private, non-profit schools).

A CBO is not required to submit a joint application with an LEA or school when applying for funds; however, the proposed project must deliver the educational services in partnership with an LEA (or school).

Likewise, an LEA is not required to submit a joint application with a CBO when applying for funds; however, the proposed project must deliver the educational services in partnership with a CBO.

Applicants who are neither CBOs nor LEAs must enter into a partnership that includes a CBO and an LEA (or school) in the delivery of educational services.

The Secretary has determined that the participation of both CBOs and LEAs (or schools) is critical to the success of the projects that will be funded in this competition. Many academic support programs for adolescents report that securing and maintaining a high level of student participation can be challenging. Involving CBOs in service delivery will help projects better master this challenge, such as by providing expanded outreach and support to students, joint programming, or alternative service sites that are in or near the neighborhoods where students live. Community-based and faith-based partners bring other important resources to the table as well, such as assistance in recruiting staff and volunteers. LEAs (or schools) are essential partners as well. Their involvement is needed to identify the students who are most in need of academic support and to ensure that the project's curriculum, assessment, and instructional practices are consistent with those of the schools the students attend.

Applications that do not show evidence of a partnership with a CBO and an LEA (or school) will be ineligible for funding.

Note: Applicants should bear in mind that LEAs are eligible applicants, but individual schools are not eligible applicants.

Absolute Priority 2: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute priority to projects that meet the following criteria:

Applicants in this program must state whether they are proposing a local or State project. A local project must include one or more CTCs; a State project must include two or more CTCs. In addition, the project must be carried out by or in partnership with one or more LEAs or secondary schools that provide supplementary instruction in the core academic subjects of reading or language arts, or mathematics, to low-achieving secondary school students. Projects must serve students who are entering or enrolled in grades 9 through 12 and who have academic skills significantly below grade level, or who have not attained proficiency on State academic assessments as established by NCLB. Supplementary instruction may be delivered before or after school or at other times when school is not in session. Instruction may also be provided while school is in session, provided that it increases the amount of time students receive instruction in core academic subjects and does not require their removal from regular academic classes. The instructional strategies used must be based on practices that have proven effective for improving the academic performance of low-achieving students. If these services are not provided directly by an LEA, they must be provided in partnership with an LEA or secondary school.

Competitive Preference Priority—Low-Performing Secondary Schools

In addition to the points to be awarded under the selection criteria, the Secretary awards up to five (5) additional points to projects that serve students in secondary schools that have not met adequate yearly progress for two (2) or more consecutive years.

Selection Criteria

The following selection criteria will be used to evaluate applications submitted for grants. Please note:

(1) The maximum score is 105 points. Up to 100 points will be awarded in response to the selection criteria listed below. A maximum of 5 additional points may be awarded to those applicants that respond to the competitive preference priority described earlier in the notice.

(2) The maximum score for each criterion is indicated in parentheses.

(a) *Need for the Project (10 points):*

In evaluating the need for the proposed project, we consider the extent to which the proposed project will:

(1) Serve students from low-income families;

(2) Serve students entering or enrolled in secondary schools that are among the secondary schools in the State that have the highest numbers or percentages of students who have not achieved proficiency on the State academic assessments required by Title I of ESEA, or who have academic skills in reading or language arts, or mathematics, that are significantly below grade level;

(3) Serve students who have the greatest need for supplementary instruction, as indicated by their scores on State or local standardized assessments in reading or language arts, or mathematics, or some other local measure of performance in reading or language arts, or mathematics; and

(4) Create or expand access to information technology and related training for disadvantaged residents of distressed urban or rural communities.

(b) *Quality of the Project Design (35 points):*

In evaluating the quality of the proposed project, we consider the extent to which the proposed project will:

(1) Provide instructional services that will be of sufficient size, scope, and intensity to improve the academic performance of participating students;

(2) Incorporate strategies that have proven effective for improving the academic performance of low-achieving students;

(3) Implement strategies in recruiting and retaining students that are likely to prove effective;

(4) Provide instruction that is aligned with the secondary school curricula of the schools in which the students to be served by the grant are entering or enrolled, and supports the efforts of the State or LEA to improve the academic achievement of these students; and

(5) Provide high-quality, sustained, and intensive professional development for personnel who provide instruction to students.

(c) *Quality of the Management Plan (15 points):*

In evaluating the quality of the management plan, we consider the extent to which the proposed project:

(1) Outlines specific, measurable goals, objectives, and outcomes to be achieved by the proposed project;

(2) Assigns responsibility for the accomplishment of project tasks to specific project personnel, and provides timelines for the accomplishment of project tasks;

(3) Requires appropriate and adequate time commitments of the project director and other key personnel to achieve the objectives of the proposed project; and

(4) Includes key project personnel, including the project director, teachers, counselors, and administrators, with appropriate qualifications and relevant training and experience.

(d) *Adequacy of Resources (20 points):*

In determining the adequacy of resources for the proposed project, we consider the following factors:

(1) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant;

(2) The extent to which a preponderance of project resources will be used for activities designed to improve the academic performance of low-achieving students in reading or language arts, and/or mathematics;

(3) The extent to which the budget is adequate and costs are reasonable in relation to the objectives and design of the proposed project; and

(4) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(e) *Quality of the Evaluation (20 points):*

In determining the quality of the evaluation, we consider the extent to which the proposed project:

(1) Includes a plan that utilizes evaluation methods that are feasible and appropriate to the goals and outcomes of the project;

(2) Will regularly examine the progress and outcomes of participating students on a range of appropriate performance measures, including their performance on State or local standardized academic assessments;

(3) Will use an independent, external evaluator with the necessary background and technical expertise to assess the performance of the project; and

(4) Effectively demonstrates that the applicant has adopted a rigorous evaluation design.

Program Requirements

Project Period: 12 months.

Range of Awards: $300,000–$500,000. Applicants who request more than $500,000 will be ineligible for funding.

Matching Requirement: Pursuant to Section 5512(c) of ESEA, as amended by NCLB, Federal funds may not pay for more than 50 percent of total project costs. In order to apply for and receive a grant award under this competition, each applicant must furnish from nonfederal sources at least 50 percent of its total project costs. Applicants may satisfy this requirement in cash or in kind, fairly evaluated, including services.

Reporting Requirements: In accordance with Education Department General Administrative Regulations (EDGAR) cited elsewhere in this notice, grantees are required to submit to the Secretary a final performance report that:

(1) Summarizes project progress with respect to the specific, measurable goals, objectives, and outcomes proposed in the management plan;

(2) Summarizes project impact with respect to the achievement of participants, as measured by standardized State or local assessments;

(3) Identifies barriers to progress as well as solutions; and

(4) Provides information about the project's success in identifying funding to sustain its operations after the cessation of the grant.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened Federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

Applicable Program Regulations: 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 86, 97, 98 and 99.

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CFDA No. 84.341 Community Technology Centers Program

Program Authority: 20 U.S.C. 7263–7263b.

Dated: May 29, 2003.

Carol D'Amico,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 03–13834 Filed 6–2–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.341]

Community Technology Centers Program

AGENCY: Office of Vocational and Adult Education, U.S. Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2003.

Purpose of Program: As authorized by Title V, Part D, Subpart 11, Section 5511–13 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act (NCLB) of 2001, the purpose of the Community Technology Centers (CTC) program is to assist eligible applicants to create or expand community technology centers that will provide disadvantaged residents of economically distressed urban and rural communities with access to information technology and related training. Eligible applicants are community-based organizations (including faith-based organizations), State and local educational agencies, institutions of higher education, and other entities such as foundations, libraries, museums, public and private nonprofit organizations, and for-profit businesses, or consortia thereof. To be eligible, an

applicant must also have the capacity to expand significantly access to computers and related services for disadvantaged residents of economically distressed urban and rural communities who would otherwise be denied such access.

The focus of the CTC program competition has changed to give absolute priority to those applicants who will focus on improving the academic achievement of low-achieving high school students while continuing to provide a community technology center for all members of their community. Thus, grant recipients must meet this priority as they use grant funds to create or expand community technology centers that expand access to information technology and related training for disadvantaged residents of distressed urban or rural communities and evaluate the effectiveness of this project.

Eligible Applicants: Eligible applicants shall be an institution of higher education, a State Education Agency, a Local Educational Agency, an entity (such as a foundation, museum, library, for-profit business, public or private nonprofit organization, or community based organization, including faith based organizations), or a consortium thereof. In addition, eligible applicants shall have the capacity to significantly expand access to computers and related services for disadvantaged residents of economically distressed urban and rural communities who would otherwise be denied such access.

Applications Available: May 30, 2003.

Application Procedures

The Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, the Department is taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our processes.

The Department is requiring that applications for the FY 2003 Community Technology Centers Program competition for new awards be submitted electronically using e-APPLICATION through the U.S. Department of Education's e-GRANTS system. The e-GRANTS system is accessible through its portal page at *http://e-grants.ed.gov.*

Applicants who are unable to submit an application through the e-GRANTS systems may apply for a waiver to the electronic submission requirement. To apply for a waiver, applicants must explain the reason(s) that prevent(s) them from using the Internet to submit their applications. The reason(s) must be outlined in a letter addressed to: Gisela Harkin, U.S. Department of Education, Office of Vocational and Adult Education, 330 ''C'' Street, SW., Washington, DC 20202–7100. Please mark your envelope ''CTC competition waiver request.'' The letter requesting the waiver is to be submitted no later than two (2) weeks before the deadline for transmittal of applications; last minute requests will not be considered.

Any application that receives a waiver to the electronic submission requirement will be given the same consideration in the review process as an electronic application.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula programs and additional discretionary grant competitions. The Community Technology Centers (CTC) program (CFDA 84.341) is one of the programs included in the pilot project. If you are an applicant under the CTC program, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We shall continue to evaluate its success and solicit suggestions for improvement.

Please note the following:

—Do not wait until the deadline date for the transmittal of applications to submit your application electronically. If you wait until the deadline date to submit your application electronically and you are unable to access the e-APPLICATION system, you must contact the Help Desk by 4:30 p.m. EST on the deadline date.

—Keep in mind that e-APPLICATIONS is not operational 24 hours a day, 7 days a week. Click on ''Hours of Web Site Operation'' for specific hours of access during the week.

—You will have access to the e-APPLICATION Help Desk for technical support: 1 (888) 336–8930 (TTY: 1–[866] 697–2696, local [202] 401–8363). The Help Desk hours of operation are limited to 8 a.m.–6 p.m. EST Monday through Friday.

You must submit all documents electronically, including the Application for Federal Education Assistance (ED424), Budget Information—Non-Construction Programs (ED524), and assurances, certifications, and appendices, as appropriate.

—After you electronically submit your application, you will receive an acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

—Within three (3) working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED424) to the Application Control Center after following these steps: (1) Print the ED424 from the e-Application system. (2) The institution's Authorizing Representative must sign this form. (3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED424. (4) Fax the signed ED424 to the Application Control Center at (202) 260–1349.

—The Department may request that you give us original signatures on all other forms at a later date.

Closing Date Extension in Case of System Unavailability

If you are prevented from submitting an application on the closing date because the e-APPLICATION system is unavailable, we will grant you an extension of one (1) business day in order to transmit your application electronically, by mail, or by hand delivery.

For us to grant this extension:

(1) You must be a registered user of e-APPLICATION and have initiated an e-APPLICATION for this competition; and

(2) (a) The e-APPLICATION system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m. EST, on the deadline date; or

(b) The e-APPLICATION system must be unavailable for any period of time during the last hours of operation (that is, for any period of time between 3:30 and 4:30 p.m. EST) on the deadline date. The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension, you must contact the e-Grants Help Desk at 1 (888) 336–8930.

You may access the electronic grant application for CFDA No. 84.341 at *http://e-grants.ed.gov.*

Page Limit: The application narrative (Part VI of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part VI to the equivalent of no more than 25 pages, using the following standards:

- A ''page'' is 8.5″ x 11″ on one side only, with 1″ margins on the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

In addition, you must limit Part VII (budget narrative) to four (4) pages and Part X (Appendices) to 15 pages, using the aforementioned standards. We will reject your application if you:

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Deadline for Transmittal of Applications: June 30, 2003.

Deadline for Intergovernmental Review: August 29, 2003.

Estimated Available Funds: $24,318,750. Note: Under 34 CFR 75.225(c)(1), the Department will conduct a separate competition for an estimated $8,106,250 in additional available funds. Only a ''novice applicant,'' as that term is defined in 34 CFR 75.225(a–b), may apply for funds in that competition.

Range of Awards: $300,000–$500,000.

In previous grant competitions, applicants have routinely requested more money than the above award ranges dictate. As a result, plans submitted to the Department have included any number of activities that could only be made possible if an applicant received a funding amount much higher than intended in the award range. Based on this experience, the Department will fund only those applications that correctly request funds within the award range specified in this notice. Therefore, applicants who request more than $500,000 will be declared ineligible and will not receive funding.

Note: The size of awards will be based on a number of factors. These factors will include the scope, quality, and comprehensiveness of the proposed program, and the recommended range of awards indicated above.

Matching Requirement: Pursuant to section 5512(c) of ESEA, as amended by NCLB, Federal funds may not pay for more than 50 percent of total project costs. In order to apply for and receive a grant award under this competition, each applicant must furnish from nonfederal sources at last 50 percent of its total project costs. Applicants may satisfy this requirement in cash or in kind, fairly evaluated, including services.

Note: The U.S. Department of Education is not bound by any estimates in this notice.

Project Period: 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 86, 97, 98 and 99 and (b) the regulations in the notice of final priorities, application requirements, and selection criteria for FY 2003 as published elsewhere in this issue of the **Federal Register**.

Priorities: This competition gives absolute and competitive priorities to applicants that meet the conditions outlined in the Notice of Final Priorities for this program, which is published elsewhere in this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: If you need further assistance and need to speak with someone in the CTC program, you may contact Gisela Harkin by phone at (202) 205–4238, by mail at 330 C Street, SW., Room 4324, Washington, DC 20202, or via e-mail at commtech.center@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed in the preceding paragraph.

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Program Authority: 20 U.S.C. 7263–7263b.

Dated: May 29, 2003.

Carol D'Amico,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 03–13835 Filed 6–2–03; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Tuesday,
June 3, 2003

Part V

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 31 and 52

Federal Acquisition Regulation; Deferred Compensation and Postretirement Benefits Other Than Pensions; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31 and 52

[FAR Case 2001–031]

RIN 9000–AJ67

Federal Acquisition Regulation; Deferred Compensation and Postretirement Benefits Other Than Pensions

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) by revising the paragraphs of the ''compensation for personal services'' cost principle relating to deferred compensation and postretirement benefits other than pensions.

DATES: Interested parties should submit comments in writing on or before August 4, 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.2001–031@gsa.gov.*

Please submit comments only and cite FAR case 2001–031 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, Procurement Analyst, at (202) 501-0650. Please cite FAR case 2001–031.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils propose the following changes:

1. FAR 31.205–6, at paragraph (k), Deferred compensation other than pensions, amend the cost principle by—

a. Deleting the first two sentences of paragraph (k)(l) which duplicate the definition of deferred compensation at FAR 31.001, the third sentence of paragraph (k)(l) which duplicates requirements at FAR 31.205–6(a), and paragraph (k)(3) which is obsolete;

b. Moving the fourth sentence of paragraph (k)(l) to (k)(2); and

c. Changing the phrase ''measured, allocated, and accounted for'' in paragraph (k)(2) to ''measured, assigned, and allocated'' to be consistent with the language used in cost accounting standards; and

d. Making related editorial changes.

2. FAR 31.205–6, at paragraph (o), Postretirement benefits other than pensions, amend the cost principle by—

a. Moving (and revising) the language in paragraphs (o)(3) through (o)(5) to paragraph (o)(2)(iii) because these requirements only apply to accrual costing other than terminal funding;

b. Adding language to the current paragraph (o)(6) (new paragraph (o)(3)) specifying how the contractor must handle refunds and credits; and

c. Making related 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 principle 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 Parts 31 and 52 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 2001–031), 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 Parts 31 and 52

Government procurement.

Dated: May 28, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 31 and 52 as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR parts 31 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).

2. Amend section 31.205–6 by revising paragraphs (k) and (o) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(k) *Deferred compensation other than pensions.* The costs of deferred compensation awards are allowable subject to the following limitations:

(1) The costs shall be measured, assigned, and allocated in accordance with 48 CFR 9904.415, Accounting for the Cost of Deferred Compensation.

(2) The costs of deferred compensation awards are unallowable if the awards are made in periods subsequent to the period when the work being remunerated was performed.

* * * * *

(o) *Postretirement benefits other than pensions (PRB).* (1) PRB covers all benefits, other than cash benefits and life insurance benefits paid by pension plans, provided to employees, their beneficiaries, and covered dependents during the period following the employees' retirement. Benefits encompassed include, but are not limited to, postretirement health care; life insurance provided outside a pension plan; and other welfare benefits such as tuition assistance, day care, legal services, and housing subsidies provided after retirement

(2) To be allowable, PRB costs shall be incurred pursuant to law, employer-employee agreement, or an established policy of the contractor, and shall comply with paragraph (o)(2)(i), (ii), or (iii) of this subsection.

(i) *Cash basis.* Costs recognized as benefits when they are actually provided, must be paid to an insurer, provider, or other recipient for current year benefits or premiums.

(ii) *Terminal funding.* If a contractor uses terminal funding the contractor shall—

(A) Accrue and pay the entire PRB liability to an insurer or trustee in a lump sum payment upon the termination of employees (or upon conversion to such a terminal-funded plan) to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees; and

(B) Amortize the lump sum over a period of 15 years.

(iii) *Accrual basis.* If a contractor uses accrual costing other than terminal funding, the PRB costs shall be—

(A) Measured and assigned in accordance with generally accepted accounting principles. However, the portion of PRB costs attributable to past service (''transition obligation'') as defined in Financial Accounting Standards Board Statement 106, paragraph 110, cannot exceed the amount assignable under the delayed recognition methodology described in paragraphs 112 and 113 of Statement 106;

(B) Paid to an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees;

(C) Calculated in accordance with generally accepted actuarial principles and practices as promulgated by the Actuarial Standards Board; and

(D) Funded by the time set for filing the Federal income tax return or any extension. PRB costs assigned to the current year, but not funded or otherwise liquidated by the tax return time, are not allowable in any subsequent year. Increased PRB costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable.

(3) The Government shall receive an equitable share of any amount of previously funded PRB costs which revert or inure to the contractor. Such equitable share shall reflect the Government's previous participation in PRB costs through those contracts for which cost or pricing data were required or which were subject to subpart 31.2. The contractor shall credit the equitable share to the Government either as a cost reduction or by cash refund at the option of the Government.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Revise section 52.215–18 to read as follows:

52.215–18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.

As prescribed in 15.408(j), insert the following clause:

Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (Date)

The Contractor shall promptly notify the Contracting Officer in writing when the Contractor determines that it will terminate or reduce a PRB plan. If PRB fund assets revert or inure to the Contractor, or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government, at the option of the Government, for its equitable share as required by FAR 31.205–6(o)(3). The Contractor shall insert the substance of this clause in all subcontracts that meet the applicability requirements of FAR 15.408(j). (End of clause)

[FR Doc. 03–13859 Filed 6–2–03; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Tuesday,
June 3, 2003

Part VI

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 15

Federal Acquisition Regulation; Unsolicited Proposals; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAR Case 2002–027]

RIN 9000–AJ66

Federal Acquisition Regulation; Unsolicited Proposals

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) to implement Section 834 of the Homeland Security Act of 2002 (Public Law 107–296). Section 834 adds new considerations concerning the submission, receipt, evaluation, and acceptance or rejection of unsolicited proposals.

DATES: Interested parties should submit comments in writing on or before August 4, 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.2002–027@gsa.gov.*

Please submit comments only and cite FAR case 2002–027 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. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAR case 2002–027.

SUPPLEMENTARY INFORMATION:

A. Background

The rule amends the FAR to implement section 834 of the Homeland Security Act of 2002 (Pub. L. 107–296). Section 834 adds new considerations concerning the submission, receipt, evaluation, and acceptance or rejection of unsolicited proposals. The rule will require that a valid unsolicited proposal not address a previously published agency requirement. It also requires that, before initiating a comprehensive evaluation, the agency must determine that the proposal contains sufficient cost-related or price-related information for evaluation, and that it has overall scientific, technical, or socioeconomic merit.

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, while we have made changes in accordance with plain language guidelines, we have not substantively changed procedures for award and administration of contracts. 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 15 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 2002–027), 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 15

Government procurement.

Dated: May 29, 2003

Laura G. Smith,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 15 as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR part 15 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 15.603 by removing ''and'' from the end of paragraph (c)(4); removing the period from the end of paragraph (c)(5) and adding ''; and'' in its place; and adding a new paragraph (c)(6) to read as follows:

15.603 General.

* * * * *

(c) * * *

(6) Not address a previously published agency requirement.

* * * * *

3. In section 15.606–1, amend paragraph (a) by—

a. Revising paragraph (a)(4);

b. Redesignating paragraphs (a)(5) and (a)(6) as (a)(6) and (a)(7), respectively; and

c. Adding a new paragraph (a)(5). The revised and added text reads as follows:

15.606–1 Receipt and initial review.

(a) * * *

(4) Contains sufficient technical information and cost-related or price-related information for evaluation;

(5) Has overall scientific, technical, or socioeconomic merit;

* * * * *

[FR Doc. 03–13860 Filed 6–2–03; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Tuesday,
June 3, 2003

Part VII

Department of Education

Office of Innovation and Improvement; Parental Information and Resource Centers Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.310A]

Office of Innovation and Improvement; Parental Information and Resource Centers Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2003.

Purposes of Program: The Parental Information and Resource Centers (PIRC) program provides resources that eligible applicants can use in pursuit of the objectives of the No Child Left Behind (NCLB) Act, which provides resources to enable all elementary and secondary students to achieve to high standards and holds schools, local educational agencies, and States accountable for ensuring that they do so. In particular, this program provides an opportunity for eligible entities to focus on assisting the parents of children who attend schools identified for improvement, corrective action, or restructuring under Title I, Part A of the Elementary and Secondary Education Act (ESEA).

The PIRC program supports school-based and school-linked parental information and resource centers that—

(1) Help implement effective parental involvement policies, programs, and activities that will improve children's academic achievement;

(2) Develop and strengthen partnerships among parents (including parents of children from birth through age five), teachers, principals, administrators, and other school personnel in meeting the educational needs of children;

(3) Develop and strengthen the relationship between parents and their children's school;

(4) Further the developmental progress of children assisted under the program;

(5) Coordinate activities funded under the program with parental involvement initiatives funded under section 1118 and other provisions of the ESEA; and

(6) Provide a comprehensive approach to improving student learning, through coordination and integration of Federal, State, and local services and programs.

Eligible Applicants: Non-profit organizations, or consortia of non-profit organizations and local educational agencies (LEAs). LEAs alone are *not* eligible to apply for funding.

A ''non-profit organization'' is an organization whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity. Faith-based and community organizations are eligible to apply for funding provided that they are nonprofit organizations.

For purposes of the PIRC program, the term ''non-profit organization'' does *not* include institutions of higher education, State educational agencies, LEAs, intermediate school districts, schools, government entities, or hospitals.

Applications Available: June 3, 2003.

Deadline for Transmittal of Applications: July 18, 2003.

Deadline for Intergovernmental Review: September 16, 2003.

Notification of Intent to Apply for Funding: We will be able to develop a more efficient process for reviewing grant applications if we have a better understanding of the number of entities that intend to apply for funding. Therefore, we strongly encourage each potential applicant to send, by June 18, 2003, a notification of its intent to apply for funding to the following address: *patricia.kilby-robb@ed.gov*.

The notification of intent to apply for funding is *optional* and should not include information regarding the proposed application. Eligible applicants that fail to provide the notification may still submit an application by the application deadline.

Estimated Available Funds: $20.5 million.

Estimated Range of Awards: $200,000 to $700,000.

Estimated Average Size of Awards: $500,000.

Estimated Number of Awards: 40.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations and Statute: (a) *Regulations.* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 85, 97, 98, and 99. The regulations in 34 CFR Part 80 also apply to an LEA that is part of a consortium receiving assistance. (b) *Statute.* Sections 5561 to 5565 of the Elementary and Secondary Education Act as reauthorized by the No Child Left Behind Act of 2001.

Priority

Under 34 CFR 75.105(c)(2), we have established the following two competitive preferences for the FY 2003 PIRC competition:

(1) The Secretary will give up to 20 additional points to each applicant that proposes specific strategies to assist parents in understanding their State accountability system and the opportunities for supplemental services and public school choice afforded to their children under section 1116 of the ESEA. The Secretary believes that this competitive preference will increase the likelihood that the activities of the funded PIRCs will improve services to parents of students who are attending low-performing schools (the schools that are not making adequate academic progress), leading to enhancements in student academic achievement.

(2) The Secretary will give 10 additional points to each ''novice applicant''. For the purposes of this grant competition a novice applicant is an applicant that (1) has never received a grant under the PIRC program; (2) has never been a member of group application (submitted in accordance with 34 CFR 75.127–75.129) that received a grant under the PIRC program; and (3) has not had an active discretionary grant from the Federal Government in the five years before July 18, 2003.

These points will be in addition to any points the applicant earns under the selection criteria.

Performance Measures: The Secretary has established the following key performance measure for assessing the effectiveness of the PIRC program: the number of parents who receive the information necessary for them to understand their State accountability system and the opportunities for supplemental services and public school choice afforded to their children under section 1116 of the ESEA. The Secretary has set an overall performance target that calls for the number of parents receiving such information from PIRC projects to increase by five percent annually.

In applying the selection criteria that follow for the ''Quality of the project design'' and the ''Quality of the project evaluation'', the Secretary will take into consideration the extent to which the applicant demonstrates a strong capacity (1) to help achieve this nationwide target, and (2) to provide reliable data to the Department on the project's impact as measured by the number of parents participating in PIRC activities that are designed to provide parents with the information necessary for them to understand their State accountability system and the opportunities for supplemental services and public school choice afforded to their children under section 1116 of the ESEA.

Selection Criteria: We will use the following selection criteria and factors to evaluate applications under this competition.

The maximum score for all of the selection criteria is 100 points. The total

maximum score of an application is 130 points (100 points under the selection criteria and an additional 30 points under the competitive preferences).

The Secretary will use the following selection criteria to evaluate applications for PIRC projects under this competition:

(a) *Need for project* (15 points).

In determining the need for the proposed project, the Secretary considers the following factors:

(1) The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals; and

(2) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(b) *Quality of the project design* (25 points).

In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable;

(2) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs;

(3) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice;

(4) The extent to which the proposed project represents an exceptional approach to meeting statutory purposes and requirements; and

(5) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(c) *Quality of project services* (15 points).

In determining the quality of the services to be provided by the project, the Secretary considers the following factors:

(1) The likely impact of the services to be provided by the proposed project on the intended recipients of those services; and

(2) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(d) *Quality of project personnel* (10 points).

In determining the quality of project personnel, the Secretary considers the following factors:

(1) The qualifications, including relevant training and experience, of key personnel (including the project director); and

(2) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(e) *Adequacy of resources* (5 points).

In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(1) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization; and

(2) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(f) *Quality of management plan* (10 points).

In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks; and

(2) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(g) *Quality of the project evaluation* (20 points).

In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible; and

(2) The extent to which the methods of evaluation will provide for performance feedback and permit periodic assessment of progress toward achieving intended outcomes. *Waiver of Proposed Rulemaking:* It is the Secretary's practice, in accordance with the Administrative Procedure Act (5 U.S.C. 553) to offer interested parties the opportunity to comment on proposed rules that are not taken directly from statute. Ordinarily, this practice would have applied to the competitive priority and selection criteria in this notice. Section 437(d)(2) of the General Education Provisions Act (GEPA), however, exempts from this rulemaking requirement those rules where the Secretary determines it would cause extreme hardship to the intended beneficiaries of the program that would be affected by those rules. The Secretary, in accordance with section 437(d)(2) of GEPA, has decided to forgo public comment with respect to the competitive priority in this grant competition in order to ensure timely and high-quality awards. These rules will apply only to the FY 2003 grant competition.

FOR APPLICATIONS AND FURTHER INFORMATION CONTACT: Patricia Kilby-Robb, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E209, FOB–6, Washington, DC 20202–6254. Telephone: (202) 260–2225 or via Internet: *patricia.kilby-robb@ed.gov*.

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Program Authority: 20 U.S.C. 7273 *et seq.*

Dated: May 29, 2003.

Nina S. Rees,

Deputy Under Secretary for Innovation and Improvement.

[FR Doc. 03–13837 Filed 6–2–03; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Tuesday,
June 3, 2003

Part VIII

The President

Executive Order 13306—Establishing the Bob Hope American Patriot Award

Executive Order 13307—European Central Bank

Federal Register
Vol. 68, No. 106
Tuesday, June 3, 2003

Presidential Documents

Title 3—

The President

Executive Order 13306 of May 28, 2003

Establishing the Bob Hope American Patriot Award

By the authority vested in me as President and as Commander in Chief by the Constitution and the laws of the United States of America, it is ordered as follows:

Section 1. *Establishment of the Award.* In order to encourage love of country, service to the people of the United States, and support for our Armed Forces, and in order to recognize the unique and lifelong service of Bob Hope to the United States Armed Forces and to the Nation through his unwavering patriotism and dedication to maintaining the morale of the troops he entertained for nearly six decades, and on the occasion of his 100th birthday, there is hereby established the Bob Hope American Patriot Award (Award).

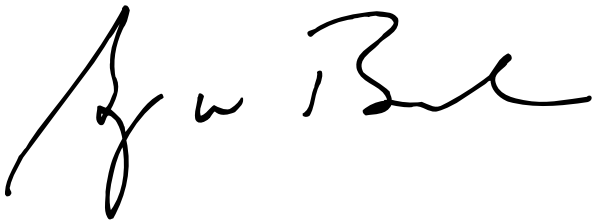
Sec. 2. *Granting and Presentation of the Award.*

(a) The Award may be granted by the President, in his sole discretion, to any civilian individual who has demonstrated extraordinary love of country and devotion to the personnel of the United States Armed Forces, in the form of true patriotism. The Award may also be granted by the President to an organization that meets the same criteria.

(b) Other than in exceptional circumstances, no more than one Award may be granted in any given year.

(c) The presentation of the Award may take place at any time during the year.

(d) Subject to the provisions of this order, the Award may be conferred posthumously.



THE WHITE HOUSE,
May 28, 2003.

[FR Doc. 03–14116
Filed 6–2–03; 9:30 am]
Billing code 3195–01–P

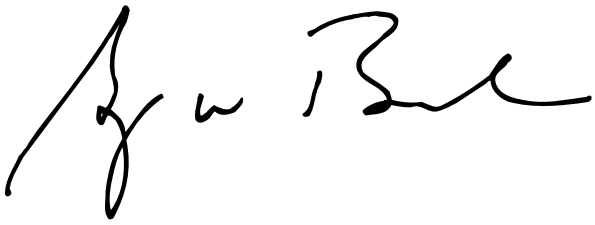
Presidential Documents

Executive Order 13307 of May 29, 2003

European Central Bank

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 1 and 15 of the International Organizations Immunities Act (22 U.S.C. 288 and 288f–5), I hereby extend to the European Central Bank the privileges, exemptions, and immunities provided to public international organizations designated by the President under the International Organizations Immunities Act.

This extension of such privileges, exemptions, and immunities is not intended to abridge in any respect privileges, exemptions, or immunities that the European Central Bank otherwise may have acquired or may acquire by international agreements or by law.



THE WHITE HOUSE,
May 29, 2003.

[FR Doc. 03–14117
Filed 6–2–03; 9:30 am]
Billing code 3195–01–P

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Federal Register

Vol. 68, No. 106

Tuesday June 3, 2003

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FEDERAL REGISTER PAGES AND DATE, JUNE

32623–32954 2
32955–33338 3

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

7 CFR
800 32623
Proposed Rules:
3560 32872

9 CFR
Proposed Rules:
93 33028

10 CFR
765 32955

12 CFR
703 32958
742 32958
1700 32627

14 CFR
39 ..... 32629, 32967, 32968
71 ..... 32633, 33231
97 32633
Proposed Rules:
39 ..... 32691, 32693, 32695, 33030

19 CFR
201 32081
204 32081
206 32081
207 32081
210 32081
212 32081

21 CFR
201 32979
349 32981
878 32983
888 32635

26 CFR
Proposed Rules:
157 32698
602 32698

27 CFR
Proposed Rules:
7 32698
25 32698

28 CFR
802 32985

29 CFR
1910 32637

30 CFR
Proposed Rules:
906 33032
934 33035
938 33037

31 CFR
1 32638

33 CFR
100 ..... 32639, 32641
117 32643
165 ..... 32643, 32996, 32998

38 CFR
Proposed Rules:
20 33040

40 CFR
52 ..... 32799, 33000, 33002, 33005, 33008, 33010, 33012, 33014, 33018
261 32645
Proposed Rules:
51 32802
52 ..... , 33041, 33042, 33043
82 33284

43 CFR
3800 32656

44 CFR
64 32657
65 ..... 32659, 32660
67 ..... 32664, 32669
Proposed Rules:
67 ..... 32699, 32717

47 CFR
2 ..... 32676, 33020
73 32676
74 32676
80 32676
87 32676
90 32676
95 32676
97 ..... 32676, 33020
Proposed Rules:
2 33043
15 32720
64 32720

48 CFR
2 33231
32 33231
52 33231
252 33026
Proposed Rules:
15 33330
31 33326
52 33326
206 33057

49 CFR

107.....32679
171.....32679
173.....32679
177.....32679
180.....32679

50 CFR

660.....32680

Proposed Rules:

17.....33058, 33234

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JUNE 03, 2003

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Payment limitations and eligibility:

Program participation; income limits; published 6-4-03

DEFENSE DEPARTMENT

Acquisition regulations:

Transportation of supplies by sea; commercial items; published 6-3-03

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Georgia; published 6-3-03

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

General Electric Co.; published 4-29-03

Pratt & Whitney; published 4-29-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Nectarines and peaches grown in—

California; comments due by 6-9-03; published 4-9-03 [FR 03-08650]

Onions (sweet) grown in—

Washington and Oregon; comments due by 6-9-03; published 4-9-03 [FR 03-08648]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Animal welfare:

Medical records maintenance; comments due by 6-10-03; published 4-11-03 [FR 03-08928]

Viruses, serums, toxins, etc.:

Veterinary biological products; actions by licensees and permitees to stop preparation, distribution, sale, etc.; comments due by 6-9-03; published 4-9-03 [FR 03-08599]

AGRICULTURE DEPARTMENT

Farm Service Agency

Special programs:

Farm Security and Rural Investment Act of 2002; implementation—

Loan eligibility provisions; comments due by 6-9-03; published 4-9-03 [FR 03-08646]

Minor Program loans; comments due by 6-9-03; published 4-9-03 [FR 03-08597]

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Program regulations:

Farm Security and Rural Investment Act of 2002; implementation—

Loan eligibility provisions; comments due by 6-9-03; published 4-9-03 [FR 03-08646]

Minor Program loans; comments due by 6-9-03; published 4-9-03 [FR 03-08597]

AGRICULTURE DEPARTMENT

Rural Housing Service

Program regulations:

Farm Security and Rural Investment Act of 2002; implementation—

Loan eligibility provisions; comments due by 6-9-03; published 4-9-03 [FR 03-08646]

Minor Program loans; comments due by 6-9-03; published 4-9-03 [FR 03-08597]

AGRICULTURE DEPARTMENT

Rural Utilities Service

Program regulations:

Farm Security and Rural Investment Act of 2002; implementation—

Loan eligibility provisions; comments due by 6-9-03; published 4-9-03 [FR 03-08646]

Minor Program loans; comments due by 6-9-03; published 4-9-03 [FR 03-08597]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Northeastern United States fisheries—

Northeast multispecies; comments due by 6-10-03; published 5-23-03 [FR 03-13013]

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; comments due by 6-13-03; published 5-16-03 [FR 03-12315]

DEFENSE DEPARTMENT

Acquisition regulations:

Tangible item marking and valuing; contractor possession of government property; comments due by 6-9-03; published 5-12-03 [FR 03-11726]

ENERGY DEPARTMENT

Polygraph Examination Regulations; counterintelligence polygraph program; comments due by 6-13-03; published 4-14-03 [FR 03-09009]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:

Federal operating permit programs—

California agricultural sources; fee payment deadlines; comments due by 6-12-03; published 5-13-03 [FR 03-11910]

California agricultural sources; fee payment deadlines; comments due by 6-12-03; published 5-13-03 [FR 03-11911]

Air pollution; standards of performance for new stationary sources:

Stationary gas turbines; comments due by 6-13-03; published 5-28-03 [FR 03-13416]

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Mississippi; comments due by 6-11-03; published 5-12-03 [FR 03-11751]

Air quality implementation plans; approval and promulgation; various States:

Illinois; comments due by 6-12-03; published 5-13-03 [FR 03-11749]

Hazardous wastes:

Identification and listing—

Hazardous waste mixtures; wastewater treatment exemptions (headworks exemptions); comments due by 6-9-03; published 4-8-03 [FR 03-08154]

Solid wastes:

Project XL (eXcellence and Leadership) program; site-specific projects—

Anne Arundel County Millersville Landfill, Severn, MD; comments due by 6-12-03; published 5-13-03 [FR 03-11909]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:

Current good manufacturing practice—

Dietary supplements and dietary supplement ingredients; comments due by 6-11-03; published 3-13-03 [FR 03-05401]

Human drugs and biological products:

Bar code label requirements; comments due by 6-12-03; published 3-14-03 [FR 03-05205]

HEALTH AND HUMAN SERVICES DEPARTMENT

Quarantine, inspection, and licensing:

Communicable diseases control—

Quarantine of persons believed to be infected with communicable diseases; comments due by 6-9-03; published 4-10-03 [FR 03-08736]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Anchorage regulations and ports and waterways safety:

Lake Michigan—

Chicago, IL; safety zone; comments due by 6-10-03; published 5-20-03 [FR 03-12494]

Boating safety:

Regulatory review; impact on small entities; comments due by 6-12-03; published 2-12-03 [FR 03-03461]

Drawbridge operations:

Florida; comments due by 6-9-03; published 4-10-03 [FR 03-08690]

Ports and waterways safety:
Chesapeake Bay, MD; Cove Point Liquefied Natural Gas Terminal; safety and security zone; comments due by 6-12-03; published 5-15-03 [FR 03-12050]
Port Everglades Harbor, Fort Lauderdale, FL; regulated navigation area; comments due by 6-12-03; published 5-13-03 [FR 03-11811]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Public and Indian housing:
Public housing assessment system; changes; comments due by 6-8-03; published 4-4-03 [FR 03-08175]

LABOR DEPARTMENT

Employment and Training Administration

Senior Community Service Employment Program; comments due by 6-12-03; published 4-28-03 [FR 03-09579]

PERSONNEL MANAGEMENT OFFICE

Group life insurance; Federal employees:
Premium rates and age bands; comments due by 6-9-03; published 4-9-03 [FR 03-08610]

TRANSPORTATION DEPARTMENT

Computer reservation systems, carrier-owned:
General policy statements; comments due by 6-9-03; published 5-9-03 [FR 03-11634]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
AeroSpace Technologies of Australia Pty Ltd.; comments due by 6-9-03; published 4-29-03 [FR 03-10516]
Boeing; comments due by 6-9-03; published 4-24-03 [FR 03-10117]
EXTRA Flugzeugbau GmbH; comments due by 6-9-03; published 5-2-03 [FR 03-10846]
Lockheed; comments due by 6-13-03; published 4-29-03 [FR 03-10513]
Class D and Class E airspace; comments due by 6-10-03; published 5-5-03 [FR 03-11030]
Class E airspace; comments due by 6-10-03; published 5-5-03 [FR 03-11034]

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials:
Hazardous materials transportation—
Cargo tank motor vehicles transporting flammable liquids; external product piping; safety requirements; comments due by 6-10-03; published 2-10-03 [FR 03-03262]

TRANSPORTATION DEPARTMENT

Saint Lawrence Seaway Development Corporation

Seaway regulations and rules:
Stern anchors and navigation underway; comments due by 6-12-03; published 5-13-03 [FR 03-11895]

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Practice and procedure:
Rate challenges; expedited resolution under stand-alone cost methodology; comments due by 6-9-03; published 4-9-03 [FR 03-08645]

TREASURY DEPARTMENT

Comptroller of the Currency

Corporate activities:
Electronic filings by national banks; comments due by 6-13-03; published 4-14-03 [FR 03-08995]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
Stock dispositions; suspension of losses; comments due by 6-12-03; published 3-14-03 [FR 03-06118]

TREASURY DEPARTMENT

Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Anti-money laundering program for persons involved in real estate closings and settlements; comments due by 6-9-03; published 4-10-03 [FR 03-08688]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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S. 243/P.L. 108–28

Concerning participation of Taiwan in the World Health Organization. (May 29, 2003; 117 Stat. 769)

S. 330/P.L. 108–29

Veterans' Memorial Preservation and Recognition Act of 2003 (May 29, 2003; 117 Stat. 772)

S. 870/P.L. 108–30

To amend the Richard B. Russell National School Lunch Act to extend the availability of funds to carry out the fruit and vegetable pilot program. (May 29, 2003; 117 Stat. 774)

Last List May 30, 2003

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