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U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

1–22–04 Thursday
Vol. 69 No. 14 Jan. 22, 2004

Pages 2997–3212

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 724

RIN 3206–AJ93

Implementation of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002

AGENCY: Office of Personnel Management.

ACTION: Interim final rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to carry out the agency reimbursement provisions of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act). The No FEAR Act requires that the President or his designee promulgate rules to regulate agency reimbursement of the Judgment Fund for payments made to employees, former employees, or applicants for Federal employment because of actual or alleged violations of Federal discrimination laws, Federal whistleblower protection laws, and/or retaliation claims arising from the assertion of rights under these laws. This rule will implement the reimbursement provisions of Title II of the No FEAR Act.

DATES: *Effective Date:* The interim final rule is effective on October 1, 2003.

Comment Date: Comments must be received on or before March 22, 2004.

ADDRESSES: Send or deliver written comments to Jeffrey E. Sumberg, Deputy Associate Director for Workforce Relations and Accountability Policy, Office of Personnel Management, Room 7H28, 1900 E Street, NW., Washington, DC, 20415; by FAX at (202) 606–0967; or by e-mail at *NoFEAR@opm.gov.*

FOR FURTHER INFORMATION CONTACT: Gary D. Wahlert by telephone at (202) 606–2920; by FAX at (202) 606–0967; or by e-mail at *NoFEAR@opm.gov.*

SUPPLEMENTARY INFORMATION: The United States and its citizens are best served when the Federal workplace is free of discrimination and retaliation. In order to maintain a productive workplace that is fully engaged with the many important missions before the Government, it is essential that the rights of employees, former employees and applicants for Federal employment under discrimination, whistleblower, and retaliation laws be steadfastly protected and that agencies that violate these rights be held accountable. Congress has found that agencies cannot be run effectively if those agencies practice or tolerate discrimination. Furthermore, Congress has found that notification of present and former Federal employees and applicants for Federal employment of their rights under discrimination and whistleblower laws, combined with training of employees, should increase Federal agency compliance with the laws. Therefore, under authority delegated by the President, OPM is issuing interim regulations to implement the reimbursement provisions of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107–174. OPM will issue proposed regulations concerning the other parts of the No FEAR Act separately.

Judgment Fund

One of the key provisions of the No FEAR Act requires that agencies reimburse the Judgment Fund for payments concerning violations or alleged violations of Federal discrimination laws, Federal whistleblower protection laws, and/or retaliation claims arising from the assertion of rights under these laws. Prior to the enactment of the No FEAR Act, agencies were not required to reimburse the Judgment Fund. Congress has created a financial incentive to foster a Federal workplace that is free of discrimination and retaliation.

The No FEAR Act does not change the criteria or process for obtaining payments from the Judgment Fund; it only creates a reimbursement requirement for agencies. In other words, the No FEAR Act does not authorize agencies to make payments directly to employees, former employees, or applicants for Federal employment that, prior to the No FEAR Act, would have been made from the Judgment Fund. Judgments, awards, or settlements that were eligible for payment from the Judgment Fund before the No Fear Act becomes effective will continue to be paid by the Judgment Fund.

As noted, however, the No FEAR Act requires agencies to reimburse the Judgment Fund for payments made in connection with 28 U.S.C. 2414, 2517, 2672, 2677 or with 31 U.S.C. 1304. OPM interprets the No FEAR Act to apply to any payment from the Judgment Fund on or after October 1, 2003, for violations or alleged violations of Federal discrimination laws, Federal whistleblower protection laws, and/or retaliation claims arising from the assertion of rights under these laws.

In addition to requiring reimbursement of the Judgment Fund, Congress expected such reimbursements to be made within a reasonable amount of time. Accordingly, these regulations specify timeframes within which agencies must either repay the Judgment Fund or contact the administrator of the Judgment Fund to make arrangements for a payment schedule. The administrator of the Judgment Fund is the Financial Management Service (FMS), the Department of the Treasury. The timeframe begins upon written notice by FMS to the agency's Chief Financial Officer (CFO) that a payment from the Judgment Fund has been disbursed. OPM notes in the regulations that agencies that fail to reimburse or make timely arrangements for reimbursement of the Judgment Fund will be identified and posted on the FMS Web site.

Notification and Training Obligations

Section 202 of the No FEAR Act requires agencies to notify covered individuals of the rights and protections concerning Federal discrimination laws, whistleblower protection laws, and/or retaliation claims arising from the assertion of rights under these laws. Agencies must also conduct training of employees about these rights and protections. OPM intends to publish proposed regulations on these subjects separately.

Annual Report

Section 203 of the No FEAR Act requires that each Federal agency

submit an annual report to Congress, the Equal Employment Opportunity Commission, and the Attorney General. Among other things, these reports are to provide information about payments from the Judgment Fund and the discipline of employees who engaged in discrimination, retaliation, harassment, or other violations of Federal discrimination and/or whistleblower laws. Each report also must provide the agency's analysis of certain information required in the report. OPM intends to publish proposed regulations on these subjects separately.

Best Practices

Section 204 of the No FEAR Act requires OPM, as the President's designee, to conduct a comprehensive study to determine the best practices relating to appropriate disciplinary actions against employees who violate Federal discrimination laws, whistleblower protection laws, and/or protections against retaliation arising from the assertion of rights under these laws. Based on the results of this study, OPM will issue advisory guidelines that incorporate the best practices that agencies may follow to take such disciplinary actions. In addition, the No FEAR Act requires agencies to report to the Congress, the Equal Employment Opportunity Commission, and the Attorney General on the extent to which they have adopted or will follow the guidelines issued by OPM. OPM intends to publish proposed regulations on these subjects separately.

Publication of Interim Regulations

Immediate implementation of this rule as an interim final rule with provision for post-promulgation public comment is based upon the exceptions found at 5 U.S.C. 553(b)(3)(A), (b)(3)(B) and (d). The agency obligations under the No FEAR Act to reimburse the Judgment Fund begin on October 1, 2003. It is essential that all agencies understand their responsibilities regarding this requirement. OPM has determined under 5 U.S.C. 553(b)(3)(A) that the reimbursement provision only effects the rules of agency organization, procedure, or practice and has no effect on the substantive rights of those entitled to payment from the Judgment Fund. OPM has determined under 5 U.S.C. 553(b)(3)(B) that it would be contrary to the public interest to delay promulgation of the rules governing the reimbursement provisions of the No FEAR Act. For the same reasons, OPM has determined under 5 U.S.C. 553(d)(3) that there is good cause for the interim final rule to be effective October 1, 2003, with provision for post-promulgation public comment. OPM is seeking public comment on the regulation and will consider all comments when promulgating the final rule.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

E.O. 12866, Regulatory Review

This interim final rule has been reviewed by the Office of Management and Budget under Executive Order 12866.

E.O. 13132

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

E.O. 12988, Civil Justice Reform

This regulation meets the applicable standard set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

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, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action pertains to agency management, personnel and organization and does not substantially affect the rights of obligations of non-agency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 5 CFR Part 724

Administrative practice and procedure, discrimination, prohibited personnel practices, claims, discipline.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, OPM is adding part 724 to title 5, Code of Federal Regulations, as follows:

PART 724—IMPLEMENTATION OF TITLE II OF THE NOTIFICATION AND FEDERAL EMPLOYEE ANTIDISCRIMINATION AND RETALIATION ACT OF 2002

Subpart A—Reimbursement of Judgment Fund

Sec.
724.101 Purpose and Scope.
724.102 Definitions.
724.103 Agency Obligations.
724.104 Procedures.
724.105 Compliance.
724.106 Effective Date.

Authority: Sec. 204 of Pub. L. 107–174, 116 Stat. 566; Presidential Memorandum dated July 8, 2003, ''Delegation of Authority Under Section 204(a) of the Notification and Federal Employee Antidiscrimination Act of 2002.''

§ 724.101 Purpose and scope.

This subpart implements Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 concerning the obligation of Federal agencies to reimburse the Judgment Fund for payments. The regulations describe agency obligations and the procedures for reimbursement and compliance.

§ 724.102 Definitions.

In this part: *Agency* means an Executive agency as defined in 5 U.S.C. 105, the United States Postal Service, or the Postal Rate Commission;

Applicant for Federal employment means an individual applying for employment in or under a Federal agency;

Employee means an individual employed in or under a Federal agency;

Former employee means an individual formerly employed in or under a Federal agency;

Judgment Fund means the Judgment Fund established by 31 U.S.C. 1304;

No FEAR Act means the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002;''

Payment means a disbursement from the Judgment Fund on or after October 1, 2003, to an employee, former employee, or applicant for Federal employment, in accordance with 28 U.S.C. 2414, 2517, 2672, 2677 or with 31 U.S.C. 1304, that involves alleged discriminatory conduct described in 5 U.S.C. 2302(b)(1) and (b)(8) or (b)(9) as applied to discriminatory conduct

described in 5 U.S.C. 2302(b)(1) and/or (b)(8).

§ 724.103 Agency Obligations.

A Federal agency must reimburse the Judgment Fund for payments covered by the No FEAR Act. Such reimbursement must be made within a reasonable time as described in § 724.104.

§ 724.104 Procedures.

(a) The procedures that agencies must use to reimburse the Judgment Fund are those prescribed by the Financial Management Service (FMS), the Department of the Treasury, in Chapter 3100 of the Treasury Financial Manual. All reimbursements to the Judgment Fund covered by the No FEAR Act are expected to be fully collectible from the agency. FMS will provide notice to the agency's Chief Financial Officer within 15 business days after payment from the Judgment Fund. For any payments from the Fund between October 1, 2003, and January 22, 2004, FMS will provide such notice within 15 business days after January 22, 2004, if it has not already provided such notice.

(b) Within 45 business days of notice by FMS, agencies must reimburse the Judgment Fund or contact FMS to make arrangements in writing for reimbursement.

§ 724.105 Compliance.

An agency's failure to reimburse the Judgment Fund or to contact FMS within 45 business days of an FMS notice for reimbursement under § 724.104 will be recorded on an annual basis and posted on the FMS Web site.

§ 724.106 Effective Date.

This subpart is effective on October 1, 2003.

Subpart B—Notification of Rights and Protections and Training

[RESERVED]

Subpart C—Annual Report

[RESERVED]

Subpart D—Best Practices

[RESERVED]

[FR Doc. 04–1338 Filed 1–21–04; 8:45 am]

BILLING CODE 6325–38–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1951

RIN 0570–AA52

Debt Collection Improvement Act—Treasury Offset and Cross Servicing

AGENCY: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This action amends the regulations governing the servicing of Rural Business-Cooperative Service (RBS) loan and grant programs by adding a section to clarify that any amounts paid by RBS on account of the liabilities of a guaranteed loan borrower will constitute a Federal debt owing to RBS by the guaranteed loan borrower. RBS may use all remedies available to it, including offset under the Debt Collection Improvement Act (DCIA), to collect the debt from the borrower.

EFFECTIVE DATE: This rule is effective on January 22, 2004.

FOR FURTHER INFORMATION CONTACT: Bill Hagy, Deputy Administrator, Rural Business-Cooperative Service, USDA, Stop 3220, Room 5050, 1400 Independence Ave. SW., Washington, DC 20250–3250, Telephone (202) 720–7287, or internet e-mail *bill.hagy@usda.gov.*

SUPPLEMENTARY INFORMATION:

Classification

This rule has been reviewed under Executive Order 12866 and has been determined to be a nonsignificant regulatory action by the Office of Management and Budget (OMB).

This rule is not published for notice and comment because it implements statutory and regulatory provisions that are binding on the RBS. Since RBS does not have discretion in this matter, public comment would not be able to affect the provisions of the rule. Therefore, the rule is published as final and effective upon publication.

Programs Affected

The Catalog of Federal Domestic Assistance Program number assigned to this program is: 10.768, Business and Industrial Loans.

Paperwork Reduction Act

There are no reporting or record keeping requirements associated with this rule.

Environmental Impact Statement

It is the determination of the Secretary that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, an Environmental Impact Statement is not required.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) 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, USDA 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 or tribal Governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires USDA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal Governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the undersigned has determined and certified by signature of this document that this rule will not have a significant

economic impact on a substantial number of small entities. The Regulatory Flexibility Act is intended to encourage Federal Agencies to utilize innovative administrative procedures in dealing with individuals, small businesses, small organizations, and small governmental bodies that would otherwise be unnecessarily adversely affected by Federal regulations. The provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, no regulatory flexibility analysis under the Regulatory Flexibility Act is necessary.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local Governments. Therefore, consultation with the States is not required.

Discussion

This rule clarifies the policy of the RBS concerning the statutory mandate imposed on the Agency by the Debt Collection Improvement Act of 1996 (104 Pub. L. 134) (DCIA).

Section 3701 of 31 U.S.C. defines ''claim'' or ''debt'' in part to include funds owed on account of loans guaranteed by the Government. This rule puts the guarantee borrower on notice that RBS will attempt to collect from them through Treasury Offset and any other available remedies when a final loss claim is paid to a guaranteed lender. It provides that a debt for purposes of the DCIA is established upon payment of a loss claim to the original guarantee-lender.

The Debt Collection Act of 1982 (Act) (97 Pub. L. 365) provides for the use of administrative, salary and Internal Revenue Service (IRS) offsets by Government Agencies to collect delinquent Federal debts. Any money that is or may become payable from the United States to an individual or entity indebted to RBS may be offset for the collection of a debt owed to RBS. In addition, money may be collected from the debtor's retirement payments for delinquent amounts owed to RBS if the debtor is an employee or retiree of a Federal Agency, the U.S. Postal Service, the Postal Rate Commission, or a member of the U.S. Armed Forces or the Reserve. Current regulations published for RBS programs in title 7 of the Code of Federal Regulations do not expressly discuss at what point a debt to the Federal Government is established for purposes of the remedies available under the DCIA; this rulemaking expressly provides that the debt is created at the time the loss claim is paid to the guaranteed lender.

This rule is consistent with the Act and clarifies that, in cases of guaranteed loans, a Federal debt is established when a guaranteed loss claim is paid. The loss claim paid may or may not be a final loss claim for purposes of this rule. Accordingly, if several claims are paid over time, separate debts are created accordingly. RBS will exercise all remedies available for collection, including those provided by the Debt Collection Improvement Act of 1996. RBS has already implemented a practice of referring debts arising from direct loans to the U.S. Department of the Treasury.

The Agency is in the process of revising the applicable forms to include the applicant's certification and acknowledgment that any amounts paid by RBS on account of liabilities of the guaranteed loan borrower will constitute a Federal debt to RBS on the part of the borrower. The forms will provide direct notice to interested applicants of RBS' debt collection policy and memorialize their understanding and acknowledgment of RBS' collection policy.

RBS loan officials will provide notification to the B&I guaranteed borrower of their applicable rights and potential collection actions by sending a 60 day due process letter.

List of Subjects in 7 CFR Part 1951

Accounting, Account servicing, Credit, Debt collection, Loan programs—agriculture, Low and moderate income housing loans—servicing, Offsets of Federal payments.

■ Accordingly, chapter VXIII, title 7, Code of Federal Regulations, is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

■ 1. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 Note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

Subpart C—Offsets of Federal Payments to USDA Agency Borrowers

■ 2. Section 1951.133 is added to read as follows:

§ 1951.133 Establishment of Federal Debt.

Any amounts paid by RBS on account of liabilities of a business and industry (B&I) program guaranteed loan borrower will constitute a Federal debt owing to RBS by the B&I guaranteed loan borrower. In such case, the RBS may use all remedies available to it, including offset under the Debt Collection Improvement Act of 1996 (DCIA), to collect the debt from the borrower. Interest charges will be established at the note rate of the guaranteed loan on the date a loss claim is paid. RBS may, at its option, refer such debt in all or part to the Department of the Treasury, before a final loss claim is determined.

Dated: January 14, 2004.

John Rosso,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 04–1261 Filed 1–21–04; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–275–AD; Amendment 39–13436; AD 2004–02–01]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Model G–V Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Gulfstream Model G–V series airplanes. This action requires a one-time inspection of the landing gear selector dump valve (LGSDV) to determine the serial number (S/N). For any part with an affected S/N, or for any part for which the S/N cannot be determined, this action requires replacing the LGSDV with a cleaned part having an S/N within the affected range; or replacing the LGSDV with a new or serviceable part that has an S/N outside the affected range. This action is necessary to prevent uncommanded unlocking of the landing gear, which could result in collapse of the landing gear. This action is intended to address the identified unsafe condition.

DATES: Effective February 6, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 6, 2004.

Comments for inclusion in the Rules Docket must be received on or before February 23, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–275–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via the Internet must contain ''Docket No. 2003-NM–275-AD'' in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–9980. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Darby Mirocha, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6095; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: The FAA has received reports that an unsafe condition may exist on certain Gulfstream Model G–V series airplanes. While on approach, a Model G–V series airplane experienced uncommanded unlocking of the landing gear following the initial ''down and locked'' indication. The airplane landed safely after the flightcrew used the emergency landing gear extension system. Investigators found foreign object debris in the landing gear selector dump valve (LGSDV). Subsequent investigation revealed that valves within a certain range of serial numbers (S/Ns) were not adequately cleaned during manufacturing. This condition, if not corrected, could result in uncommanded unlocking of the landing gear, which could cause the landing gear to collapse.

Explanation of Relevant Service Information

The FAA has reviewed and approved Gulfstream GV Customer Bulletin 114, dated December 15, 2003, which describes procedures for a one-time inspection of the LGSDV to determine the S/N of the valve. For any LGSDV with an affected S/N, the customer bulletin describes procedures for replacing the valve with a cleaned, new, or serviceable valve. Accomplishment of the action specified in the customer bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent uncommanded unlocking of the landing gear, which could result in collapse of the landing gear. This AD requires a one-time inspection of the LGSDV to determine the S/N of the valve. For any LGSDV with an affected S/N, or for any LGSDV for which the S/N cannot be determined, this AD requires replacement of the LGSDV with a cleaned part having an S/N within the affected range, or with a new or serviceable part having an S/N outside the affected range. The actions are required to be accomplished in accordance with the customer bulletin described previously, except as discussed below.

Difference Between the AD and the Customer Bulletin

Operators should note that, although the Accomplishment Instructions of the referenced customer bulletin describe procedures for submitting a service reply card to the manufacturer, this proposed AD would not require those actions.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–275–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined

further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–02–01 Gulfstream Aerospace Corporation: Amendment 39–13436. Docket 2003–NM–275–AD.

Applicability: Model G–V series airplanes, certificated in any category; equipped with a landing gear selector dump valve (LGSDV) having part number 1159SCH512–7, –9, or –19.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded unlocking of the landing gear, which could result in collapse of the landing gear, accomplish the following:

Inspection To Determine Serial Number

(a) Within 45 days after the effective date of this AD: Inspect the LGSDV located in the main wheel well to determine whether any serial number (S/N) listed in paragraph II.B. of Part I of the Accomplishment Instructions of Gulfstream GV Customer Bulletin 114, dated December 15, 2003, is installed.

Replacement, if Necessary

(b) Within 90 days after the effective date of this AD: Replace, per paragraph (b)(1) or (b)(2) of this AD, any LGSDV which has been determined by the inspection required by paragraph (a) of this AD to have an affected S/N; or any LGSDV for which the S/N cannot be determined. Replace in accordance with Part II of the Accomplishment Instructions of Gulfstream GV Customer Bulletin 114, dated December 15, 2003.

(1) Replace the affected LGSDV with an LGSDV having an S/N inside the affected range that has been cleaned in accordance with the customer bulletin.

(2) Replace the affected LGSDV with a new or serviceable part having an S/N outside the affected range.

Parts Installation

(c) As of the effective date of this AD, no person may install on any airplane an LGSDV having an S/N listed in paragraph II.B. of Part I of the Accomplishment Instructions of Gulfstream Customer Bulletin 114, dated December 15, 2003, unless it has been cleaned in accordance with the customer bulletin.

No Reporting Requirement

(d) Although the customer bulletin referenced in this AD specifies to submit a service reply card to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, FAA, Atlanta Aircraft Certification Office, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(f) The actions shall be done in accordance with Gulfstream GV Customer Bulletin 114, dated December 15, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–9980. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on February 6, 2004.

Issued in Renton, Washington, on January 8, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–965 Filed 1–21–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16415; Airspace Docket No. 03–AEA–16]

Establishment of Class E Airspace; Calverton, NY

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Calverton, NY. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft operating into Calverton Executive Airpark Airport, Calverton, NY under Instrument Flight Rules (IFR).

EFFECTIVE DATES: 0901 UTC June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On December 9, 2003, a notice proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace extending upward from 700 feet above the surface within a 6-mile radius of Calverton Executive Airpark Airport, Calverton, NY was published in the **Federal Register** (68 FR 68575–68576). Interested parties were invited to participate in this rulemaking proceeding by sumitting written comments on the proposal to the FAA on or before January 8, 2004. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace area designations for airspace extending upward from the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting IFR operations within a 6-mile radius of Calverton Executive Airpark Airport, Calverton, NY.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action''

under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6005 Class E Airspace Areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY ES Calverton, NY [NEW]

Calverton Executive Airpark Airport, NY
(Lat. 40°54′54″ N., long. 72°47′31″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Calverton Executive Airpark Airport, excluding that portion that coincides with the Shirley, NY and Westhampton Beach, NY Class E airspace areas.

* * * * *

Issued in Jamaica, New York on January 14, 2004.

John G. McCartney,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 04–1331 Filed 1–21–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2003–15086; Airspace Docket No. 03–AAL–07]

RIN 2120–AA66

Revision of Restricted Area 2202C, and the Establishment of Restricted Area 2202D; Big Delta, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Restricted Area 2202C (R–2202C), Big Delta, AK, by subdividing the altitude of R–2202C, to create R–2202D. The lateral dimensions of R–2202C will remain the same, however, the internal modification of the R–2202C and subsequent establishment of R–2202D will enable the military to activate only that portion of the airspace that is actually needed to contain their operations.

EFFECTIVE DATE: 0901 UTC, April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

As a result of a recent review of R–2202 airspace, the U.S. Army requested that the FAA take action to internally subdivide R–2202C into two sub-areas. Dividing the airspace into two sub-areas will allow for more efficient real-time use of the airspace, and allow more public access.

The Rule

This action amends title 14 Code of Federal Regulations (14 CFR) part 73 (part 73) by subdividing R–2202C, and establishing R–2202D, to enable more efficient use of airspace. Specifically this action changes the vertical limit of R–2203C to FL 310 and establishes R–2202D in the former restricted airspace of R–2202C above FL 310. The internal stratification of R–2202C and subsequent establishment of R–2202D will enable the military to activate only that portion of the airspace that is actually needed to contain hazardous operations. There are no changes to the external boundaries, altitudes, and times of designation or activities conducted within the restricted area.

Section 73.22 of part 73 was published in FAA Order 7400.8L, Special Use Airspace, dated October 7, 2003.

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

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

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

§ 73.22 [Amended]

■ 2. § 73.22 is amended as follows:

* * * * *

R–2202C Big Delta, AK (Revised)

■ By removing the existing altitudes and substituting the following:

Designated altitudes. 10,000 feet MSL to and including FL310.

R–2202D Big Delta, AK (New)

Boundaries. Beginning at lat. 64°14′44″ N., long. 146°43′23″ W.; to lat. 64°03′34″ N., long. 146°10′58″ W.; to lat. 63°56′16″ N., long. 145°49′38″ W.; to lat. 63°54′19″ N., long. 145°50′28″ W.; to lat. 63°50′29″ N., long. 145°50′08″ W.; to lat. 63°42′59″ N., long. 145°54′09″ W.; to lat. 63°42′14″ N., long. 146°13′34″ W.; to lat. 63°43′59″ N., long. 146°30′08″ W.; to lat. 63°50′49″ N., long. 146°47′38″ W.; thence along the east bank of the East Fork and Little Delta Rivers to the point of beginning.

Designated altitudes. Above FL 310 to unlimited.

Time of designation. Intermittent by NOTAM.

Controlling agency. FAA, Anchorage ARTCC.

Using agency. U.S. Army, Commander, Cold Regions Test Activity, Fort Greely, AK.

* * * * *

Issued in Washington, DC on January 9, 2004.

Reginald C. Mathews,

Manager, Airspace and Rules Division.

[FR Doc. 04–1268 Filed 1–21–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 732, 738, 740 and 746

[Docket No. 031219324–3324–01]

RIN 0694–AC86

Lifting of U.N. Sanctions Against UNITA

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by removing from the EAR references to sanctions on Angola administered by the Department of the Treasury's Office of Foreign Assets Control (OFAC). In response to United Nations Security Council (UNSC) resolutions regarding the conflict in Angola, the President, by Executive Order, directed the Department of the Treasury to maintain sanctions on the National Union for the Total Independence of Angola (UNITA). On December 9, 2002, the UNSC terminated the sanctions previously imposed on UNITA. On May 6, 2003, consistent with the UNSC action, the President terminated the relevant Executive Orders, effectively ending U.S. sanctions. This rule amends the EAR to remove certain references to the sanctions which had been maintained by OFAC with respect to UNITA.

DATES: This rule is effective January 22, 2004.

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Director, Foreign Policy Controls Division, Office of Strategic Trade and Foreign Policy Controls, Bureau of Industry and Security, Department of Commerce, Telephone: (202) 482–4252, e-mail *jroberts@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Consistent with UNSC Resolution 864 (September 15, 1993) and subsequent related resolutions, and under the authority of the International Emergency Economic Powers Act (IEEPA), the National Emergencies Act, and section 5 of the United Nations Participation Act of 1945 (UNPA), the President issued Executive Orders 12865 (September 26, 1993), 13069 (December 12, 1997), and 13098 (August 18, 1998), imposing sanctions on UNITA (as defined therein) and Angola. Specifically, the Department of the Treasury was directed to maintain certain sanctions on UNITA, a task that it delegated to OFAC. OFAC implemented this mandate by issuing and amending the UNITA (Angola) Sanctions Regulations, set forth at Title 31, Part 590 of the Code of Federal Regulations. These provisions block all property within the possession or control of a U.S. person in which UNITA or its senior officials have an interest. They also prohibit the unauthorized exportation by U.S. persons of mining equipment, arms and related material of all types, petroleum and petroleum products, aircraft or aircraft components, and motorized vehicles or watercraft and spare parts for such items, to the territory of Angola, other than through approved points of entry designated by the Department of the Treasury.

On December 9, 2002, based on certain steps taken to resolve the conflict in Angola, the UNSC issued Resolution 1448, terminating the sanctions measures imposed on UNITA based on UNSC Resolutions 864, 1127 (August 28, 1997), 1130 (September 29, 1997), 1173 (June 12, 1998), and 1176 (June 24, 1998). On May 6, 2003, consistent with this UNSC action, the President issued Executive Order 13298, which revoked Executive Orders 12865, 13069 and 13098, and terminated U.S. sanctions imposed on UNITA and Angola.

Consistent with these actions, the Bureau of Industry and Security (BIS) is making certain changes to the EAR. Specifically, BIS is removing references to the measures imposed by OFAC on UNITA from parts 732, 738, 740 and 746 of the EAR.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves collections of information subject to the PRA. These collections have been approved by OMB under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 40 minutes to prepare and submit electronically and 45 minutes to submit manually form BIS–748P. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553 (a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no public comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 732 and 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 738

Exports, Foreign trade.

15 CFR Part 746

Embargoes, Exports, Foreign trade, Reporting and recordkeeping requirements.

PART 732—[AMENDED]

■ 1. The authority citation for Part 732 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

§ 732.3 [Amended]

■ 2. Section 732.3 is amended by revising the phrase ''For Angola and Rwanda'' in paragraph (d)(4) to read ''For Rwanda''.

PART 738—[AMENDED]

■ 3. The authority citation for Part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

Supplement No. 1 to Part 738—[Amended]

■ 4. Supplement No. 1 to Part 738 is amended by removing the footnote notation ''1'' from the entry for ''Angola''.

PART 740—[AMENDED]

■ 5. The authority citation for Part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

■ 6. Supplement No. 1 to Part 740 is amended:

■ a. By removing Angola from Country Group D; and

■ b. By revising the footnote section for Country Group E to read as follows:

Supplement No. 1 to Part 740

* * * * *

Country Group E

* * * * *

[1]In addition to the controls maintained by the Bureau of Industry and Security pursuant to the EAR, note that the Department of the Treasury administers:

(a) A comprehensive embargo against Cuba, Iran, Iraq, Libya, and Sudan; and

(b) An embargo against certain persons, e.g., Specially Designated Terrorists (SDT), Foreign Terrorist Organizations (FTO), Specially Designated Global Terrorists (SDGT), and Specially Designated Narcotics Traffickers (SDNT). Please see part 744 of the EAR for controls maintained by the Bureau of Industry and Security on these and other persons.

PART 746—[AMENDED]

■ 7. The authority citation for Part 746 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 6004; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12854, 58 FR 36587, 3 CFR 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

■ 8. Part 746 is amended:

■ a. By removing paragraph (d) from § 746.1; and

■ b. By removing and reserving Supplement No. 1 to Part 746.

Dated: January 9, 2004.

Peter Lichtenbaum,

Assistant Secretary for Export Administration.

[FR Doc. 04–1280 Filed 1–21–04; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 347

[Docket No. 78N–021A]

RIN 0910–AA01

Skin Protectant Drug Products for Over-the-Counter Human Use, Astringent Drug Products; Final Monograph, Direct Final Rule; and Confirmation of Effective Date; Corrections

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule and confirmation of effective date; corrections.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that published in the **Federal Register** of June 13, 2003 (68 FR 35290), that amended the regulation that established conditions under which over-the-counter (OTC) skin protectant astringent drug products are generally recognized as safe and effective and not misbranded. This action revised some labeling for astringent drug products to be consistent with the final rule for OTC skin protectant drug products that published June 4, 2003 (68 FR 33362), and added labeling for certain small packages (styptic pencils). FDA is also correcting a document that confirmed the effective date of the direct final rule that published on October 9, 2003 (68 FR 58273). These documents were published with an incorrect effective date and an incorrect confirmation of effective date, respectively. This document corrects those errors.

DATES: The effective date of the direct final rule amending 21 CFR part 347, published June 13, 2003 (68 FR 35290), and confirmed October 9, 2003 (68 FR 58273), is corrected from October 27, 2003, to June 13, 2004.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION:

1. In FR Doc. 03–14818, published on June 13, 2003 (68 FR 35290), make the following correction: On page 35291, in the first column, under the **DATES** caption, in the line beginning with ''*Effective Date*'', the phrase ''effective October 27, 2003'' is corrected to read ''effective June 13, 2004''.

2. In FR Doc. 03-25648, published on October 9, 2003 (68 FR 58273), make the following correction: On page 58273, in the second column, under the **DATES** caption, the phrase ''Effective date confirmed: October 27, 2003'' is corrected to read ''Effective date confirmed: June 13, 2004''.

Dated: January 14, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–1262 Filed 1–21–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Houston–Galveston–03–004]

RIN 1625–AA00

Security Zone; Houston Ship Channel and Adjacent Waterways Between Buffalo Bayou and Morgans Point, Houston, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone for the Houston Ship Channel and all associated turning basins including a portion of the San Jacinto River. This security zone is needed to protect vessels, waterfront facilities, the public, and other surrounding areas from destruction, loss, or injury caused by sabotage, subversive acts, accidents, or other actions of a similar nature performed by individuals or groups reacting to current world events. All vessels carrying Certain Dangerous Cargoes (CDCs) are prohibited from entering into, departing from or moving within the security zone unless authorized to do so by the Captain of the Port Houston-Galveston or a designated representative and escorted by a Coast Guard vessel. Additionally, vessels desiring to anchor or moor within the security zone must have permission from the Captain of the Port Houston-Galveston or a designated representative.

DATES: This rule is effective from 12:01 a.m. on December 25, 2003, through 6 a.m. on March 1, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP Houston-Galveston–03–004] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Houston-Galveston, 9640 Clinton Dr., Houston, TX 77029 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Commander (CDR) Thomas Marian, Commanding Officer, Vessel Traffic Service Houston/Galveston, Houston, TX at (713) 671–5164.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM and under 5 U.S.C. 553(d)(3) good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. National security and intelligence officials continue to warn that future terrorist attacks against the United States interests are likely. Publishing an NPRM and delaying the rule's effective date would be contrary to public interest because immediate action is needed to protect vessels, waterfront facilities, and the public from destruction, loss, or injury due to sabotage or other subversive acts performed by individuals or groups reacting to current world events.

Background and Purpose

On September 11, 2001, terrorists attacked both towers of the World Trade Center and the Pentagon. The President has continued the national emergencies that he declared following those attacks (68 FR 53665, Sep. 10, 2003, continuing the emergency declared with respect to terrorist attacks; 68 FR 55189, Sep. 18, 2003, continuing emergency with respect to persons who commit, threaten to commit or support terrorism). The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191, *et seq.*), that the security of the United States continues to be endangered following those terrorist attacks (E.O. 13273, 67 FR 56215, Sep. 3, 2002, security of U.S. endangered by disturbances in its international relations and such disturbances continue to endanger such relations).

In response to those terrorist acts and current international events, heightened awareness for the security and safety of all vessels, ports, and harbors is necessary. This security zone is needed to protect vessels, waterfront facilities, the public, and other surrounding areas from destruction, loss, or injury caused by sabotage, subversive acts, accidents, or other actions of a similar nature performed by individuals or groups reacting to current world events.

Discussion of Rule

The Captain of the Port Houston-Galveston is establishing a temporary security zone for the Houston Ship Channel between Morgans Point (that portion of the Houston Ship Channel north and west of a line drawn between Houston Ship Channel Lights 89A and 90A) and the entrance of Buffalo Bayou and adjoining waterways. This security zone is part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities against sabotage or terrorist attacks.

All vessels carrying or controlling vessels carrying CDCs are prohibited from entering, leaving, or moving within the security zone unless authorized by the Captain of the Port Houston-Galveston or designated representative and escorted by a Coast Guard vessel. To minimize the potential for vessels transporting CDCs to be delayed while waiting for a Coast Guard escort, it is highly recommended that those vessels contact the COTP Houston-Galveston at least four hours prior to the anticipated time they intend to enter, depart or move within the security zone. Additionally, it is strongly encouraged that vessels carrying or controlling vessels carrying CDCs plan their transits into, out of, and through the security zone to occur between 8 a.m. and 6 p.m. daily as Coast Guard escort resources are limited during night-time periods. In Houston, vessels can contact the COTP through Vessel Traffic Service Houston/Galveston on VHF Channel 5A, by telephone at (713) 671–5103 or by facsimile at (713) 671–5159.

This rule is effective from 12:01 a.m. on December 25, 2003, through 6 a.m. on March 1, 2004.

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).

While vessels carrying or controlling another vessel carrying CDCs will need authorization to transit the zone, the Coast Guard expects minimal interference with or delay to their passage. Proactive measures that vessels carrying or controlling vessels carrying CDCs can take to minimize the potential for delays to occur are noted within this preamble. Notifications to the marine community will be made through broadcast notice to mariners.

This security zone is temporary in nature. The Coast Guard will issue an NPRM should it consider making this rule permanent.

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: the owners or operators of vessels intending to transit the Houston Ship Channel and all associated turning basins including that portion of the San Jacinto River from its mouth north to the Interstate 10 highway bridge, bounded by a line drawn between Houston Ship Channel Light 89A (LLNR–23347) and Houston Ship Channel Light 90A (LLNR–23350) west to the T & N Rail Road Swing Bridge at the entrance to Buffalo Bayou, including all waters adjacent to the ship channel from shoreline to shoreline and the first 1000 yards of connecting waterways with the exception of the San Jacinto River as set forth above between 12:01 a.m. on December 25, 2003, through 6 a.m. on March 1, 2004. This rule will not have a significant economic impact on a substantial number of small entities for the reasons enumerated under the section entitled Regulatory Evaluation.

If you are a small business entity and are significantly affected by this regulation please contact CDR Thomas Marian, Vessel Traffic Service Houston/Galveston at (713) 671–5164.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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 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 M16475.1D, 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 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 because this rule is not expected to result in any significant environmental impact as described in NEPA.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T08–162 is added to read as follows:

§ 165.T08–162 Security Zone; Houston Ship Channel and adjacent waterways between Buffalo Bayou and Morgans Point, Houston, TX.

(a) *Location*. The following area is a security zone: The Houston Ship Channel and all associated turning basins including that portion of the San Jacinto River from its mouth north to the Interstate 10 highway bridge, bounded

by a line drawn between Houston Ship Channel Light 89A (LLNR–23347) and Houston Ship Channel Light 90A (LLNR–23350) west to the T & N Rail Road Swing Bridge at the entrance to Buffalo Bayou, including all waters adjacent to the ship channel from shoreline to shoreline and the first 1000 yards of connecting waterways with the exception of the San Jacinto River as set forth above.

(b) *Effective period.* This section is effective from 12:01 a.m. on December 25, 2003, through 6 a.m. on March 1, 2004.

(c) *Definitions.* As used in this section—

(1) *Certain Dangerous Cargoes* or *(CDCs)* includes—

(i) Division 1.1 or 1.2 explosives as defined in 49 CFR 173.50.

(ii) Division 1.5D blasting agents for which a permit is required under 49 CFR 176.415 or, for which a permit is required as a condition of a Research and Special Programs Administration exemption.

(iii) Division 2.3 ''poisonous gas'', as listed in 49 CFR 172.101 that is also a ''material poisonous by inhalation'' as defined in 49 CFR 171.8, and that is in a quantity in excess of 1 metric ton per vessel or barge.

(iv) Division 5.1 oxidizing materials for which a permit is required under 49 CFR 176.415 or, for which a permit is required as a condition of a Research and Special Programs Administration exemption.

(v) A liquid material that has a primary or subsidiary classification of 6.1 ''poisonous material'' as listed in 49 CFR 172.101 that is also a ''material poisonous by inhalation'', as defined in 49 CFR 171.8 and that is in a bulk packaging, or that is in a quantity in excess of 20 metric tons per vessel or barge when not in a bulk packaging.

(vi) Class 7, ''highway route controlled quantity'' radioactive material or ''fissile material, controlled shipment'', as defined in 49 CFR 173.403.

(vii) Bulk liquefied chlorine gas and Bulk liquefied gas cargo that is flammable and/or toxic and carried under 46 CFR 154.7.

(viii) The following bulk liquids—

(A) Acetone cyanohydrin,

(B) Allyl alcohol,

(C) Chlorosulfonic acid,

(D) Crotonaldehyde,

(E) Ethylene chlorohydrin,

(F) Ethylene dibromide,

(G) Methacrylonitrile,

(H) Oleum (fuming sulfuric acid), and

(I) Propylene oxide.

(2) *CDC Vessel* means any vessel carrying or controlling another vessel that is carrying CDCs.

(d) *Regulations.* (1) Under § 165.33, entry into, departure from, and movement within this zone by a CDC vessel is prohibited unless authorized by the Captain of the Port (COTP) Houston-Galveston or designated representative and conducted with a Coast Guard vessel escort. CDC vessels desiring to remain within the zone while moored or at anchor are prohibited from doing so without prior authorization from the COTP Houston-Galveston or designated representative.

(2) CDC vessels must request permission to enter into, depart from, move within, or remain in the security zone described in paragraph (a) of this section by contacting Vessel Traffic Service (VTS) Houston/Galveston on VHF channel 5A, by telephone at (713) 671–5103, or by facsimile at (713) 671–5159.

(3) To avoid delays while waiting for a Coast Guard escort to arrive on scene, CDC vessels should contact VTS Houston/Galveston on VHF channel 5A, by telephone at (713) 671–5103, or by facsimile at (713) 671–5159 at least 4 hours prior to the time the CDC vessel anticipates entering into, departing from, or moving within the security zone. Additionally, as escort resources are limited during nighttime periods, it is highly recommended that CDC vessels only plan to transit into, out of, or through the security zone between 8 a.m. and 6 p.m. daily.

(4) All persons and vessels must comply with the instructions of the Captain of the Port Houston-Galveston and designated personnel. Designated personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: December 24, 2003.

Richard M. Kaser,

Captain, U.S. Coast Guard, Captain of the Port Houston-Galveston.

[FR Doc. 04–1327 Filed 1–21–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Houston–Galveston–03–005]

RIN 1625–AA00

Security Zone; Port of Texas City Channel, Turning Basin and Industrial Canal, Texas City, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone for the Port of Texas City Channel, Turning Basin and Industrial Canal. This security zone is needed to protect vessels, waterfront facilities, the public, and other surrounding areas from destruction, loss, or injury caused by sabotage, subversive acts, accidents, or other actions of a similar nature performed by individuals or groups reacting to current world events. All vessels carrying Certain Dangerous Cargoes (CDCs) are prohibited from entering into, departing from or moving within the security zone unless authorized to do so by the Captain of the Port Houston-Galveston or a designated representative.

DATES: This rule is effective from 12:01 a.m. on January 2, 2004, through 6 a.m. March 1, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP Houston-Galveston-03–005] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Houston–Galveston, 9640 Clinton Dr., Houston, TX 77029 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Commander (CDR) Thomas Marian, Commanding Officer, Vessel Traffic Service Houston/Galveston, Houston, TX at (713) 671–5164.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM and under 5 U.S.C. 553(d)(3) good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. National security and intelligence officials continue to warn that future terrorist attacks against the United States interests are likely. Publishing an NPRM and delaying its effective date would be contrary to public interest because immediate action is needed to protect vessels, waterfront facilities, and the public from destruction, loss, or injury due to sabotage or other subversive acts performed by individuals or groups reacting to current world events.

Background and Purpose

On September 11, 2001, terrorists attacked both towers of the World Trade Center and the Pentagon. The President has continued the national emergencies that he declared following those attacks

(68 FR 53665, Sep. 10, 2003, continuing the emergency declared with respect to terrorist attacks; 68 FR 55189, Sep. 18, 2003, continuing emergency with respect to persons who commit, threaten to commit or support terrorism). The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191, *et seq.*), that the security of the United States continues to be endangered following those terrorist attacks (E.O. 13273, 67 FR 56215, Sep. 3, 2002, security of U.S. endangered by disturbances in its international relations and such disturbances continue to endanger such relations).

In response to those terrorist acts and current international events, heightened awareness for the security and safety of all vessels, ports, and harbors is necessary. This security zone is needed to protect vessels, waterfront facilities, the public, and other surrounding areas from destruction, loss, or injury caused by sabotage, subversive acts, accidents, or other actions of a similar nature performed by individuals or groups reacting to current world events.

Discussion of Rule

The Captain of the Port Houston-Galveston is establishing a temporary security zone for Port of Texas City Channel, Turning Basin and Industrial Canal containing all waters within the area south and west of a line drawn between Texas City Channel Light 19 (LLNR–24810) through Cut B Inner Range Front Light (LLNR–24765) and terminating on land in position 29°23′16″ N, 095°53′15″ W (NAD 83). This security zone is part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities against sabotage or terrorist attacks.

All vessels carrying or controlling vessels carrying CDCs are prohibited from entering, leaving or moving within the security zone unless authorized by the Captain of the Port Houston-Galveston or designated representative. To minimize the potential for vessels transporting CDCs to be delayed, it is highly recommended that those vessels contact the COTP Houston-Galveston at least 4 hours prior to the anticipated time they intend to enter, depart or move within the security zone. In Houston, vessels can contact the COTP through Vessel Traffic Service Houston/Galveston on VHF Channel 5A, by telephone at (713) 671–5103 or by facsimile at (713) 671–5159.

This rule is effective from 12:01 a.m. on January 2, 2004, through 6 a.m. March 1, 2004.

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).

While vessels carrying or controlling another vessel carrying CDCs will need authorization to transit the zone, the Coast Guard expects minimal interference with or delay to their passage. Proactive measures that vessels carrying or controlling vessels carrying CDCs can take to minimize the potential for delays to occur are noted within this preamble. Notifications to the marine community will be made through broadcast notice to mariners.

This security zone is temporary in nature. The Coast Guard will issue an NPRM should it consider making this rule permanent.

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: the owners or operators of vessels intending to transit the Port of Texas City Channel, Turning Basin and Industrial Canal containing all waters within the area south and west of a line drawn between Texas City Channel Light 19 (LLNR–24810) through Cut B Inner Range Front Light (LLNR–24765) and terminating on land in position 29°23′16″ N, 095°53′15″ W (NAD 83) between 12:01 a.m. on January 2, 2004, through 6 a.m. March 1, 2004. This rule will not have a significant economic impact on a substantial number of small entities for the reasons enumerated under the section entitled Regulatory Evaluation.

If you are a small business entity and are significantly affected by this regulation please contact CDR Thomas Marian, Vessel Traffic Service Houston/Galveston at (713) 671–5164.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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 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 M16475.1D, 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 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 because this rule is not expected to result in any significant environmental impact as described in NEPA.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T08–163 is added to read as follows:

§ 165.T08–163 Security Zone; Port of Texas City Channel, Turning Basin and Industrial Canal, Texas City, TX.

(a) *Location.* The following area is a security zone: The Port of Texas City Channel, Turning Basin and Industrial Canal containing all waters within the area south and west of a line drawn between Texas City Channel Light 19 (LLNR–24810) through Cut B Inner Range Front Light (LLNR–24765) and terminating on land in position 29°23′16″ N, 095°53′15″ W (NAD 83).

(b) *Effective period.* This section is effective from 12:01 a.m. on January 2, 2004, through 6 a.m. March 1, 2004.

(c) *Definitions.* As used in this section—

(1) *Certain Dangerous Cargoes* or *(CDCs)* includes—

(i) Division 1.1 or 1.2 explosives as defined in 49 CFR 173.50.

(ii) Division 1.5D blasting agents for which a permit is required under 49 CFR 176.415 or, for which a permit is required as a condition of a Research and Special Programs Administration exemption.

(iii) Division 2.3 ''poisonous gas'', as listed in 49 CFR 172.101 that is also a ''material poisonous by inhalation'' as defined in 49 CFR 171.8, and that is in a quantity in excess of 1 metric ton per vessel or barge.

(iv) Division 5.1 oxidizing materials for which a permit is required under 49 CFR 176.415 or, for which a permit is required as a condition of a Research and Special Programs Administration exemption.

(v) A liquid material that has a primary or subsidiary classification of 6.1 ''poisonous material'' as listed in 49 CFR 172.101 that is also a ''material poisonous by inhalation'', as defined in 49 CFR 171.8 and that is in a bulk packaging, or that is in a quantity in excess of 20 metric tons per vessel or barge when not in a bulk packaging.

(vi) Class 7, ''highway route controlled quantity'' radioactive material or ''fissile material, controlled shipment'', as defined in 49 CFR 173.403.

(vii) Bulk liquefied chlorine gas and Bulk liquefied gas cargo that is flammable and/or toxic and carried under 46 CFR 154.7.

(viii) The following bulk liquids:

(A) Acetone cyanohydrin,

(B) Allyl alcohol,

(C) Chlorosulfonic acid,

(D) Crotonaldehyde,

(E) Ethylene chlorohydrin,

(F) Ethylene dibromide,

(G) Methacrylonitrile,

(H) Oleum (fuming sulfuric acid), and

(I) Propylene oxide.

(2) *CDC Vessel* means any vessel carrying or controlling another vessel that is carrying CDCs.

(d) *Regulations.* (1) Under § 165.33, entry into, departure from, and movement within this zone by a CDC vessel is prohibited unless authorized by the Captain of the Port (COTP) Houston-Galveston or designated representative.

(2) CDC vessels must request permission to enter into, depart from, move within, or remain in the security zone described in paragraph (a) of this section by contacting Vessel Traffic Service (VTS) Houston/Galveston on VHF channel 5A, by telephone at (713) 671–5103, or by facsimile at (713) 671–5159.

(3) To avoid transit delays, CDC vessels should contact VTS Houston/Galveston on VHF channel 5A, by telephone at (713) 671–5103, or by facsimile at (713) 671–5159 at least 4 hours prior to the time the CDC vessel anticipates entering into, departing from, or moving within the security zone.

(4) All persons and vessels must comply with the instructions of the Captain of the Port Houston-Galveston and designated personnel. Designated personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: December 31, 2003.

Richard M. Kaser,

Captain, U.S. Coast Guard, Captain of the Port Houston-Galveston.

[FR Doc. 04–1328 Filed 1–21–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP No. MT–001–0005, MT–001–0006; FRL–7609–1]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Thompson Falls PM_{10} Nonattainment Area Control Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the Governor of Montana on June 26, 1997, and June 13, 2000, as meeting the requirements for moderate PM–10 nonattainment areas contained in Part D of the Clean Air Act. (Portions of the June 26, 1997, submittal were withdrawn by the Governor of Montana on February 28, 1999. We are only acting on the portions of the June 26, 1997, submittal that were not withdrawn.) These revisions contain an inventory of emissions for Thompson Falls and establish and require continuation of all control measures adopted and implemented for reductions of particulate matter with an aerodynamic diameter less than or equal to 10 micrometers (PM_{10}) in order to attain the PM_{10} National Ambient Air Quality Standards (NAAQS) in Thompson Falls. We are approving the control measures and the emissions inventory as part of the Montana SIP and making the control measures Federally enforceable. Also, we will be taking action on other portions of the June 13, 2000, submittal at a later time. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This final rule is effective February 23, 2004.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466 and copies of the Incorporation by Reference material at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108 (Mail Code 6102T), 1301 Constitution Ave., NW., Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Montana Department of Environmental Quality, Air and Waste Management Bureau, 1520 E. 6th Avenue, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, EPA, Region 8, (303) 312–6144.

SUPPLEMENTARY INFORMATION: On November 19, 2003 (68 FR 65229), we proposed to approve SIP revisions submitted by the Governor of Montana on June 26, 1997, and June 13, 2000, as meeting the requirements for moderate PM–10 nonattainment areas contained in Part D of the Clean Air Act.[1] These revisions contain an inventory of emissions for Thompson Falls and establish and require continuation of all control measures adopted and implemented for reductions of particulate matter with an aerodynamic diameter less than or equal to 10 micrometers (PM_{10}) in order to attain the PM_{10} National Ambient Air Quality Standards (NAAQS) in Thompson Falls. A discussion of the control measures is contained in the November 19, 2003, proposed rulemaking. With this action, we are approving the submitted emission inventory and control measures for Thompson Falls as meeting the requirements of Part D of the Clean Air Act and also making the control measures Federally enforceable.

I. Final Action

We received no comment on our November 19, 2003, notice of proposed rulemaking. EPA is approving State Implementation Plan revisions submitted by the Governor of Montana on June 26, 1997, and June 13, 2000. The June 26, 1997, submittal contains the Thompson Falls Air Pollution Control Plan and an emissions inventory for the Thompson Falls PM_{10} nonattainment area. On February 28, 1999, the Governor of Montana withdrew all chapters of the Thompson Falls Air Pollution Control Plan submitted on June 26, 1997, except chapters 45.2, 45.10.10 and 45.10.12 and the emissions inventory. The June 13, 2000, submittal contains corrections to chapter 45.10.10 of the Thompson Falls Air Pollution Control Plan and the emissions inventory submitted on June 26, 1997. Chapters 45.2, 45.10.10 and 45.10.12 of the Thompson Falls Air Pollution Control Plan include the PM_{10} control measures, control demonstration and enforceability sections of the plan. We are approving the emissions inventory for Thompson Falls and chapters 45.2, 45.10.10 and 45.10.12 of the Thompson Falls Air Pollution Control Plan as meeting the requirements for moderate PM–10 nonattainment areas contained in Part D of the Clean Air Act.

II. 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),

[1] On February 28, 1999, the Governor of Montana withdrew all chapters of the Thompson Falls Air Pollution Control Plan submitted on June 26, 1997, except chapters 45.2, 45.10.10, and 45.10.12, and the emissions inventory. The June 13, 2000 submittal contained corrections to chapter 45.10.10 and the emissions inventory submitted on June 26, 1997. We are only approving the portions of the SIP that the Governor did not withdraw, as corrected by the June 13, 2000 submittal.

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 March 22, 2004. 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: December 31, 2003.

Robert E. Roberts,

Regional Administrator, Region 8.

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

PART 52—[AMENDED]

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

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

Subpart BB—Montana

■ 2. Section 52.1370 is amended by adding paragraph (c)(60) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(60) On June 26, 1997, the Governor of Montana submitted the Thompson Falls Air Pollution Control Plan and on June 13, 2000, the Governor submitted revisions to the June 26, 1997, submittal. On February 28, 1999, the Governor of Montana withdrew all chapters of the Thompson Falls Air Pollution Control Plan submitted on June 26, 1997, except chapters 45.2, 45.10.10, and 45.10.12. EPA is approving sections 45.2, 45.10.10 and 45.10.12 of the Thompson Falls Air Pollution Control Plan.

(i) Incorporation by reference.

(A) Board Order issued June 20, 1997, by the Montana Board of Environmental Review, as reprinted in section 45.2.2 of the Thompson Falls Air Pollution Control Plan. The Board Order adopts and incorporates the May 1997 Maintenance Agreement Between the City of Thompson Falls, Montana Department of Transportation, and Montana Department of Environmental Quality which contains the control plan for the attainment and maintenance of the PM–10 National Ambient Air Quality Standards in the Thompson Falls area.

(B) May 1997 Maintenance Agreement between the City of Thompson Falls, Montana Department of Transportation, and Montana Department of Environmental Quality, as reprinted in section 45.2.1 of the Thompson Falls Air Pollution Control Plan.

(ii) Additional Material.

(A) Sections 45.2, 45.10.10 and 45.10.12 of the Thompson Falls Air Pollution Control Plan.

■ 3. Section 52.1391 is amended by redesignating the existing paragraph as paragraph (a) and adding paragraph (b) to read as follows:

§ 52.1391 Emission inventories.

* * * * *

(b) As part of the Thompson Falls Air Pollution Control Plan (approved at § 52.1370(c)(60)), the Governor of Montana submitted a PM–10 emission inventory for the Thompson Falls area as a SIP revision. The PM–10 emission inventory covers the time period of July 1, 1990 through June 30, 1991.

[FR Doc. 04–1233 Filed 1–21–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA264–0430; FRL–7607–5]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District, Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and Yolo-Solano Air Quality Management District (YSAQMD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on April 25, 2003, and concerns volatile organic compound (VOC) emissions from industries storing, loading, and transfering organic liquids as part of their operations. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves these local rules that regulates these emission sources and directs California to correct rule deficiencies.

EFFECTIVE DATE: This rule is effective on February 23, 2004.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours by appointment. You can inspect copies of the submitted SIP revisions by appointment 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;
San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726; and,
Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616.

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: Jerald S. Wamsley, EPA Region IX, at either(415) 947–4111, or *Wamsley.Jerry@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

I. Proposed Action

On April 25, 2003 (68 FR 20356), EPA proposed a limited approval and limited disapproval of the following rules that were submitted for incorporation into the California SIP.

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	4623	Storage of Organic Liquids	12/20/01	03/15/02
YSAQMD	2.21	Organic Liquid Loading	06/12/02	08/06/02

We proposed a limited approval because we determined that these rules improve the SIP and are largely consistent with the relevant CAA requirements. Simultaneously, we proposed a limited disapproval because some provisions within each rule conflict with section 110 and part D of the Act. These provisions are reviewed below.

Within SJVUAPCD Rule 4623, the provisions discussed below conflict with section 110 of the Act and raise enforceability issues preventing EPA's full approval of the SIP revision.

- Section 5.6.1 is unclear on two points. First, it references requirements in section 6.4.6; these requirements are unclear in how they apply to section 5.6.1. For example, no VOC control requirement is clearly specified. Second, a typographical error exists in how section 5.6.1 references either section 6.4.6 or section 6.4.7.
- Section 7.1 has a missing compliance date and conflicting dates in its last sentence.

Within YSAQMD Rule 2.21, the provisions discussed below conflict with section 110 of the Act and raise rule enforceability issues preventing EPA's full approval of the SIP revision. In part, Rule 2.21's deficiencies relate to an EPA policy described within a memorandum dated September 20, 1999, entitled ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Start-up, and Shutdown'' (the Excess Emissions Policy).

Taken together section 111 and section 501 are inconsistent with the EPA policy on exemptions for excess emissions during malfunctions, start-up and shutdown. Furthermore, the Air Pollution Control Officer (APCO) discretion within section 111 for approving maintenance plans is a case of unbounded ''director's discretion'' as there are no criteria delimiting the APCO's authority for approving maintenance plans. These provisions violate EPA requirements concerning enforceability and and rule relaxations.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of these submittals.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments on our proposed action.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of the submitted rules. This action incorporates the submitted rules into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is finalizing simultaneously a limited disapproval of each rule. As a result, sanctions will be imposed unless EPA approves subsequent SIP revisions that correct each rule's deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the Act according to 40 CFR 52.31. In addition, EPA must promulgate a Federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months. Note SJVUAPCD Rule 4623 and YSAQMD Rule 2.21 have been adopted by these local air districts, and EPA's final limited disapproval does not prevent the local agency from enforcing it. Also, please note that the sanctions process for each of these rules is separate and distinct from the other; none of the language above should be construed otherwise.

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 February 23, 2004.

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 March 22, 2004. 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, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 18, 2003.

Laura Yoshii,

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)(297)(i)(E)(*2*) and (c)(303)(i)(B)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(297) * * *

(i) * * *

(E) * * *

(*2*) Rule 4623, adopted on April 11, 1991 and amended on December 20, 2001.

* * * * *

(303) * * *

(i) * * *

(B) * * *

(*2*) Rule 2.21, adopted on March 23, 1994 and amended on June 12, 2002.

* * * * *

[FR Doc. 04–1232 Filed 1–21–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–238, 255–200406; FRL–7612–2]

Approval and Promulgation of Implementation Plans: Tennessee: Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Tennessee on July 29, 2003. The revision corrects a deficiency identified by EPA in its August 14, 2002, conditional approval of Tennessee's Phase I NO_X SIP call submittal (67 FR 52913). With this deficiency corrected, EPA is fully approving Tennessee's NO_X Reduction and Trading Program because it meets the requirements of Phase I of the NO_X SIP Call that will significantly reduce ozone transport in the eastern United States.

EPA proposed to approve Tennessee's NO_X Reduction and Trading Program, with one exception, in the August 14, 2002 (67 FR 52913), action. The exception was Tennessee's rule that allowed for the allocation, to NO_X budget units, of additional allowances that have been generated through NO_X emission reductions from industrial, mobile, and area source sectors. However, Tennessee's rule provided for approval of the allocation of additional allowances solely by the permitting authority, without approval by EPA. Tennessee corrected this deficiency in the revision submitted on July 29, 2003, by requiring EPA approval of any additional allocations generated through NO_X emissions reductions from industrial, mobile, and area sources. Therefore, EPA is approving Tennessee's NO_X Reduction and Trading Program.

EFFECTIVE DATE: This final rule is effective January 22, 2004.

ADDRESSES: Copies of documents relative to this action 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.

Tennessee Department of Environment and Conservation, L&C Annex, 401 Church Street, Nashville, Tennessee 37243.

FOR FURTHER INFORMATION CONTACT: Anne Marie Hoffman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9074. Ms. Hoffman can also be reached via electronic mail at *hoffman.annemarie@epa.gov*.

SUPPLEMENTARY INFORMATION: On November 7, 2000, the Tennessee Department of Environment and Conservation (TDEC) submitted a draft NO_X emission control rule to the EPA for pre-adoption review, requesting parallel processing of the development of the rule at the State level and included a schedule for development and adoption of the rule by the State. On January 11, 2001, TDEC submitted adopted revisions to its SIP to meet the requirements of the Phase I NO_X SIP Call. Tennessee submitted State-effective rule revisions on October 4, 2001. The revisions complied with the requirements of the Phase I NO_X SIP Call with one exception regarding deficiencies in section 96.40 State trading program budget. Tennessee corrected this deficiency in the revision submitted on July 29, 2003. Included in this document are new rules 1200–3–27–.04 *Standards for Cement Kilns* and 1200–3–27–.06 *NO_X Budget Trading Program for State Implementation Plans (40 CFR 96)*. The information in this final rule is organized as follows:

I. EPA's Action
- A. What action is EPA approving today?
- B. Why is EPA approving this action?
- C. What are the NO_X SIP Call general requirements?
- D. What is EPA's NO_X budget and allowance trading program?
- E. What guidance did EPA use to evaluate Tennessee's submittal?
- F. What is the result of EPA's evaluation of Tennessee's program?

II. Tennessee's Control of NO_X Emissions
- A. When did Tennessee submit the SIP revision to EPA in response to the NO_X SIP Call?
- B. What is the Tennessee NO_X Budget Trading Program?
- C. What is the Compliance Supplement Pool?
- D. What is the New Source Set-Aside program?

III. Final Action

IV. Statutory and Executive Order Reviews

I. EPA's Action

A. What Action Is EPA Approving Today?

EPA is approving revisions to Tennessee's SIP concerning the adoption of its NO_X Reduction and Trading Program, submitted for parallel processing on November 7, 2000, with additional material submitted on January 11, 2001, and State-effective rules submitted on October 4, 2001, and July 29, 2003.

B. Why Is EPA Approving This Action?

EPA is approving this action because Tennessee's NO_X Reduction and Trading Program regulations meet the requirements of Phase I of the NO_X SIP Call. EPA proposed to approve Tennessee's NO_X Reduction and

Trading Program, with one exception, in the August 14, 2002 (67 FR 52913), action. The exception was Tennessee's rule that allowed for the allocation, to NO_X budget units, of additional allowances that have been generated through NO_X emission reductions from industrial, mobile, and area source sectors. However, Tennessee's rule provided for approval of the allocation of additional allowances solely by the permitting authority, without approval by EPA. In a letter dated June 25, 2002, EPA informed Tennessee of this deficiency and how the State could correct the deficiency. In the letter EPA also required the State to commit to correct the deficiency within 12 months. Tennessee corrected this deficiency in the revision submitted on July 29, 2003. Therefore, EPA is approving Tennessee's NO_X Reduction and Trading Program, including a rule for cement kilns.

C. What Are the NO_X SIP Call General Requirements?

On October 27, 1998, EPA published a final rule entitled, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' otherwise known as the ''NO_X SIP Call.'' *See* 63 FR 57356. For detailed information refer to the proposal document (67 FR 52913).

D. What Is EPA's NO_X Budget and Allowance Trading Program?

EPA's model NO_X budget and allowance trading rule, 40 CFR part 96, sets forth a NO_X emissions trading program for large EGUs and non-EGUs. For detailed information refer to the proposal document (67 FR 52913).

E. What Guidance Did EPA Use To Evaluate Tennessee's Submittal?

The final NO_X SIP Call rule included a model NO_X budget trading program regulation. *See* 40 CFR part 96. EPA used the model rule and 40 CFR 51.121–51.122 to evaluate Tennessee's NO_X reduction and trading program.

F. What Is the Result of EPA's Evaluation of Tennessee's Program?

EPA has evaluated Tennessee's July 29, 2003, SIP submittal and finds it approvable. The Tennessee NO_X reduction and trading program is consistent with EPA's guidance and meets the requirements of the Phase I NO_X SIP Call. EPA finds the NO_X control measures in Tennessee's NO_X reduction and trading program, including the cement kiln rule, approvable. The July 29, 2003, submittal will strengthen Tennessee's SIP for reducing ground level ozone by providing NO_X reductions beginning in 2004. Also, EPA finds that the submittal contained the information necessary to demonstrate that Tennessee has the legal authority to implement and enforce the control measures, and to demonstrate appropriate distribution of the compliance supplement pool. Furthermore, EPA finds that the submittal demonstrates that the compliance dates and schedules, and the monitoring, recordkeeping and emission reporting requirements will be met.

II. Tennessee's Control of NO_X Emissions

A. When Did Tennessee Submit the SIP Revision to EPA in Response to the NO_X SIP Call?

On November 7, 2000, the Tennessee Department of Environment and Conservation submitted a draft NO_X emission control rule to the EPA for pre-adoption review, requesting parallel processing of the development of the rule at the State level and included a schedule for development and adoption of the rule by the State. On January 11, 2001, TDEC submitted adopted revisions to its SIP to meet the requirements of the Phase I NO_X SIP Call. Tennessee submitted State-effective rule revisions on October 4, 2001, and July 29, 2003.

B. What Is the Tennessee NO_X Budget Trading Program?

Tennessee's rule, as in the model rule, allows the large EGUs and non-EGUs to participate in the multi-state cap and trade program. For detailed information refer to the proposal document (67 FR 52913).

Tennessee chose to revise the provisions in section 96.40 (State trading program budget) of the model rule by adding a provision at 1200–3–27–.06(1)(f) to allow for the allocation of additional allowances for NO_X emission reductions from industrial, mobile, and area source sectors. The provision states that Tennessee ''may'' allocate, to NO_X budget units, additional allowances generated through NO_X emission reductions from industrial, mobile, and area source sectors if the reductions are permanent, enforceable, quantifiable, and surplus as determined by and approved by EPA and Tennessee. The provision does not give Tennessee any authority to make such additional allocations unless and until EPA approves the use of NO_X emission reductions from sources in these sectors to generate allowances. Any program for such use of these emission reductions that is submitted by Tennessee will be reviewed by EPA, as a revision to the SIP, to assure that, before receiving approval, the program will meet the requirements that only emission reductions that are permanent, enforceable, quantifiable, and surplus may be credited for allowances. In order to meet these requirements, the program must, among other things, prevent the crediting for allowances of emissions that may be shifted from sources in the program to sources not covered by the program.

Tennessee's Rule 1200–3–27–.04 *Standards for Cement Kilns* establishes requirements for cement manufacturing facilities. These sources are subject to NO_X reduction requirements but do not participate in the NO_X trading program. Cement kilns are not included in the trading program, but will be required to install low NO_X burners, mid-kiln system firings or technology.

Tennessee's submittal demonstrates that the Phase I NO_X emission budgets established by EPA will be met as follows:

Source category	EPA 2007 NO_X budget emissions (tons/season)	Tennessee 2007 NO_X budget emissions (tons/season)
EGUs	25,814	25,814
Non-EGUs	5,519	5,519
Area Sources	13,333	13,333
Non-road Sources	52,920	52,920
Highway Sources	66,342	66,342
Total	163,928	163,928

C. What Is the Compliance Supplement Pool?

To provide additional flexibility for complying with emission control requirements associated with the NO_X SIP Call, the final NO_X SIP Call rule provided each affected State with a ''compliance supplement pool.'' For detailed information refer to the proposal document (67 FR 52913).

D. What Is the New Source Set-Aside Program?

Part 96 requires that new sources hold allowances to cover their emissions. For detailed information refer to the proposal document.

III. Final Action

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(d)(3) of the Administrative Procedures Act (APA), which allows an agency to make a rule effective immediately. Because the NO_X SIP Call Compliance date is May 31, 2004, EPA believes it is necessary that sources be allowed to begin immediate population of their accounts thereby enabling them prepare for the ozone control season and compliance with their allocations. Thus, in today's rule EPA finds there is good cause to have this rule take effect immediately.

EPA is approving the Tennessee's SIP revision consisting of its draft NO_X Budget Trading Program, which was submitted on November 7, 2000, with additional material submitted on January 11, 2001, and State-effective rules submitted on October 4, 2001, and July 29, 2003. EPA finds that Tennessee's submittal is approvable because it meets the requirements of the Phase I NO_X SIP Call.

EPA originally proposed to approve Tennessee's NO_X Reduction and Trading Program, with one exception, in an August 14, 2002 (67 FR 52913), action. The exception referred to section 96.40 State trading program budget. Tennessee's rule allowed for the allocation of additional allowances that have been generated through NO_X emission reductions from industrial, mobile, and area source sectors, as described above in section II.B. However, Tennessee's rule provided for approval of the allocation of additional allowances solely by the permitting authority, without approval by EPA. Tennessee corrected this deficiency in the revision submitted on July 29, 2003, by requiring EPA approval of any additional allocations generated through NO_X emission reductions from industrial, mobile, and area sources. Therefore, EPA is approving Tennessee's NO_X Reduction and Trading Program.

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 (Public Law 104–4).

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

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

The Congressional Review Act, 5 U.S.C. 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 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 March 22, 2004. 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: January 8, 2004.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ 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. In § 52.2220(c) Table 1 is amended by adding in numerical order new entries for ''Section 1200–3–27–.04'' and ''Section 1200–3–27–.06'' to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

TABLE 1.—EPA-APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	Adoption date	EPA approval date	Federal Register notice
*	*	*	*	*
Section 1200–3–27–.04	Standards for Cement Kilns.	July 27, 2003	January 22, 2004	[Insert FR Page citation of publication]
Section 1200–3–27–.06	NO_X Trading Budget for State Implementation Plans.	July 27, 2003	January 22, 2004	[Insert FR Page citation of publication]
*	*	*	*	*

* * * * *

[FR Doc. 04–1231 Filed 1–21–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA275–0423a; FRL–7609–2]

Revisions to the California State Implementation Plan, 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 South Coast Air Quality Management District portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from food product manufacturing and processing, recordkeeping for VOC sources, and particulate matter (PM) emissions from woodworking operations. 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 March 22, 2004 without further notice, unless EPA receives adverse comments by February 23, 2004. 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: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to steckel.andrew@epa.gov, or submit comments at *http://www.regulations.gov.*

You can inspect copies of the submitted SIP revisions, EPA's technical support documents (TSDs), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

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; and,

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765–4182.

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 website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, at either (415) 947–4111, or *wamsley.jerry@epa.gov.*

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 rule revisions?
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A. How is EPA evaluating the rules?
B. Do the rules meet the evaluation criteria?
C. EPA recommendations to further improve the rules.
D. Public comment and final action.
III. 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 No.	Rule title	Adopted	Submitted
SCAQMD	1131	Food Product Manufacturing and Processing Operations	06/06/03	08/11/03
SCAQMD	109	Recordkeeping for Volatile Organic Compound Emissions	05/02/03	08/11/03
SCAQMD	1137	PM–10 Emission Reductions from Woodworking Operations	02/01/02	11/19/02

EPA found these rule submittals met the completeness criteria in 40 CFR Part 51 Appendix V on the following dates: October 10, 2003 for Rule 1131; October 10, 2003 for Rule 109, and February 7, 2003 for Rule 1137. These completeness criteria must be met before formal EPA review can begin.

B. Are There Other Versions of These Rules?

There are previous versions of Rules 1131 and 109 in the SIP. We gave a limited approval and limited disapproval to Rule 1131 on June 26, 2002 (see 67 FR 43004) and we gave a full approval to Rule 109 on February 12, 2002 (see 67 FR 6410). CARB has made no intervening submittals of either Rule 1131 or Rule 109 since these last EPA actions. There is no version of Rule 1137 in the SIP as it has not be submitted to EPA in the past. There have been no subsequent submittals of Rule 1137 since CARB's November 2002 submittal to EPA.

C. What Is the Purpose of the Submitted Rule Revisions?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Similarly, PM–10 (particulate matter less than 10 microns) causes a wide range of health problems. Section 110(a) of the CAA requires states to submit regulations that control VOC and PM–10 emissions.

SCAQMD Rule 1131 specifies the VOC content of solvents used in food product manufacturing and to clean and sterilize the equipment used in the manufacturing process. SCAQMD's June 6, 2003 amendments to Rule 1131 concerned these sections:

—Subsection (c)(1)(C) was deleted; and,
—The applicability and exemption portions of the rule were amended to say that food supplements in tablet or capsule form are regulated by Rule 1103—Pharmaceuticals and Cosmetics Manufacturing Operations.

SCAQMD Rule 109 establishes recordkeeping requirements for stationary sources that use coatings, adhesives, solvents and graphic arts materials. Rule 109 is referenced by many industry-specific prohibitory rules in SCAQMD's 1100 series. SCAQMD's amendments to the SIP-approved version of Rule 109 are summarized below.

—Several test methods were added to determine the VOC content of super-compliant materials (solvent with a VOC content less than 50 grams per liter) including non thin-film radiation curable materials.
—A provision was also added to allow sources to use an alternative test method if it is adequate to determine compliance and is approved in writing by SCAQMD, CARB, and EPA.
—The discussion of exempt compounds within the test method section was revised. All compounds not listed in SCAQMD Test Methods 302 and 303 as exempt are assumed not to be exempt until they are specifically identified by the manufacturer along with the test method used for the identification.
—An exemption from recordkeeping was added for super compliant materials at a facility where total facility VOC emissions do not exceed 4 tons per year, including permitted and non-permitted emissions from all VOC containing materials.

SCAQMD Rule 1137 is designed to limit particulate matter (PM) emissions at woodworking operations such as lumbermills, furniture manufacturers, cabinet shops, and sash and door manufacturers. The rule requires that woodworking operations send sawdust emissions either directly to a baghouse filter, or to a pneumatic conveyance device that leads to a baghouse filter. These woodworking operations must either maintain, or have implemented these controls by July 1, 2002.

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 Act), and must not relax existing requirements (see sections 110(l) and 193). VOC prohibitory rules must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)). Similarly, PM prohibitory rules must require Reasonably Available Control Methods (RACM) and Best Available Control Methods (BACM) for major sources and significant source categories in serious PM nonattainment areas (see section 189 (a) and (b)). The SCAQMD regulates an ozone nonattainment area (see 40 CFR part 81), so Rules 1131 and 109 must fulfill RACT. SCAQMD regulates a serious PM nonattainment area; however, Rule 1137 need not fufill RACM or BACM given its lack of RACM or BACM status within the SCAQMD PM attainment plan. Rule 1137 is only a listed control measure in that plan and need only be approvable as meeting enforceability guidelines.

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements consistently include the following:

—Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
—''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).
—General Preamble to Title I of the Clean Air Act Amendments of 1990, April 16, 1992, pages 13540–13541.
—General Preamble to Title I of the Clean Air Act Amendments of 1990, August 16, 1994, pages 42008–42015.

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 revisions to Rule 1131 deleting section (c)(1)(C) addresses the deficiency providing cause for our 2002 limited disapproval action. The TSDs have more information on our respective evaluation of each rule.

C. EPA Recommendations To Further Improve the Rules

We have no suggestions for additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, 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 February 23, 2004, 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 March 22, 2004. This will incorporate these rules into the federally enforceable SIP and will permanently terminate all section 179 and 110(c) sanction and FIP implications associated with our limited disapproval of a prior version of Rule 1131.

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.

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. 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. section 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 March 22, 2004. 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: December 4, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

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

PART 52—[AMENDED]

■ 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)(307)(i)(D) and (c)(320)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(307) * * *

(i) * * *

(D) South Coast Air Quality Management District.

(*1*) Rule 1137 adopted on February 1, 2002.

* * * * *

(320) * * *

(i) * * *

(B) South Coast Air Quality Management District.

(*1*) Rule 109 adopted on May 5, 1989 and amended on May 2, 2003; and, Rule 1131 adopted on September 15, 2000 and amended on June 6, 2003.

* * * * *

[FR Doc. 04–1037 Filed 1–21–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 02–6; FCC 03–288]

Rural Health Care Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Final rule, correction.

SUMMARY: This document corrects errors in the dates section and the supplementary information section of a **Federal Register** document regarding the Commission modification of its rules to improve the effectiveness of the rural health care support mechanism, which provides discounts to rural health care providers to access modern telecommunications for medical and health maintenance purposes. The summary was published in the **Federal Register** on December 24, 2003.

DATES: Effective January 22, 2004.

FOR FURTHER INFORMATION CONTACT: Shannon Lipp, Attorney, (202) 418–7400 or Regina Brown, Attorney, (202) 418–7400, Wireline Competition Bureau, Telecommunications Access Policy Division.

SUPPLEMENTARY INFORMATION: This summary contains corrections to the dates section and the supplementary information section of a **Federal Register** summary, 68 FR 74492 (December 24, 2003). The full text of the Commission's Report and Order and Order on Reconsideration in WC Docket No. 02–6, FCC 03–288 released on December 24, 2003 is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

In rule FR Doc. 03–31683 published December 24, 2003 (68 FR 74492) make the following corrections.

1. On page 74492, in the third column, in the **DATES** section, remove ''February 23, 2004'' and add ''January 23, 2004'' in its place. Also in the **DATES** section, remove ''§ 54.609(A)(3)(ii)'' and add ''§ 54.609(d)(2)'' in its place.

2. On page 74502, in the first column, in paragraph 69, fourth line, remove ''§ 54.609(A)(3)(ii)'' and add ''§ 54.609(d)(2)'' in its place.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–1247 Filed 1–21–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket OST–2003–15245]

RIN 2105–AD36

Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Revision of Substance Abuse Professional Credential Requirement

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation's Office of Drug and Alcohol Policy and Compliance (ODAPC) is adding drug and alcohol abuse counselors certified by the National Board for Certified Counselors, Inc. and Affiliates (NBCC), specifically NBCC's Master Addictions Counselor (MAC), to those eligible to be substance abuse professionals (SAPs) under subpart O of 49 CFR part 40.

DATES: This rule is effective January 22, 2004.

FOR FURTHER INFORMATION CONTACT: Jim L. Swart, Drug and Alcohol Policy Advisor at (202) 366–3784 (voice), (202) 366–3897 (fax), or at *jim.swart@ost.dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Background

The Omnibus Transportation Employee Testing Act of 1991 required that an opportunity for treatment be made available to covered employees. To implement this requirement in its alcohol and drug testing rules issued in February 1994, the Department of Transportation (DOT) established the role of the ''substance abuse professional'' (SAP). The Department's regulation—49 CFR part 40–requires an employer to provide a covered employee, who engages in conduct prohibited by DOT agency drug and alcohol regulations, a listing of qualified SAPs. In addition, the regulation requires the employee to be evaluated by a SAP and to demonstrate successful compliance with the SAP's evaluation recommendations for education and/or treatment prior to being considered for returning to any DOT safety-sensitive position.

The Department considers the SAP to be the ''Gatekeeper'' for the return-to-duty process. The SAP represents the major decision point an employer may have in choosing whether or not to place an employee back to safety-sensitive duties following a DOT regulation violation. The SAP is responsible for several duties important to the evaluation, referral, and treatment of employees who have engaged in prohibited drug and alcohol related conduct. The job a SAP accomplishes as ''Gatekeeper'' provides vital help to the employee, the employer, and to the traveling public.

In order to be permitted to act as a SAP in the DOT drug and alcohol testing program, in addition to meeting basic knowledge, training and examination, and continuing education requirements, a person must have one of the following credentials:

(1) Licensed physician;

(2) Licensed or certified social worker;

(3) Licensed or certified psychologist;

(4) Licensed or certified employee assistance professional; or

(5) Drug and alcohol counselor certified by the National Association of Drug Abuse Counselors Certification Commission (NAADAC) or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC).

Part 40, at § 40.283, details how a certification organization wishing to obtain recognition for its members as SAPs can submit to the Department a written petition requesting a review of that petition. The Department stipulates that the organization must first obtain National Commission for Certifying Agencies (NCCA) accreditation through the National Organization for Competency Assurance (NOCA) and meet the requirements of appendix E to part 40. The petition must fully show proof of the organization's meeting these review prerequisites.

The National Board for Certified Counselors, Inc. and Affiliates, 3 Terrace Way, Suite D, Greensboro, NC 27403–3660, petitioned the DOT for inclusion of its MAC as one of the SAP credentials. Upon receipt of the petition, the DOT began a thorough review of the NBCC proposal, to include substantive information documentation and demonstration of the 12 items in appendix E to part 40. In addition, the Department obtained corroboration from appropriate sources that the information provided by NBCC was valid.

Relative to the criteria established by the Department for certifying organizations, the NBCC MAC credential was accredited by the NCCA certification and accreditation process and that accreditation is currently in good standing. The Department used its collaborative relationship with NOCA to ensure that the focus of the NBCC's MAC examination was on substance abuse, and we used that relationship to further ensure that NCCA's accreditation standards were met. In addition to meeting the NCCA accreditation standards, NBCC had to meet the part 40 requirements at appendix E. The NBCC MAC credential process met or exceeded all DOT requirements.

The results of our evaluation supports the conclusion that NBCC has rigorous standards in place and their MAC credential warrants inclusion as an appropriate SAP credential in the Department's drug and alcohol testing regulation. Their program requirements and certification process meet the rigorous requirements of NCCA accreditation. Their standards also satisfy the Department's equally rigorous requirements at appendix E to 49 CFR part 40. Therefore, after careful review of NBCC's petition, supporting documentation, and certification procedures, NBCC's certified MACs will be recognized as eligible to be SAPs.

Regulatory Analyses and Notices

This rule is not a significant rule for purposes of Executive Order 12866 or

the DOT's Regulatory Policies and Procedures. With respect to the Regulatory Flexibility Act, the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. In fact, it will serve to increase the number of qualified SAPs available to employees and employers.

The Department is issuing this as a final rule without opportunity for notice and public comment. The Department determined that doing so would be impracticable, unnecessary, and contrary to the public interest because the parameters for the Department's decisions with regard to counselor certification groups have been long established in part 40 and have been amply commented upon previously. In addition, our review, verification, and corroboration process of NBCC's petition and documentation were very comprehensive and followed the review criteria in appendix E to part 40. Finally, an immediate increase in the number of those counselors eligible to become SAPs will be realized within the transportation industries near to part 40's SAP ''qualification training'' deadline, which was December 31, 2003.

For the same good cause and reasons stated in the above paragraph, the Department is issuing this final rule with an immediate effective date rather than one 30 days from date of publication.

List of Subjects in 49 CFR Part 40

Administrative practice and procedures, Alcohol abuse, Alcohol testing, Drug abuse, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

Dated: January 13, 2004.

Norman Y. Mineta,

Secretary of Transportation.

■ For reasons set forth in the preamble, the Department of Transportation amends part 40 Title 49, Code of Federal Regulations, as follows:

PART 40—[AMENDED]

■ 1. The authority citation for 49 CFR part 40 continues to read as follows:

Authority: 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 45102 *et seq.*

■ 2. Revise § 40.281(a)(5) to read as follows:

§ 40.281 Who is qualified to act as a SAP?

(a) * * *

(5) You are a drug and alcohol counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC); or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC); or by the National Board for Certified Counselors, Inc. and Affiliates/Master Addictions Counselor (NBCC).

* * * * *

[FR Doc. 04–1326 Filed 1–21–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI16

Endangered and Threatened Wildlife and Plants; Endangered Status for the Rota Bridled White-Eye (*Zosterops rotensis*) From the Commonwealth of the Northern Mariana Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, determine endangered status pursuant to the Endangered Species Act of 1973, as amended, for the Rota bridled white-eye (*Zosterops rotensis*), a bird. The Rota bridled white-eye is a recognized species of white-eye endemic to the island of Rota, Commonwealth of the Northern Mariana Islands. The Rota bridled white-eye was once widespread, possibly occupying forested habitat at all elevations. The total population of the Rota bridled white-eye was estimated at 1,167 individuals in 1996, representing a decline of 89 percent from the 1982 estimated population of 10,763 individuals. The Rota bridled white-eye has continued to decline: In 1999, the population estimate was approximately 1,092 individuals. The Rota bridled white-eye is currently found in four patches of mature wet forest at elevations above 200 meters (650 feet). The reasons for this species' decline are likely the degradation or loss of habitat due to development, agricultural activities, and naturally occurring events; avian disease; predation; and pesticides. This final rule implements the protection provisions of the Act.

DATES: This rule is effective February 23, 2004.

ADDRESSES: The administrative file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, HI 96850.

To request copies of regulations on listed species, or for inquiries on prohibitions and permits, write or visit the Service's Portland Office, U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE., 11th Avenue, Portland, OR 97232–4181.

FOR FURTHER INFORMATION CONTACT: Gina Shultz, Assistant Field Supervisor, at the Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section) (telephone (808) 792–9400; facsimile (808) 792–9580).

Endangered Species, Portland Office (*see* **ADDRESSES** section) (telephone (503) 231–2063; facsimile (503) 231–6243).

SUPPLEMENTARY INFORMATION:

Background

The Rota bridled white-eye (*Zosterops rotensis*) is endemic to the island of Rota, U.S. Commonwealth of the Northern Mariana Islands (CNMI). The fourth largest island in the Mariana Archipelago, Rota is approximately 86 square kilometers (km2) (33 square miles (mi ^{2})), and is composed of a series of uplifted coral limestone plateaus with a volcanic outcrop. The climate is tropical marine with high humidity and uniform temperatures throughout the year. Average daytime temperatures are approximately 12 degrees Celsius (80 degrees Fahrenheit), with approximately 200 centimeters (cm) (80 inches (in)) of rainfall annually and about 80 percent humidity. Rainfall averages 27 cm (10.6 in) per month during the wet season and 9.6 cm (3.8 in) per month during the dry season.

The Rota bridled white-eye is a small flocking bird in the Family *Zosteropidae*, Order Passeriformes. The name white-eye is derived from the ring of white feathers around each eye. The plumage is tinged with yellow, and the bill, legs, and feet are yellow-orange (Pratt *et al.* 1987). Wing, tail, and tarsal lengths taken from 21 adult birds captured by the Mariana Avian Rescue and Survey (MARS) Project averaged 5.6 cm (2.2 in), 3.8 cm (1.5 in), and 2.6 cm (1 in), respectively (Scott Derrickson, National Zoological Park, *in litt.* 1998). Average weights taken from birds captured for the MARS Project were 9.7 grams (0.3 ounces) for males and 9.2 grams (0.3 ounces) for females (S. Derrickson, *in litt.* 1998).

All of the bridled white-eyes in Micronesia, including the Rota bridled white-eye, were placed under one species, *Zosterops conspicillatus,* by Stresemann (1931). Later, the bridled

white-eyes in the Mariana Islands were recognized as three separate subspecies: *Z. c. rotensis* (Rota), *Z. c. saypani* (Saipan and Tinian), and *Z. c. conspicillatus* (Guam) (Mees 1969). However, the Rota bridled white-eye is now considered to be a full species, *Z. rotensis,* on the basis of recent genetic evidence from mitochondrial DNA sequences (Slikas *et al.* 2000) and unpublished differences in plumage, vocalizations, and behavior (H. D. Pratt, *in litt.* 1994, as cited in Collar *et al.* 1994).

Rota bridled white-eyes are primarily found in native forests and introduced *Acacia confusa* (sosugi) forests at upper elevations in Rota's Sabana region (Amidon 2000). On Saipan and Guam, bridled white-eyes were recorded at a wide range of elevations in native and introduced forests, suburban areas, beach strands, wetlands, and grasslands at a wide range of elevations (Craig 1996; Jenkins 1983). Rota bridled white-eyes forage primarily by gleaning insects from leaves in the upper, outer layers of trees, but also feed on seeds, nectar, flowers, and fruits (Craig and Taisacan 1994; Amidon 2000). The majority of the foraging observations were recorded in *Elaeocarpus joga* (yoga) trees (Amidon 2000). However, these birds have also been observed foraging in eight other tree species, including *Hernandia labyrinthica* (oschal), *Merrilliodendron megacarpum* (faniok), and sosugi (Amidon 2000).

Rota bridled white-eyes are highly gregarious and are often observed foraging in small groups of five to seven birds (Craig and Taisacan 1994). These foraging groups sometimes include rufous fantails (*Rhipidura rufifrons*) (Amidon 2000). Historically, flock sizes were larger, but available evidence indicates that group sizes have decreased as the population has declined (Craig 1989; Craig and Taisacan 1994; Fancy and Snetsinger 2001; Derrickson, *in litt.* 2001). Home ranges of Rota bridled white-eye flocks are estimated to be at least 150 meters (m) (495 feet (ft)) in diameter (Craig and Taisacan 1994).

Very little is known about the breeding biology of the Rota bridled white-eye. Twenty-three nests have been recorded (Yamashina 1932; Pratt 1985; Lusk and Taisacan 1997; Amidon 2000), and the discovery dates of these nests indicate that the breeding season extends at least from December to August. However, a year-round breeding season may be more likely, as indicated by breeding records of bridled white-eye species and subspecies (Marshall 1949; Jenkins 1983). Clutches from four Rota bridled white-eye nests consisted of one to two light blue eggs (Yamashina 1932; Amidon 2000). Observations of 7 active nests by Amidon (2000) indicate incubation and nestling periods of at least 10 and up to 12 days, and observations of 1 banded nestling indicates a fledgling period of at least 8 days. Nests were found above 320 m (1,056 ft) elevation in oschal, yoga, faniok, and sosugi trees with diameter at breast height (dbh) between 23 cm (9 in) and 60.2 cm (24 in) (Pratt 1985; Lusk and Taisacan 1997; Amidon 2000). Rota bridled white-eye nests were commonly suspended between branchlets and leaf petioles and were composed of rootlets, woven grass or *Pandanus* spp. fibers, moss, spider webs, and a yellow cotton-like material (Lusk and Taisacan 1997; Amidon 2000).

Very little is known about the past distribution and abundance of bridled white-eyes on Rota. Early descriptions by Baker (1948) described this species as numerous and found at lower elevations. Residents of Rota during the post-World War II years also remember seeing white-eyes at low elevations in Songsong Village (Engbring *et al.* 1986). However, in 1975, Pratt *et al.* (1979) found no white-eyes in the lowland areas and observed birds in the Sabana region only at upper elevations. The current distribution of Rota bridled white-eyes indicates that the highest densities are found in the high-elevation wet forests on the Sabana (Amidon 2000; Fancy and Snetsinger 2001). Most Rota bridled white-eye nests with recorded locations (22 out of 23 nests) were also recorded in high-elevation wet forest (Pratt 1985; Lusk and Taisacan 1997; Amidon 2000). Whether this distribution is the result of habitat preference or is simply an artifact of population decline is unknown; however, the species appears to have been mostly limited to this distribution since at least the 1960s (Fancy and Snetsinger 2001).

In 1977, a bird survey, conducted only on the Sabana, estimated Rota bridled white-eye densities to be 22 birds/km^2 (35 birds/mi^2) (Ralph and Sakai 1979). The first island-wide survey of forest birds was conducted in 1982. During this survey, bridled white-eyes were found only in forested areas above 300 m (984 ft) (Engbring *et al.* 1986). The average bridled white-eye density on Rota was determined to be 183 birds/km^2 (292 birds/mi^2), with an island population estimate of 10,763 birds. Other surveys following the 1982 survey showed little change in the white-eye distribution, but did show a decline in white-eye numbers (Engbring 1987, 1989; Craig and Taisacan 1994). A 1994 survey found that densities had decreased 27 percent (155 birds/km^2 (248 birds/mi^2)) from the 1982 estimate (Ramsey and Harrod 1995). In the fall of 1996, a survey by Fancy and Snetsinger (2001) estimated the population of Rota bridled white-eyes to be 1,167 birds. This estimate indicated an 89 percent decline from the 1982 estimate. In addition, this survey determined that the population was restricted primarily to four patches of forest covering an area of about 254 hectares (ha) (628 acres (ac)) above 200 m (656 ft) elevation. Ninety-four percent of the Rota bridled white-eyes were found to occur in these patches. In 1999, survey work by Amidon (2000) estimated the Rota bridled white-eye population to be 1,092 within the high-density areas identified by Fancy and Snetsinger (2001).

The forest in these four high-density areas can be described as a type of cloud forest, with growths of epiphytic ferns and orchids, because of the cloud buildup over the Sabana region (Fosberg 1960; Falanruw *et al.* 1989). Amidon (2000) found that the primary overstory components of three of the four high-density Rota bridled white-eye areas were oschal and yoga. The remaining area of the overstory was almost exclusively faniok.

Currently, 85 percent of the Rota bridled white-eye population occurs on public lands and 15 percent occurs on private lands. There is no U.S. Government-owned land in the CNMI; all public lands are administered by the Mariana Public Land Authority for people of Mariana Island descent. Approximately 60 percent of the land on Rota is administered by the Mariana Public Land Authority, although much of it has been leased to private individuals.

The Rota bridled white-eye is listed as a critically endangered species in the most recent list of threatened animals of the world by the World Conservation Union (IUCN) (2002). The IUCN list provides an assessment of the conservation status of species on a global scale in order to highlight species threatened with extinction and, therefore, promote their conservation. According to the IUCN, a critically endangered species is one facing an extremely high risk of extinction in the wild in the immediate future. Also, in 1991, the CNMI government listed the Rota bridled white-eye as threatened or endangered (the CNMI makes no distinction between the threatened and endangered categories).

Previous Federal Action

Federal action on the Rota bridled white-eye began when we published a

Notice of Review in the **Federal Register** on December 30, 1982 (47 FR 58454). The Rota bridled white-eye was included as a Category 2 candidate for Federal listing. Category 2 species were those for which conclusive data on biological vulnerability and threats were not currently available to support publication of a proposed rule. Subsequent Notices of Review, published on September 18, 1985 (50 FR 37958), January 6, 1989 (54 FR 554), and November 21, 1991 (56 FR 58804), also designated this species as a Category 2 species.

In the November 15, 1994, Notice of Review (59 FR 58982), the Rota bridled white-eye was moved from a Category 2 candidate to a Category 1 candidate for Federal listing. Category 1 species were those for which we had on file substantial information on biological vulnerability and threats to support preparations of listing proposals, but for which listing proposals had not yet been published because they were precluded by other listing activities.

In the February 28, 1996 (61 FR 7596), and September 19, 1997 (62 FR 49398), Candidate Notices of Review, we discontinued category designations and listed the Rota bridled white-eye was listed as a candidate species. We define candidate species as those for which we have sufficient information on biological vulnerability and threats to support a proposal to list the species as threatened or endangered.

On August 29, 2001, a settlement agreement was announced between the Service, the Center for Biological Diversity, and others regarding endangered species litigation. The terms of agreement required that the Service submit to the **Federal Register**, on or by September 29, 2001, a proposed rule to list the Rota bridled white-eye as endangered. On October 3, 2001, we published a proposed rule to list the species as endangered (66 FR 50383). Because all available listing funds in 2002 were used to fund the proposal and designation of critical habitat for other species required by court order, we were not able to finalize our decision to list the Rota bridled white-eye. On August 22, 2002, the U.S. District Court in Hawaii approved an agreement between the Service and the Center for Biological Diversity to modify the court-ordered deadlines for submitting final critical habitat designations for the Kauai cave amphipod (*Spelaeorchestia koloana*), Kauai cave wolf spider (*Adelocosa anops*), and Blackburn's sphinx moth (*Manduca blackburni*). In consideration for an extension of time on these critical habitat proposals, the Service committed to take final action on the proposal to list the Rota bridled white-eye by January 15, 2004.

Summary of Comments and Recommendations

In the proposed rule (66 FR 50383), we requested that all interested parties submit comments on the proposal. We also contacted all appropriate Commonwealth and Federal agencies, local governments, landowners, and other interested parties and invited them to comment. The comment period closed on December 3, 2001 (66 FR 50383).

During the public comment period, we received five comment letters. Commenters included one Federal agency, two organizations, and two individuals. We did not receive any comments from State agencies. In total, none of the commenters opposed the listing, three supported the listing, and two were neutral.

This final rule incorporates and addresses comments and information we received during the comment period. We address substantive comments concerning the rule below. Comments of a similar nature are grouped together.

Peer Review

In accordance with our July 1, 1994, Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (59 FR 43270), we solicited the expert opinions of three independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population status, and supporting biological and ecological information for the Rota bridled white-eye. The purpose of such review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists. Information and suggestions provided by reviewers were incorporated or addressed as applicable.

We received peer reviews from three experts. All agreed that the Rota bridled white-eye is imperiled throughout its range, and that the proposed rule was based on scientifically sound data, assumptions, and analysis. These experts' comments are incorporated in the final rule and summarized in the following responses to comments.

Comment 1: Several commenters stated that critical habitat should have been proposed for the Rota bridled white-eye at the time the proposed rule was published. Two peer reviewers and two commenters suggested that critical habitat be designated as soon as possible.

Our Response: As stated in the proposed rule, we believe that designation of critical habitat for the Rota bridled white-eye would be prudent. However, due to our limited listing budget, we are not able to propose critical habitat for the Rota bridled white-eye at this time and it is essential to the conservation of the species that this final listing decision be published promptly. *See* 16 U.S.C. 1533(b)(6)(c)(i). When funds become available, we will propose critical habitat for the Rota bridled white-eye as required under section 4(a)(3) of the Act.

Comment 2: One commenter requested information on the plans that will be proposed for the recovery of the species.

Our Response: A recovery plan will be developed, in coordination with stakeholders. This plan will identify recovery objectives and describe specific management actions necessary to achieve the conservation and long-term survival of the species. We anticipate that these management actions will include habitat protection and restoration, and efforts to study and reduce Rota bridled white-eye mortality.

Comment 3: One commenter suggested that high mosquito densities within the Rota bridled white-eye's range and resulting blood loss should be considered a limiting factor.

Our Response: We do not agree that blood loss from high mosquito densities is having an impact on species survival. Compared to other areas of Rota, mosquito densities appear to be higher on the Sabana within the Rota bridled white-eye's range (Amidon pers. obs. 1999). However, high mosquito densities would also likely impact other bird species and reduce their abundance in this region. Review of bird survey results do not indicate that the abundance of native species differs between the Sabana region and other areas of the island (Amidon unpubl. data 2000).

Summary of Factors Affecting the Species

Section 4 of the Act and our regulations issued to implement the Act's listing provisions (50 CFR part 424) establish the procedures for adding species to the Federal List of Endangered and Threatened Species. We may determine a species to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to the Rota bridled white-eye are as follows:

A. *The present or threatened destruction, modification, or*

curtailment of its habitat or range. The Mariana Islands are believed to have been colonized by humans at least 4,000 years ago (Craib 1983). Before European contact, the island of Rota was thought to have had a large human population that moved into the area from insular (interior) southeast Asia and Melanesia and modified most of the island's vegetation (Fosberg 1960). During the Spanish administration (1521–1899), the island was largely depopulated, and the vegetation probably recovered on most of the island until the Japanese administration from 1914 to 1944 (Fosberg 1960; Engbring *et al.* 1986). During the Japanese administration, much of the level land was cleared for sugar cane cultivation, including areas on the Sabana, and additional areas were also cleared on the Sabana for phosphate mining (Fosberg 1960; Engbring *et al.* 1986). Rota was heavily bombed but not invaded during World War II (Engbring *et al.* 1986). In 1946, one-fourth of the total area of Rota was covered in well developed forest, but this was broken later into small parcels or located along the base of cliffs (Fosberg 1960). By the mid-1980s, Engbring *et al.* (1986) reported that 60 percent of Rota was composed of native forest, although a good portion of this was in an altered condition. The majority of the mature native forest was found along the cliffs of the upper plateau, with the forest on level portions of the island being mostly secondary growth. Today, less than 60 percent of the native limestone forest remains (Falanruw *et al.* 1989), and there are plans for further projects, such as agricultural homesteads and resort development in the As Mundo and As Rosalia areas, in the remaining limestone forest, and the available habitat for the Rota bridled white-eye.

Although the habitat in the limestone forest may be threatened by development, the majority of the high-elevation forests on the Sabana have not been subjected to development and large-scale clearing in the past because of their rugged topography. The forests have, however, received extensive typhoon damage in recent years, which has increased fragmentation and reduced the availability of breeding and foraging habitat. In 1988, typhoon Roy hit Rota with winds of over 241 kilometers per hour (150 miles per hour) and completely defoliated almost all of the forests of Rota (Fancy and Snetsinger 1996). In some areas, 50 percent of the trees were downed, and 100 percent of the trees suffered limb damage. The wet forests of the upper cliffline were drastically altered by this storm and have been heavily degraded (Fancy and Snetsinger 2001; Derrickson, *in litt.* 2001). In December 1997, Supertyphoon Paka hit Rota, and much of the upper plateau was defoliated again. These storms have resulted in the degradation and destruction of high-elevation wet forests on Rota and have limited the available nesting and foraging sites for the Rota bridled white-eye. This habitat loss may be the primary factor in the range restriction and population decline of the Rota bridled white-eye over the last two decades (Amidon 2000; Fancy and Snetsinger 2001; Derrickson, *in litt.* 2001).

Although land clearing on the Sabana has been limited, it may have played a part in the extent of typhoon damage to the forests on the Sabana. Clearings increased forest fragmentation on the Sabana, and thus increased the amount of forest edge, especially in the center and this increased forest exposure to typhoon damage. Probably the damage caused by typhoons might not have been as extensive if the forests on the Sabana had not been fragmented by land clearing.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Valued for their songs, some species and subspecies of white-eyes are kept as pets in Asian countries (Moreau and Kikkawa 1985). However, there are no reports of Rota bridled white-eyes in the pet trade. Unrestricted collecting or hunting is not known to be a factor currently affecting this species. Vandalism is a potential concern for this species. Rare plants on Rota have been the target of vandals who feared the plant's existence was an impediment to development (Raulerson and Rinehart 1997); however, we have no evidence of such vandalism directly affecting Rota bridled white-eyes.

C. *Disease or Predation.* Black drongos (*Dicrurus macrocercus*), a bird species from Asia, was thought to have been introduced to Rota from Taiwan by the Japanese South Seas Development Company in 1935 to control destructive insects (Baker 1948). Black drongos were noted for their aggression toward and occasional predation on small passerines (Ali and Ripley 1972; Maben 1982). On Guam, black drongos were observed eating a Eurasian tree sparrow (*Passer montanus*) (Maben 1982), rufous fantails (*Rhipidura rufifrons*), a Mariana swiftlet (*Aerodramus bartschi*) (Perez 1968), and either a bridled white-eye or a Guam broadbill (*Myiagra freycineti*) (Drahos 2002). A black drongo was also observed eating a Rota bridled white-eye (Amidon 2000). In addition to predation, Maben (1982) observed black drongos harassing native and introduced doves (Order Columbidae), cardinal (Micronesian) honeyeaters (*Myzomela rubratra)*, and Micronesian starlings (*Aplonis opaca*). Drongos have also been observed harassing other potential drongo predators such as crows and raptors (Ali and Ripley 1972; Maben 1982; Melville 1991).

Craig and Taisacan (1994) believe that a relationship exists between the abundance and distribution of black drongos and the decline and range restriction of the Rota bridled white-eye. Engbring *et al.* (1986) found black drongos to be uncommon in the forests of the upper plateau, where the Rota bridled white-eye is found, and abundant in lowlands. In lowland areas, the rufous fantail, another potential prey species of the black drongo, was also found to be uncommon, while birds too large to be prey for black drongos were abundant (Engbring *et al.* 1986). Amidon (2000) analyzed 1982 and 1994 bird survey data and found that black drongo numbers had increased on the Sabana between 1982 and 1994, while Rota bridled white-eye numbers decreased. However, Amidon did not find a negative relationship between black drongo, Rota bridled white-eye, and rufous fantail abundance estimates at survey stations on the Sabana.

Not all researchers agree that the black drongo was the main factor in the decline and range restriction of the Rota bridled white-eye. Maben (1982) found that, although they would harass other birds on Guam, black drongos did not regularly attempt to prey on them. Birds have also been reported to forage within black drongo territories and nest near active black drongo nests without harassment (Ali and Ripley 1972; Shukkur and Joseph 1980; Maben 1982). Michael Lusk of the Service (unpublished data) observed no interactions between black drongos and Rota bridled white-eyes during a 1993–1994 study of their interactions on Rota (cited in Fancy and Snetsinger 1996). In addition, Amidon (2000) observed only one black drongo predation on a Rota bridled white-eye over 11 months, despite efforts to record observations of black drongo predation on Rota bridled white-eyes. However, it is possible that black drongo predation or harassment, in combination with other factors, such as habitat loss, may be limiting the Rota bridled white-eye population (Amidon 2000; Fancy and Snetsinger 2001).

The brown treesnake (*Boiga irregularis*) is recognized as the major factor in the decline of native forest birds on Guam (Savidge 1986, 1987). There have been 46 sightings and 8 captures of brown treesnakes on Saipan

since 1982 (Nate Hawley, CNMI Department of Fish and Wildlife, *in litt.* 2002), and a population of this voracious predator may now be established on Saipan (Hawley, *in litt.* 2002). Presently, no observations of live brown treesnakes have been recorded on Rota, although two confirmed dead brown treesnakes have been found on Rota (Hawley, *in litt.* 2002). Currently, brown treesnakes are not believed to be a factor in the decline of the Rota bridled white-eye (Fancy and Snetsinger 2001). However, given that the brown treesnake is well established on Guam and may now be established on Saipan, and that two dead brown treesnakes were found on Rota, the accidental introduction of the brown treesnake to Rota is a serious potential threat.

Two species of introduced rat, Asian house rat (*Rattus tanezumi*) and Polynesian rat (*R. exulans*), have been recorded on Rota (Johnson 1962; Flannery 1995). Recent work by Service personnel on Rota, and opportunistic trapping and observations for the Guam rail release program, have indicated that high densities of rats exist on Rota (Fancy and Snetsinger 2001). Introduced rats have been found to be major predators of native birds in Hawaii, New Zealand, and other Pacific Islands (Atkinson 1977, 1985; Robertson *et al.* 1994). It appears unlikely that rat predation is responsible for the Rota bridled white-eye's restricted distribution because rat numbers within their range are similar to other areas outside their range on Rota (Amidon 2000). However, rat predation may be limiting the recovery of the species and may, in combination with other factors, be playing a role in the population decline.

Avian disease has also been implicated as a potential factor in the population decline and range restriction of the Rota bridled white-eye. In Hawaii, research has indicated that avian disease was a significant factor in the decline and distributional change of the native avifauna (van Riper *et al.* 1986; Warner 1968). Observations made by biologists and veterinarians who have worked on Rota, however, do not indicate the presence of pathogens or an epidemic (Fancy and Snetsinger 1996; Pratt 1983). Research on Guam has not revealed the presence of significant levels of disease (Savidge 1986). The presence of the haematozoans, *Plasmodium* spp. (Savidge 1986) and *Haemoproteus* spp. (Marshall 1949; Savidge 1986), in bridled white-eyes on Saipan has been reported. However, these parasites were considered to be relatively benign based on the good physical condition of the birds (Savidge 1986). In addition, 21 Rota bridled white-eyes captured by the MARS Project were sampled for avian disease, and no diseases were detected (Glenn Olsen, Biological Resources Division, pers. comm. 2000). However, no large-scale studies on the presence and effect of disease on the native birds of Rota have been conducted. Therefore, the role of avian disease in the decline and range restriction of the Rota bridled white-eye remains unclear. However, the accidental introduction of a new avian disease, such as West Nile virus, could also pose an additional threat to the species.

D. *The Inadequacy of Existing Regulatory Mechanisms.* In 1991, the CNMI government listed the Rota bridled white-eye as threatened or endangered (the CNMI makes no distinction between the threatened and endangered categories) (Public Law 2–51). However, CNMI regulations do not prohibit the taking of CNMI-listed threatened and endangered species (Kevin Garlick, Service, *in litt.* 1997).

In addition to listing the species, the CNMI has also designated a protected area on the Sabana in 1994 through Rota Local Law No. 9–1 (Sabana Protected Area Management Committee 1996). A plan was developed to manage this protected area as part of an effort by the CNMI government to limit development in this upper elevation area (Sabana Protected Area Management Committee 1996). Zones of activities have been designated for the protected area, with rules established for each zone. A number of activities are allowed to occur in the protected area in certain zones, such as farming, hunting, forestry, and medicinal use of plants. Many of these activities require a permit from the CNMI Department of Lands and Natural Resources. Conservation zones within the protected area have been established in areas critical to the continued survival of bats on Rota (Sabana Protected Area Management Committee 1996). These conservation zones also correspond to most of the current range of the Rota bridled white-eye. However, vegetation that is 15 cm (6 in) diameter at breast height or less may be permitted to be removed in certain zones, including the bat conservation zone. Removal of this vegetation may have negative effects on Rota bridled white-eye nesting and foraging habitat. While preservation of these forested areas is believed to also be essential for the long-term stability of the Rota bridled white-eye, not all of its habitat occurs within the Sabana Protected Area. In the As Rosalia area, there are plans for projects such as agricultural homesteads and resort development. Since the Rota bridled white-eye is not protected from take as a CNMI-listed species, and since the Sabana Protected Area affords minimal habitat protection for this species, regulatory mechanisms to protect this species are inadequate.

E. *Other Natural or Manmade Factors Affecting Its Continued Existence.* The use of pesticides has been implicated as a potential factor in the decline of the Rota bridled white-eye (Fancy and Snetsinger 2001). However, little information is available on the use of pesticides in the post World War II Mariana Islands. The U.S. military is reported to have liberally applied DDT (1, 1-bis (chlorophenyl)-2, 2, 2 trichloroethane) on the Mariana Islands during and after WWII (Baker 1946; Grue 1985). Pesticide use on Guam was implicated as a potential factor in the decline of Guam's avifauna (Jenkins 1983; Diamond 1984; Drahos 2002). But concentrations of DDT and DDE (1, 1-bis (chlorophenyl)-2, 2-dichloroethane) in Mariana swiftlet carcasses and guano were considered to be too low to cause mortality or reproductive failure (Grue 1985; Savidge 1986). The insecticide malathion was also used to control the introduced melon fly (*Dacus cucurbitae*) in 1988 and 1989 on Rota (Engbring 1989). However, a study to monitor the status of birds on Rota before and after the insecticide application did not detect any adverse effects on populations there (Engbring 1989). Approximately 90 to 95 percent of crops grown on Rota are root crops, such as sweet potato and taro, so pesticide use tends to be minimal. The most commonly used insecticides on Rota are diazinon, sevin, and malathion, which are used to control insects on vegetables and livestock (John Morton, Service, pers. comm. 1998). It is not known what impacts these insecticides may have on the Rota bridled white-eye.

The small population size and limited distribution of the Rota bridled white-eye places this species at risk from naturally occurring events and environmental factors. In particular, typhoons pose a serious threat, directly and indirectly, to the white-eye and other avian populations (Wiley and Wunderle 1993). This threat can also be exacerbated by human land-use practices, which can affect the extent of damage caused by these storms (*see* ''The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range,'' above). Direct effects include mortality from winds and rains. Indirect effects include the short-term and potential long-term loss of food supplies, foraging habitat, nests, nest and roost sites, and microclimate

changes. For example, in December 1997, Supertyphoon Paka defoliated trees and removed large amounts of epiphytic growth and associated organic matter from the forests of Rota (John Morton, pers. comm. 1998). This may have resulted in lower-quality foraging and breeding habitat and decreased availability of nesting material for the Rota bridled white-eye until the forests regenerated from the typhoon. Typhoon damage can also lead to long-term forest composition changes (Lugo and Scatena 1996), which can affect bird community composition. For example, Amidon (2000) found that Rota bridled white-eye abundance decreased on the Sabana between 1982 and 1994, while black drongo, collared kingfisher (*Halcyon chloris*), and Micronesian starling abundance increased. These changes in bird abundance may be related to changes in habitat caused by typhoon Roy in 1988.

In making this determination, we have carefully evaluated the best scientific and commercial information available regarding the past, present, and future threats faced by this species. Based on this evaluation, we are listing the Rota bridled white-eye as endangered. The Rota bridled white-eye is endemic to the island of Rota, and its population has declined an estimated 89 percent from 1982 to 1996. This species is threatened by one or more of the following: habitat degradation or loss due to development, agricultural activities, and naturally occurring events such as typhoons; predation by black drongos and rats; and inadequate existing regulatory mechanisms. The small population size and limited distribution make this species particularly vulnerable to extinction from random environmental events. Because the Rota bridled white-eye is in danger of extinction throughout all or a significant portion of its range, it fits the definition of endangered as defined in the Act.

Critical Habitat

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

Section 4 of the Act and implementing regulations (50 CFR 424 part 12) require that, to the maximum extent prudent and determinable, the Secretary of the Interior (Secretary) designate critical habitat at the time the species is determined to be endangered or threatened unless publishing the listing rule more promptly is essential to the conservation of the species. Our implementing regulations (50 CFR 424.12(a)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

We find that designating critical habitat is prudent for the Rota bridled white-eye. Consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity. In the absence of a finding that critical habitat would increase threats to a species, if any benefits would result from critical habitat designation, then a prudent finding is warranted. In the case of this species, some benefits may result from designating critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species may not change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat is also likely to result in jeopardy to the species, in some instances a section 7 consultation would be triggered only if critical habitat is designated (*e.g.*, unoccupied habitat). Some educational or informational benefits also may result from designation of critical habitat.

Section 4(b)(6)(C) of the Act states that the final critical habitat designation shall be published with the final listing determination unless ''(i) it is essential to the conservation of such species that the regulation implementing such determination be promptly published. * * *'' The Rota bridled white-eye has declined by approximately 90% since 1982 and is currently threatened by one or more of the following: habitat degradation or loss due to development, agricultural activities, and naturally occurring events such as typhoons; predation; and inadequate existing regulatory mechanisms. The small population size and limited distribution make this species particularly vulnerable to extinction from random environmental events. Nearly all of our listing funds are being used to comply with court orders and court-approved settlement agreements to complete listing determinations or petition findings, we were unable to additionally propose critical habitat with the proposal to list this species and the final listing rule. We will develop a proposal to designate critical habitat for the Rota bridled white-eye as soon as funding is available and in accordance with other priority listing actions.

Available Conservation Measures

Conservation measures provided to endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and may result in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act authorizes possible land acquisition and cooperation with ''States,'' including the CNMI, and requires that recovery plans be developed for all listed species. Funding is available through section 6 of the Act for the CNMI to conduct recovery activities. We discuss the protection required of Federal agencies and the prohibitions against taking and harm for the Rota bridled white-eye below.

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

responsible Federal agency must enter into consultation with us, under section 7(a)(2) of the Act.

Federal agency actions that may affect the Rota bridled white-eye and may require consultation with us include, but are not limited to, those within the jurisdiction of the U.S. Army Corps of Engineers, Natural Resources Conservation Service, Federal Emergency Management Agency, Federal Aviation Administration, and Federal Highway Administration.

There are no federally owned lands on the island of Rota. Parts of Rota have been used as, or are under consideration for use as, training areas by U.S. armed forces. In the past, some military training has occurred at the Rota airport and on Angyuta, an island near the commercial port. Neither area is within the known range of the Rota bridled white-eye. Federally supported activities that could affect the Rota bridled white-eye or its habitat in the future include, but are not limited to, low-altitude helicopter maneuvers, road construction and improvements, and radio tower construction within areas occupied by the Rota bridled white-eye.

Listing the Rota bridled white-eye necessitates the development and implementation of a recovery plan for the species. This plan will bring together Federal, Commonwealth, and regional agency efforts for conservation of the species, and will also establish a framework for agencies to coordinate their recovery efforts. It will set recovery priorities and estimate the costs of the tasks necessary to accomplish the priorities. It will also describe the site-specific management actions necessary to achieve conservation and survival of the species.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.21 for endangered species, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or attempt any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Further, it is illegal for any person to attempt to commit, to solicit another person to commit, or to cause to be committed, any of these acts. Certain exceptions apply to agents of the Service and CNMI conservation agencies.

Permits may be issued to allow people and groups to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities. Permits are also available for zoological exhibitions, educational purposes, or special purposes consistent with the purposes of the Act. Requests for copies of the regulations regarding listed wildlife and inquiries about permits and prohibitions may be addressed to the Service's Portland offices (*see* **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections).

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not likely be a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the range of the species. We believe that permitted scientific activities or recreational activities within forested areas that support populations of Rota bridled white-eyes would not likely result in a violation of section 9.

Activities that we believe could potentially harm the Rota bridled white-eye, and would likely violate section 9, include, but are not limited to:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, transporting, or shipping of the species;

(2) Intentional introduction of alien species that compete with or prey on bird species, such as the introduction of the predatory brown treesnake to islands that support bird populations; and

(3) Activities that disturb Rota bridled white-eyes and disrupt nesting and foraging, and destruction or alteration of forested areas required by the bridled white-eye for foraging, perching, breeding, or rearing young.

Questions regarding whether specific activities will constitute a violation of section 9 of the Act should be directed to the Field Supervisor of the Pacific Islands Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT** section). Requests for copies of the regulations regarding listed species and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE 11th Avenue, Portland, OR 97232–4181 (503/231–2063; facsimile 503/231–6243).

National Environmental Policy Act

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

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section).

Author

The primary author of this final rule is Fred Amidon, Biologist, Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

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

■ 2. Amend ''17.11(h) by adding the following, in alphabetical order under BIRDS, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
BIRDS							
*	*	*	*	*	*		*
White-eye, Rota bridled.	*Zosterops rotensis*	Western Pacific Ocean-U.S.A. (Commonwealth of the Northern Mariana Islands).	Entire	E	741	NA	NA
*	*	*	*	*	*		*

Dated: January 12, 2004.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 04–1297 Filed 1–21–04; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register

Vol. 69, No. 14

Thursday, January 22, 2004

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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1775

RIN 0572–AB75

Technical Assistance Grants

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) proposes to amend the regulation utilized to administer the technical assistance grant programs. This action is necessary to separate the technical assistance and training grant and solid waste management grant programs for clarification purposes and to bring the regulation in line with revisions to OMB circulars. Additionally, it eliminates the requirement that applicants submit a pre-application when applying for grant funds. This action also transfers grant processing and servicing from the National Office to Rural Development State Offices. The intended effect is to separate the technical assistance and solid waste management programs and to reduce regulatory burdens on applicants.

DATES: Written comments must be received by RUS or bear a postmark or equivalent, no later than March 22, 2004. Comments regarding the information and record keeping requirements must be received by March 22, 2004.

ADDRESSES: Written comments should be sent to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 5168–S, STOP 1522, Washington, DC 20250–1522. RUS requires a signed original and three copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Stephen Saulnier, Loan Specialist, Water Programs Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2235–S, Stop 1570, Washington, DC 20250–1570. Telephone (202) 690–2526. E-mail: *ssaulnie@rus.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. *See* the final rule related notice titled, ''Technical Assistance and Training Grants Program; Proposal to Exclude Program and Activity From Executive Order 12372,'' (53 FR 44505) which determined that the RUS grants were not covered by Executive Order 12372.

Executive Order 12988

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

Regulatory Flexibility Act Certification

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), RUS certifies that this rule will not have a significant economic impact on a substantial number of small entities. The amendments reflect only statutory changes that Congress has mandated and over which the Agency has no discretion.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) RUS is requesting comments on the information collection incorporated in this proposed rule.

Comments on this information collection must be received by March 22, 2004.

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

Title: 7 CFR Part 1775, Technical Assistance Program.

OMB Control Number: 0572–0112.

Type of Request: Revision of a currently approved collection.

Abstract: The information collections contained in this rule are requirements prescribed by the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1926(a)), as amended.

The primary reasons for the promulgation of the proposed revisions to this rule were changes in the OMB circulars affecting these programs and changes in the way the programs have developed since inception.

The proposed rule will provide a general section for the requirements that are the same for both grant programs and separate sections for the requirements unique to each grant program. This will clarify both the similarities and the differences in the programs and provide a clearer understanding of the requirements of each.

RUS applicants would submit an application for consideration of grant funding, and if selected for funding, submit quarterly reports, as prescribed by the rule. The burden will vary depending on the type of project proposed for funding under the programs, which would then prescribe

the type of information collection involved. The collection of information is only that information which is essential for RUS to award and service grants in the best interest of the government.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3.7 hours per response.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents: 95.

Estimated Number of Responses per Respondents: 16.

Estimated Total Annual Burden on Respondents: 5,555 hours.

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

Send comments regarding this information collection requirement to Richard Annan, Acting Director, Program Development and Regulatory Analysis, USDA, Rural Utilities Service, 1400 Independence Ave., SW., Room 4034, Stop 1522, Washington, DC 20250–1522.

Comments are best assured of having full effect if received within 30 days of publication in the **Federal Register**. All comments will become a matter of public record.

National Environmental Policy Act Certification

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

Catalog of Federal Domestic Assistance

The programs described by this proposed rule are listed in the Catalog of Federal Domestic Assistance Programs under numbers 10.761, Technical Assistance and Training Grants and 10.762, Solid Waste Management Grants. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Unfunded Mandates

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

Background

On November 2, 1987, the Farmers Home Administration (FmHA) (predecessor of RUS) published 7 CFR part 1942, subpart J, Technical Assistance and Training Grants, as a final rule in the **Federal Register** (52 FR 41950) implementing a new grant program. On February 5, 1992, FmHA published 7 CFR part 1942, subpart J, Technical Assistance and Training Grants, as a final rule in the **Federal Register** (57 FR 4357) revising the regulation to implement another new grant program. In 1994 when RUS assumed the functions of the Water and Waste Disposal programs from the former FmHA and the Rural Development Administration (RDA), RUS changed the Technical Assistance and Training (TAT) and Solid Waste Management (SWM) grants regulations from 7 CFR 1942, subpart J, to 7 CFR 1775. Based on changes in the OMB circulars affecting these programs and the agency's experience and review of its existing procedures, RUS has determined that several changes are necessary in order to operate the grant programs in a smooth, efficient, and effective manner.

The existing 7 CFR part 1775 was designed to provide policy and procedures for RUS's technical assistance and training grants and solid waste management grants in addition to the agency's internal administrative actions. There has been some confusion as to the basic differences in the programs, especially pertaining to eligibility. To avoid confusion and clarify eligibility requirements, objectives, and purposes, separate sections have been developed for each grant program.

Unsuccessful applicants have often requested the basis upon which funding decisions were made. The existing regulation contains general statements describing the priority criteria used in making those decisions. The proposed rule would provide a more detailed description of the project priority criteria used in determining if an applicant is selected or not selected for funding.

Over the years, the number of proposals for projects to be operated within a single State, especially in the Solid Waste Management Grants program, have drastically increased. Due to the requirements of the existing regulations, these projects are processed and serviced from the National Office. Experience has shown that these projects should be processed and serviced from the Rural Development State Offices because of the proximity of the project and the familiarity of field personnel with grantee organizations. RUS is proposing to delegate approval authority to the State Directors for projects to be operated only within their States. Funding for these projects would be determined by the National Office on a competitive basis.

The proposed rule contains a variety of procedural changes from the provisions of the current rule. Some of these revisions are minor or are merely intended to clarify existing RUS policy and procedure. Other revisions reflect fundamental changes to RUS' operation of the grant programs and are outlined below.

For clarification purposes, RUS proposes to define the term ''technical assistance'' as it relates to eligibility of projects under both grant programs.

The current rule prohibits the use of grant funds for expenses incurred prior to grant approval. The proposed rule would allow applicants to incur grant-related expenses, however, RUS would not be obligated to reimburse these expenses if the grant is not approved or is insufficient to do so.

To foster clarity, this proposed rule includes an expanded explanation of the items needed to complete an application package and a more detailed description of the information required for priority consideration. The proposed rule would also expand the priority criteria to include the population of associations to be served, needs assessment, description of how the project will be implemented, hands-on assistance, evaluation methodology, and strategy for sustaining the project.

The existing regulation requires fidelity bond coverage. The proposed rule would remove the requirement because coverage is not needed when grant funds are reimbursed for actual expenses.

This proposed rule would require grantees to obtain written permission from the approval official for changes in the project or changes of more than 10 percent of the total budget. Permission would be obtained before changes are put into effect or funds spent.

The proposed rule would allow grantees to submit financial statements in certain instances. The existing regulation does not offer any option other than submission of an audit.

List of Subjects in 7 CFR Part 1775

Business and industry, Community development, Community facilities, Grant programs-housing and community

development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

For reasons set forth in the preamble, RUS proposes to amend 7 CFR chapter XVII of title 7 of the Code of Federal Regulations by revising part 1775 to read as follows:

PART 1775—TECHNICAL ASSISTANCE GRANTS

Subpart A—General Provisions

Sec.
1775.1 General.
1775.2 Definitions.
1775.3 Availability of Forms and Regulations.
1775.4 Allocation of funds.
1775.5 Limitations.
1775.6 Equal opportunity requirements.
1775.7 Environmental requirements.
1775.8 Other Federal Statutes.
1775.9 OMB control number.

Subpart B—Grant Application Processing

1775.10 Applications.
1775.11 Priority.
1775.12 Grant processing.
1775.13 Grant agreement.
1775.14–1775.17 [Reserved]
1775.18 Fund disbursement.
1775.19 Grant cancellation or major changes.
1775.20 Reporting.
1775.21 Audit or financial statements.
1775.22 [Reserved]
1775.23 Grant servicing.
1775.24 Delegation of authority.
1775.25–1775.30 [Reserved]

Subpart C—Technical Assistance and Training Grants

1775.31 Authorization.
1775.32 [Reserved]
1775.33 Objectives.
1775.34 Source of funds.
1775.35 Eligibility.
1775.36 Purpose.
1775.37 Allocation of funds.
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Subpart D—Solid Waste Management Grants

1775.61 Authorization.
1775.62 [Reserved]
1775.63 Objectives.
1775.64 [Reserved]
1775.65 Eligibility.
1775.66 Purpose.
1775.67 Allocation of funds.
1775.68 Exception authority.
1775.69–1775.99 [Reserved]

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart A—General Provisions

§ 1775.1 General.

This subpart sets forth the general policies and procedures for the Technical Assistance and Training and the Solid Waste Management Grant Programs. Any processing or servicing activity conducted pursuant to this part involving authorized assistance to Rural Development employees with Water and Environmental Program responsibility, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this title. Applicants for this assistance are required to identify any known relationship or association with an Agency employee.

§ 1775.2 Definitions.

The following definitions apply to subparts A through D of this part.

Association. An entity, including a small city or town, that is eligible for Rural Utilities Service (RUS) Water and Waste Disposal (WWD) financial assistance in accordance with 7 CFR 1780.7 (a).

Approval official. Any individual with administrative and legal responsibility for Rural Development programs.

DUNS Number. Data Universal Numbering System number obtained from Dun and Bradstreet and used when applying for Federal grants or cooperative agreements. A DUNS number may be obtained at no cost, by calling 1–866–705–5711.

Grant agreement. RUS Guide 1775–1. The agreement outlines the terms and conditions of the grant awards and establishes the guidelines for administering the grant awards.

Grantee. The entity or organization receiving financial assistance directly from the Agency to carry out the project or program under these programs.

Low Income. Median household income (MHI) below 100 percent of the statewide non-metropolitan median household income (SNMHI).

Regional. A multi-State area or any multi-jurisdictional area within a State.

Rural area. Any area not in a city or town with a population in excess of 10,000, according to the latest decennial census of the United States.

RUS. The Rural Utilities Service, an Agency of the United States Department of Agriculture.

State. Any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Western Pacific Territories, Marshall Islands, Federated States of Micronesia, Republic of Palau, and the U.S. Virgin Islands.

Technical Assistance. Supervision, oversight, or training by an organization for the practical solution of a problem or need of an association as defined in this section.

Solid Waste Management. Refers to the operations, maintenance and the recycling of materials disposed of in landfills.

§ 1775.3 Availability of forms and regulations.

Information about the forms, instructions, regulations, bulletins, OMB Circulars, Treasury Circulars, standards, documents and publications cited in this part is available from any UDSA/Rural Development Office or the Rural Utilities Service, United States Department of Agriculture, Washington, DC 20250–1500.

§ 1775.4 Allocation of funds.

The National Office of the Rural Utilities Service will administer grant funds and will allocate them on a competitive basis.

§ 1775.5 Limitations.

Grant funds may not be used to:

(a) Duplicate current services, replace or substitute support normally provided by other means, such as those performed by an association's consultant in developing a project, including feasibility, design, and cost estimates.

(b) Fund political or lobbying activities.

(c) Purchase real estate or vehicles, improve or renovate office space, or repair and maintain privately owned property.

(d) Pay the costs for construction, improvement, rehabilitation, modification, or operation and maintenance of water, wastewater, and solid waste disposal facilities.

(e) Construct or furnish a building.

(f) Intervene in the Federal regulatory or adjudicatory proceedings.

(g) Sue the Federal Government or any other government entities.

(h) Pay for any other costs that are not allowable under OMB Circular A–87, OMB Circular 110, OMB Circular 102 or OMB Circular A–122.

(i) Make contributions or donations to others.

(j) Fund projects that duplicate technical assistance given to implement action plans under the National Forest-Dependent Rural Communities Economic Diversification Act of 1990 (7 U.S.C. 6613). Applicants cannot receive both grants made under this part and grants that the Forest Service makes to implement the action plans for five continuous years from the date of grant approval by the Forest Service.

(1) The Forest Service helps rural communities that are dependent upon national forest resources diversify existing industries and economies. It establishes rural forestry and economic diversification action teams that prepare

technical assistance plans for these rural communities to expand their local economies and reduce their dependence on national forest resources. The Forest Service provides assistance to implement the action plans through grants, loans, cooperative agreements, or contracts.

(2) To avoid duplicate assistance, applicants must contact the Forest Service to find out if any geographical areas or local areas in a State have received grants for technical assistance to an economically disadvantaged community. These areas are defined as national forest-dependent communities under 7 U.S.C. 6612. Applicants will provide documentation to the Forest Service and Rural Utilities Service that they have contacted each agency.

(k) To pay, an outstanding judgment obtained by the United States in a Federal Court (other than in the United States Tax Court), which has been recorded. An applicant will be ineligible to receive a loan or grant until the judgment is paid in full or otherwise satisfied.

(l) Recruit applications for the Agency's water and waste loan and/or any loan and/or grant program. Grant funds cannot be used to create new business; however, they can be used to assist with application preparation.

§ 1775.6 Equal opportunity requirements.

The policies and regulations contained in subpart E of part 1901 of this title apply to grants made under this part.

§ 1775.7 Environmental requirements.

The policies and regulations contained in part 1794 of this title apply to grants made for the purposes in §§ 1775.36 and 1775.66 of this part.

§ 1775.8 Other Federal Statues.

Other Federal statues and regulations are applicable to grants awarded under this part. These include but are not limited to:

(a) 7 CFR Part 1, Subpart A—USDA implementation of Freedom of Information Act.

(b) 7 CFR Part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

(c) 7 CFR Part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

(d) 7 CFR Part 1794, RUS Implementation of the National Environmental Policy Act.

(e) 7 CFR Part 1901, Subpart E—Civil Rights Compliance Requirements.

(f) 7 CFR Part 3016—USDA Implementation of OMB Circular Nos. A–102 and A–97, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(g) 7 CFR Part 3017, as amended—Government-wide Debarment and Suspension (Non-procurement); Government-wide Requirements for Drug-Fee Workplace (Grants), implementing Executive Order 12549 on debarment and suspension and the Drug-Free Workplace Act of 1988 (41 U.S.C. 701).

(h) 7 CFR Part 3018—Restrictions on Lobbying, prohibiting the use of appropriated funds to influence Congress or a Federal agency in connection with the making of any Federal grant and other Federal contracting and financial transactions.

(i) 7 CFR Part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

(j) 7 CFR Part 3051—USDA implementation of OMB Circular No. A–133 regarding audits of institutions of higher education and other nonprofit institutions.

(k) 29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

§ 1775.9 OMB control number.

The information collection requirements contained in this part have been approved by the Office of Management and Budget and have been assigned OMB control number 0572–0112.

Subpart B—Grant Application Processing

§ 1775.10 Applications.

(a) *Filing period.* Applications may be filed on or after October 1 and must be received by close of business or postmarked by midnight December 31. If an application is received either before October 1 or after December 31, the receiving office will return it to the applicant.

(b) *Where to file.*

(1) An applicant will apply to the appropriate State Office of Rural Development if the project will serve a single State.

(2) An applicant will apply to the National Office if the project will serve multiple States. The application must be submitted to the following address: Assistant Administrator, Water and Environmental Programs, Rural Utilities Service, Washington, DC 20250–1570.

(c) *Application requirements.* To file an application, an organization must provide their DUNS number. An organization may obtain a DUNS number from Dun and Bradstreet by calling (1–866–705–5711). To file a complete application, the following information should be submitted:

(1) Standard Form 424, ''Application for Federal Assistance (For Non-Construction).''

(2) Standard Form 424A & B, ''Budget Information-Non-Construction Programs.''

(3) Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transaction.''

(4) Form AD 1049, ''Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I—For Grantees Other Than Individuals.''

(5) Form AD 1048, ''Certification Regarding Debarment.''

(6) Attachment regarding assistance provided to Rural Development Employees as required by RD Instruction 1900-D.

(7) Form RD 400–4, ''Assurance Agreement.''

(8) Form RD 400–1, ''Equal Opportunity Agreement.''

(9) Indirect Cost Rate Agreement (if applicable, applicant must include approved cost agreement rate schedule).

(10) Statement of Compliance for Title VI of the Civil Rights Act of 1964.

(11) SF LLL, ''Disclosure of Lobbying Activities'' (include only if grant is over $100,000).

(12) Certification regarding Forest Service grant.

(d) *Supporting information.* All applications shall be accompanied by:

(1) Evidence of applicant's legal existence and authority in the form of:

(i) Certified copies of current authorizing and organizational documents for new applicants or former grantees where changes were made since the last legal opinion was obtained in conjunction with receipt of an RUS grant, or, certification that no changes have been made in authorizing or organizing documents since receipt of last RUS grant by applicant.

(ii) Current annual corporation report, Certificate of Good Standing, or statement they are not required.

(iii) For public nonprofits, Certificate of Continued Status from local attorney (if applicable).

(iv) Certified list of directors/officers with their respective terms.

(2) Evidence of tax exempt status from the Internal Revenue Service (IRS), if applicable.

(3) Narrative of applicant's experience in providing services similar to those

proposed. Provide brief description of successfully completed projects including the need that was identified and objectives accomplished.

(4) Latest financial information to show the applicant's financial capacity to carry out the proposed work. A current audit report is preferred, however applicants can submit a balance sheet and an income statement in lieu of an audit report.

(5) List of proposed services to be provided.

(6) Estimated breakdown of costs (direct and indirect) including those to be funded by grantee as well as other sources. Sufficient detail should be provided to permit the approval official to determine reasonableness, applicability, and allowability.

(7) Evidence that a Financial Management System is in place or proposed.

(8) Documentation on each of the priority ranking criteria listed in § 1775.11 of this part as follows:

(i) List of the associations to be served and the State or States where assistance will be provided. Identify associations by name, or other characteristics such as size, income, location, and provide MHI and population.

(ii) Description of the type of technical assistance and/or training to be provided and the tasks to be contracted.

(iii) Description of how the project will be evaluated and provide clearly stated goals and the method proposed to measure the results that will be obtained.

(iv) Documentation of need for proposed service. Provide detailed explanation of how the proposed services differ from other similar services being provided in the same area.

(v) Personnel on staff or to be contracted to provide the service and their experience with similar projects.

(vi) Statement indicating the number of months it takes to complete the project or service.

(vii) Documentation on cost effectiveness of project. Provide the cost per association to be served or proposed cost of personnel to provide assistance.

(viii) Other factors for consideration, such as emergency situation, training need identified, health or safety problems, geographic distribution, Rural Development Office recommendations, etc.

§ 1775.11 Priority.

The application and supporting information will be used to determine the applicant's priority for available funds. All applications will be reviewed and scored for funding priority in accordance with RUS Guide 1775–2. Points will be given only for factors that are well documented in the application package and, in the opinion of the Agency, meet the objective outlined under each factor. The following is a listing of the criteria that will be used to select the applications that meet the objectives of the technical assistance program.

(a) Projects proposing to give priority for available services to rural communities having a population less than 5,500 and/or below 2,500.

(b) Projects proposing to give priority for available services to communities that are 80 percent of or below the SNMHI.

(c) Projects that will provide assistance in a multi-State area.

(d) Points will be awarded for work plans that clearly describe the goals and objectives of the project, how they will be accomplished in targeted communities, and what measurement of accomplishment will be used.

(e) Projects containing needs assessment (*i.e.* actual issue or problem being addressed) clearly defined and supported by data.

(f) Projects containing evaluation methods that are specific to the activity, clearly defined, measurable, and with projected outcomes.

(g) Applicants proposing to use at least 75 percent of the total grant amount for their own staff, or the staff of an affiliated organization to provide services for a project instead of contracting with an outside organization for the services.

(h) Projects providing technical assistance/training that accomplish the objective within a 12-month or less timeframe.

(i) Projects primarily providing ''hands on'' technical assistance and training, *i.e.*, on-site assistance as opposed to preparation and distribution of printed material, to communities with existing water and waste systems which are experiencing operation and maintenance or management problems.

(j) Cash or in kind support of project from non-federal sources.

(k) Ability to demonstrate sustainability of project without Federal financial support.

§ 1775.12 Grant processing.

(a) *Single State applications.*

(1) Grant applications submitted at the State level will receive a letter acknowledging receipt and confirmation that all information required for a full application was included in the packet. The State will notify the applicant of missing information. The applicant will have 14 business days to respond.

(2) The State Office will review applications for eligibility. Those applicants that are deemed ineligible will be notified. Applicants deemed eligible will be forwarded to the National Office for funding consideration.

(3) The National Office will review all applications received from State Offices. Applications will compete on a priority basis and will be scored and ranked. The applications receiving the highest scores and subject to the availability of funds will be notified by the National Office that they have been selected for funding. The National Office will send applications to the State Office for final processing.

(4) Applicants not selected for funding due to low priority rating shall be notified by the State Office.

(b) *National and multi-State applications.*

(1) National and multi-State applications submitted to the National Office will receive a letter acknowledging receipt and confirmation that all information required for a full application was included in the packet. The National Office shall notify the applicant of missing information. The applicant will have 14 business days to respond.

(2) The National Office will review applications for eligibility. Those applications that are deemed ineligible will be notified. Applications deemed eligible will be reviewed and given a rating score. Applications receiving the highest scores will be grouped with those received from State Offices for funding consideration.

(3) The National Office will review all applications received. Applications will compete on a priority basis and will be scored and ranked. The applications receiving the highest scores and subject to the availability of funds will be notified by the National Office that they have been selected for funding. The National Office shall conduct final processing of multi-State and national applications.

(4) Multi-State and National applicants not selected for funding due to low priority rating will be notified by the National Office.

(c) *Low priority applications.* Applications that cannot be funded in the fiscal year received will not be retained for consideration in the following fiscal year and will be handled as outlined in paragraph (a)(4) or (b)(4) of this section.

§ 1775.13 Grant agreement.

Applicants selected for funding will complete a grant agreement, RUS Guide

1775–1, which outlines the terms and conditions of the grant award.

§§ 1775.14—1775.17 [Reserved]

§ 1775.18 Fund disbursement.

Grantees will be reimbursed as follows:

(a) SF–270, ''Request for Advance or Reimbursement,'' will be completed by the grantee and submitted to either the State or National Office not more frequently than monthly.

(b) Upon receipt of a properly completed SF–270, the funds will be requested through the field office terminal system. Ordinarily, payment will be made within 30 days after receipt of a proper request for reimbursement.

(c) Grantees are encouraged to use women- and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members) for the deposit and disbursement of funds.

§ 1775.19 Grant cancellation or major changes.

Any change in the scope of the project, budget adjustments of more than 10 percent of the total budget, or any other significant change in the project must be reported to and approved by the approval official by written amendment to RUS Guide 1775–1. Any change not approved may be cause for termination of the grant.

§ 1775.20 Reporting.

(a) Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved.

(b) SF–269, ''Financial Status Report (short form),'' and a project performance activity report will be required of all grantees on a quarterly basis, due 30 days after the end of each quarter.

(c) A final project performance report will be required with the last SF–269 due 90 days after the end of the last quarter in which the project is completed. The final report may serve as the last quarterly report.

(d) All multi-State grantees are to submit an original of each report to the National Office. Grantees serving only one State are to submit an original of each report to the State Office. The project performance reports should detail, preferably in a narrative format, activities that have transpired for the specific time period and shall include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period (*i.e.* number of meetings held, number of people contacted, results of activity);

(2) Analysis of challenges or setbacks that occurred during the grant period;

(3) Copies of fliers, news releases, news articles, announcements and other information used to promote services or projects;

(4) Problems, delays, or adverse conditions which will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(5) Activities planned for the next reporting period.

§ 1775.21 Audit or financial statements.

The grantee will provide an audit report or financial statements as follows:

(a) Grantees expending $500,000 or more Federal funds per fiscal year will submit an audit conducted in accordance with OMB Circular A–133. The audit will be submitted within 9 months after the grantee's fiscal year. Additional audits may be required if the project period covers more than one fiscal year.

(b) Grantees expending less than $500,000 will provide annual financial statements covering the grant period, consisting of the organization's statement of income and expense and balance sheet signed by an appropriate official of the organization. Financial statements will be submitted within 90 days after the grantee's fiscal year.

§ 1775.22 [Reserved]

§ 1775.23 Grant servicing.

Grants will be serviced in accordance with RUS Guide 1775–1 and subpart E of part 1951 of this title. When grants are terminated for cause, 7 CFR Part 11 will be followed.

§ 1775.24 Delegation of authority.

The authority under this part is re-delegated to the Assistant Administrator, Water and Environmental Programs, except for the discretionary authority contained in § 1775.34 of this part. The Assistant Administrator, Water and Environmental Programs may re-delegate the authority in this part.

§§ 1775.25–1775.30 [Reserved]

Subpart C—Technical Assistance and Training Grants

§ 1775.31 Authorization.

This subpart sets forth additional policies and procedures for making Technical Assistance and Training (TAT) grants authorized under Section 306(a)(14)(A) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1926(a)), as amended.

§ 1775.32 [Reserved]

§ 1775.33 Objectives.

The objectives of the program are to:

(a) Identify and evaluate solutions to water and waste problems in rural areas.

(b) Assist applicants in preparing applications for water and waste disposal loans/grants.

(c) Assist associations in improving operation and maintenance of existing water and waste facilities in rural areas.

§ 1775.34 Source of funds.

Grants will be made from not less than 1 percent or, at the discretion of the Agency Administrator, not more than 3 percent of any appropriations for grants under Section 306(a)(2) of the CONACT (7 U.S.C. 1926(a)). Funds not obligated by September 1 of each fiscal year will be used for water and waste disposal grants made in accordance with part 1780 of this chapter.

§ 1775.35 Eligibility.

(a) Entities eligible for grants must be private nonprofit organizations with tax exempt status, designated by the Internal Revenue Service. A nonprofit organization is defined as any corporation, trust, association, cooperative, or other organization that:

(1) Is operated primarily for scientific, education, service, charitable, or similar purposes in the public interest.

(2) Is not organized primarily for profit.

(3) Uses its net proceeds to maintain, improve, and/or expand its operations.

(b) Entities must be legally established and located within a state as defined in § 1775.2.

(c) Organizations must be incorporated by December 31 of the year the application period occurs to be eligible for funds.

(d) Private businesses, Federal agencies, public bodies, and individuals are ineligible for these grants.

(e) Applicants must also have the proven ability, background, experience, (as evidenced by the organization's satisfactory completion of project(s) similar to those proposed;) legal authority, and actual capacity to provide technical assistance and/or training on a regional basis to associations as provided in § 1775.33 of this subpart. To meet the requirement of actual capacity, an applicant must either:

(1) Have the necessary resources to provide technical assistance and/or

training to associations in rural areas through its staff, or

(2) Be assisted by an affiliate or member organization which has such background and experience and which agrees, in writing, that it will provide the assistance, or

(3) Contract with a nonaffiliated organization for not more than 49 percent of the grant to provide the proposed assistance.

§ 1775.36 Purpose.

Grants may be made to organizations as defined in § 1775.35 of this subpart to enable them to assist associations to:

(a) Identify and evaluate solutions to water problems of associations in rural areas relating to source, storage, treatment, and/or distribution.

(b) Identify and evaluate solutions to waste problems of associations in rural areas relating to collection, treatment, and/or disposal.

(c) Prepare water and/or waste disposal loan/grant applications.

(d) Provide technical assistance/ training to association personnel that will improve the management, operation, and maintenance of water and waste facilities.

(e) Pay the expenses associated with providing the technical assistance and/ or training authorized in paragraphs (a) through (d) of this section.

§ 1775.37 Allocation of funds.

At least 10 percent of available funds will be used for funding single State projects based on the priority criteria.

§§ 1775.38–1775.60 [Reserved]

Subpart D—Solid Waste Management Grants

§ 1775.61 Authorization.

This subpart sets forth the policies and procedures for making Solid Waste Management (SWM) grants authorized under Section 310B of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1926(a)), as amended.

§ 1775.62 [Reserved]

§ 1775.63 Objectives.

The objectives of the program are to:

(a) Reduce or eliminate pollution of water resources, and

(b) Improve planning and management of solid waste sites.

§ 1775.64 [Reserved]

§ 1775.65 Eligibility.

(a) Entities eligible for grants must be either:

(1) Private nonprofit organizations with tax exempt status designated by the Internal Revenue Service. A nonprofit organization is defined as any corporation, trust, association, cooperative, or other organization that:

(i) Is operated primarily for scientific, education, service, charitable, or similar purposes in the public interest.

(ii) Is not organized primarily for profit.

(iii) Uses its net proceeds to maintain, improve, and/or expand its operations.

(2) Public bodies.

(3) Federally acknowledged or State-recognized Native American tribe or group.

(4) Academic institutions.

(b) Entities must be legally established and located within a state as defined in § 1775.2.

(c) Organizations must be incorporated by December 31 of the year the application period occurs to be eligible for funds.

(d) Private businesses, Federal agencies, and individuals are ineligible for these grants.

(e) Applicants must also have the proven ability; background; experience, as evidenced by the organization's satisfactory completion of project(s) similar to those proposed; legal authority; and actual capacity to provide technical assistance and/or training on a regional basis to associations as provided in § 1775.63 of this subpart. To meet the requirement of actual capacity, an applicant must either:

(1) Have the necessary resources to provide technical assistance and/or training to associations in rural areas through its staff, or

(2) Be assisted by an affiliate or member organization which has such background and experience and which agrees, in writing, that it will provide the assistance, or

(3) Contract with a nonaffiliated organization for not more than 49 percent of the grant to provide the proposed assistance.

§ 1775.66 Purpose.

Grants may be made to organizations as defined in § 1775.65 to enable them to assist associations to:

(a) Provide technical assistance and/ or training to reduce the solid waste stream through reduction, recycling, and reuse.

(b) Provide training to enhance operator skills in maintaining and operating active landfills.

(c) Provide technical assistance and/ or training for operators of landfills which are closed or will be closed in the near future with the development/ implementation of closure plans, future land use plans, safety and maintenance planning, and closure scheduling within permit requirements.

(d) Evaluate current landfill conditions to determine the threats to water resources.

(e) Pay the expenses associated with providing the technical assistance and/ or training authorized in paragraphs (a) through (d) of this section.

§ 1775.67 Allocation of funds.

The maximum amount for a single applicant for a Solid Waste Management project will be 25 percent of available grant funds.

§ 1775.68 Exception authority

The Administrator may, in individual cases, make an exception to any requirement or provision of this part which is not inconsistent with the authorizing statue or other applicable law and is determined to be in the Government's interest.

§§ 1775.69–1775.99 [Reserved]

Dated: December 29, 2003.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 04–1274 Filed 1–21–04; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–119–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A, KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This amendment proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10 series airplanes, Model MD–10 series airplanes, and Model MD–11 series airplanes. That AD currently requires repetitive inspections of the number 1 and 2 electric motors of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated wiring resistance/ voltage; and corrective actions, if necessary. This action would reduce the interval between the repetitive inspections. The actions specified by the proposed AD are intended to prevent various failures

of electric motors of the auxiliary hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 8, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–119–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–119–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Ken Sujishi, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5353; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–119–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket Number 2003–NM–119–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On July 2, 2001, the FAA issued AD 2001–14–08, amendment 39–12319 (66 FR 36441, July 12, 2001), applicable to certain McDonnell Douglas Model DC–10 series airplanes, Model MD–10 series airplanes, and Model MD–11 series airplanes, to require the following actions:

1. Do an initial detailed inspection of the number 1 and 2 electric motors of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated wiring resistance/voltage.
2. Replace any failed hydraulic pump.
3. Troubleshoot and repair any failed wiring.
4. Do repetitive inspections of the number 1 and 2 electric motors of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated wiring resistance/voltage.

The initial inspections were to be conducted within 6 months after August 16, 2001, the effective date of AD 2001–14–08, except in one case. For those MD–11 and MD–11F airplanes which had accumulated fewer than 3,000 flight hours as of the effective date of the AD, the initial inspection was to be done within 6 months after accumulating 3,000 flight hours. The repetitive inspections were to be conducted every 6,000 flight-hours or every 18 months thereafter, whichever came first.

That AD was prompted by reports that, during ground operations or when powered in flight by the air driven generator, the electric motors of the auxiliary hydraulic pump and associated motor feeder cables failed on certain McDonnell Douglas Model DC–10, MD–11, and MD–90–30 series airplanes.

The requirements of that AD are intended to prevent such failures of the electric motors of the auxiliary hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, Boeing has informed the FAA that the original compliance time was not adequate, because another incident of failure of an electric motor of the auxiliary hydraulic pump had occurred during the interval between repetitive inspections.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin DC10–29A142, Revision 02, dated April 17, 2003, pertaining to certain Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A, KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F airplanes. The FAA has also reviewed and approved Boeing Alert Service Bulletin MD11–29A057, Revision 02, dated April 17, 2003, pertaining to certain Model MD–11 and MD–11F airplanes. The actions described in those alert service bulletins are essentially the same as those described in Revision 01 of the alert service bulletins. Revision 02 of both alert service bulletins recommend that the repetitive inspections of the number 1 and 2 electric motors of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated airplane wiring resistance/voltage be performed ''every 2,500

flight-hours.'' Both service bulletins also recommend that results of the initial inspection, either positive and negative, be sent to the manufacturer.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2001–14–08 to require that the repetitive inspections of the number 1 and 2 electric motors of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated airplane wiring resistance/voltage; and corrective actions, if necessary, be performed at intervals not to exceed 2,500 flight hours. The actions would be required to be accomplished in accordance with the service bulletins, except as described below.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Difference Between Proposed Rule and Referenced Service Bulletins

Operators should note that, although the Accomplishment Instructions of the referenced alert service bulletins describe procedures for reporting the results, both positive and negative of the initial inspection to the manufacturer, this proposed AD would not require those actions. The FAA does not need this information from operators.

Explanation of Change to Applicability in Proposed AD

The FAA has revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models. The existing AD specifies the applicability as ''Model DC–10 and MD–10 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC10–29A142, Revision 01, dated October 21, 1999; and Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–29A057, Revision 01, dated October 21, 1999; certificated in any category.''

The proposed AD specifies the applicability as ''McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A, KDC–10), DC–10–40, DC–1040F, MD–10–10F, and MD–10–30F airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC10–29A142, Revision 01, dated October 21, 1999; or Revision 02, dated April 17, 2003; and Model MD–11 and MD–11F airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–29A057, Revision 01, dated October 21, 1999; or Revision 02, dated April 17, 2003; certificated in any category.

Cost Impact

There are approximately 604 airplanes of the affected design in the worldwide fleet. The FAA estimates that 396 airplanes of U.S. registry would be affected by this proposed AD.

The repetitive inspections that are currently required by AD 2001–14–08 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $25,740, or $65 per airplane, per inspection cycle. The cost of the repetitive inspections per inspection cycle would not change in the proposed AD.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed 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 provided 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, Safety.

Adoption of the Amendment

Accordingly, pursuant to 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. Section 39.13 is amended by removing amendment 39–12319 (66 FR 36441, July 12, 2001), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 2003–NM–119–AD. Supersedes AD 2001–14–08, Amendment 39–12319.

Applicability: Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A, KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC10–29A142, Revision 01, dated October 21, 1999; or Revision 02, dated April 17, 2003; and Model MD–11 and MD–11F airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–29A057, Revision 01, dated October 21, 1999; or Revision 02, dated April 17, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent various failures of electric motors of the auxiliary hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure, accomplish the following:

Service Bulletin References

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of one of the following service bulletins, as applicable:

(1) For Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A, KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes: McDonnell Douglas Alert Service Bulletin DC10–29A142, Revision 01, dated October 21, 1999; or Revision 02, dated April 17, 2003.

(2) For Model MD–11 and MD–11F airplanes: McDonnell Douglas Alert Service Bulletin MD11–29A057, Revision 01, dated October 21, 1999; or Revision 02, dated April 17, 2003.

Note 1: Paragraphs (b)(1), (b)(2), and (b)(3) of this AD restate the requirement for an

initial detailed inspection which was contained in paragraph (a) of AD 2001–14–08, amendment 39–12319. Operators who have previously accomplished the initial detailed inspection in accordance with paragraph (a) of AD 2001–14–08 need not repeat that inspection.

Initial Inspection

(b) Do a detailed inspection of the number 1 and 2 electric motors of the auxiliary hydraulic pumps for electrical resistance, continuity, mechanical rotation, and associated airplane wiring resistance/voltage, as specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD, as applicable.

(1) For Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A, KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes: Do the detailed inspection within 6 months after August 16, 2001 (the effective date of AD 2001–14–08), in accordance with the service bulletin.

(2) For Model MD–11 and MD–11F airplanes that have accumulated 3,000 flight hours or more as of August 16, 2001: Do the detailed inspection within 6 months after August 16, 2002, in accordance with the service bulletin.

(3) For Model MD–11 and MD–11F airplanes that have accumulated fewer than 3,000 flight hours as of August 16, 2002: Do the inspection within 6 months after accumulating 3,000 flight hours, in accordance with the service bulletin.

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

Repetitive Inspections

(c) Repeat the inspection required by paragraph (b) of this AD prior to accumulating an additional 2,500 flight hours after the effective date of this AD or prior to accumulating 6,000 flight hours since the previous inspection, whichever occurs first.

Condition 1, No Failures Detected

(d) If no failures are detected during the inspection required by paragraph (b) or (c) of this AD, repeat the inspection at intervals not to exceed 2,500 flight hours.

Condition 2, Failure of Any Pump Motor

(e) If any pump motor fails during any inspection required by paragraph (b) or (c) of this AD, before further flight, replace the auxiliary hydraulic pump with a serviceable pump in accordance with the applicable service bulletin. Repeat the inspection required by paragraph (c) of this AD thereafter at intervals not to exceed 2,500 flight hours.

Condition 3, Failure of Any Wiring

(f) If any airplane wiring fails during any inspection required by paragraph (b) or (c) of this AD, before further flight, troubleshoot and repair the wiring in accordance with the applicable service bulletin. Repeat the inspection required by paragraph (c) of this AD thereafter at intervals not to exceed 2,500 flight hours.

Alternative Methods of Compliance

(g) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on January 9, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–1308 Filed 1–21–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–256–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F.28 Mark 0070 and 0100 series airplanes. This proposal would require a magnetic inspection of the sliding members in the main landing gear (MLG) for cracking, and replacement of the sliding members with serviceable parts, if necessary. This action is necessary to prevent fatigue cracking of the sliding member, which could result in possible separation of the MLG from the airplane and consequent reduced controllability of the airplane upon landing and possible injury to passengers. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 23, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–256–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–256–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., PO Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Thomas Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–256–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–256–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on certain Fokker Model F.28 Mark 0070 and 0100 series airplanes. The CAA–NL advises that it received a report of the sliding member of a main landing gear (MLG) breaking off during pushback of the airplane from the gate. The failure occurred during braking while the airplane was moving backwards, immediately after the tow bar was inadvertently disconnected. Investigation revealed that the separation had been caused by overload, initiated by a fatigue crack on the aft side of the sliding member of the MLG. Further investigation on spare parts and airplanes in service revealed additional units with cracks in the affected area. Such fatigue cracking, if not corrected, could result in possible separation of the MLG from the airplane and consequent reduced controllability of the airplane upon landing and possible injury to passengers.

Explanation of Relevant Service Information

Fokker Services B.V. has issued Fokker Service Bulletin SBF100–32–133, dated April 1, 2002, which describes procedures for performing a magnetic inspection of the sliding members of the MLG for cracking, and replacing the sliding members with serviceable parts, if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA–NL classified this service bulletin as mandatory and issued Dutch airworthiness directive 2002–060, dated April 29, 2002, to ensure the continued airworthiness of these airplanes in the Netherlands.

Explanation of Secondary Service Information

The Fokker service bulletin references Messier-Dowty Service Bulletin F100–32–103, dated March 11, 2002, as an additional source of service information for accomplishment of the magnetic inspection.

FAA's Conclusions

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA–NL has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA–NL, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Referenced Service Bulletin

Operators should note that, although the Accomplishment Instructions of the referenced Fokker service bulletin describe procedures for reporting inspection findings to Fokker Services B.V., this proposed AD would not require that action. The FAA does not need this information from operators.

Cost Impact

The FAA estimates that 110 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 or 12 work hours per airplane, depending on the airplane configuration, to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $28,600 or $85,800, or $260 or $780 per airplane, depending on the airplane configuration.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed 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 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 proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the 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 is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to 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. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker Services B.V.: Docket 2002–NM–256–AD.

Applicability: Model F.28 Mark 0070 and 0100 series airplanes, certificated in any

category, equipped with any Dowty or Messier-Dowty main landing gear (MLG) listed in Table 1 of this AD.

TABLE 1.—AFFECTED MLGS.

MLG having part number (P/N)—	Which have sliding member P/N—
201072011	201072301 or 201072305.
201072012	201072301 or 201072305.
201072013	201072301 or 201072305.
201012014	201072301 or 201072305.
201072015	201072301 or 201072305.
201072016	201072301 or 201072305.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the sliding member, which could result in possible separation of the MLG from the airplane and consequent reduced controllability of the airplane upon landing and possible injury to passengers, accomplish the following:

Inspection and Replacement If Necessary

(a) Within 1,000 flight cycles or six months after the effective date of this AD, whichever occurs first, perform a magnetic inspection of the sliding members of the MLG for cracking, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–133, dated April 1, 2002. If any crack is found during the inspection, before further flight, replace the sliding members with serviceable parts in accordance with the Accomplishment Instructions of the service bulletin.

Note 1: Fokker Service Bulletin SBF100–32–133, dated April 1, 2002, refers to Messier-Dowty Service Bulletin F100–32–103, dated March 11, 2002, as an additional source of service information.

Parts Installation

(b) As of the effective date of this AD, no person may install a sliding member of the MLG, P/N 201072301 or P/N 201072305, on any airplane, unless it has been inspected in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–133, dated April 1, 2002, and found to be serviceable.

Reporting Requirement Difference

(c) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, International Branch, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in Dutch airworthiness directive 2002–060, dated April 29, 2002.

Issued in Renton, Washington, on January 9, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–1307 Filed 1–21–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–232–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dassault Model Mystere-Falcon 50 series airplanes. This proposal would require one-time detailed inspections for structural discrepancies of various fuselage attachments; and corrective actions, if necessary, to restore the structure to the original design specifications. This action is necessary to prevent early fatigue, corrosion, or fretting, which could result in structural failure of major components of the airplane and reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 23, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–232–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–232–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet, PO Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–232–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the

FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–232–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Dassault Model Mystere-Falcon 50 series airplanes. The DGAC advises that non-conformities to the original design specifications of the airplane were recorded at assembly for various fuselage attachments. Those non-conformities to specifications, if not corrected, could result in early fatigue, corrosion, or fretting, which could cause structural failure of major components, and reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Dassault Aviation has issued Service Bulletin F50–332, dated March 13, 2002, which describes procedures for detailed inspections for structural discrepancies (*e.g.*, missing rivets, and loose or non-reinforced rivets and screws) of various fuselage attachments. The inspection areas include points on the cabin inner structure, the stub, and the outer structure. This service bulletin also describes procedures for corrective actions, if necessary, to restore the structure to the original design specifications. The corrective actions include installing new shims, installing new reinforcement fittings, re-torquing or re-installing screws, and installing missing rivets, as applicable, at the appropriate point(s) of the fuselage. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2002–033–039(B) R1, dated May 15, 2002, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept 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 this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between the Service Bulletin and This Proposed AD

Although the service bulletin specifies to submit a reporting card to the manufacturer, this proposed AD would not include such a requirement.

Cost Impact

The FAA estimates that 21 airplanes of U.S. registry would be affected by this proposed AD. The average labor rate is $65 per work hour. The estimated work hours per inspection are between 5 hours and 123 hours, depending on the operating point(s) that would be inspected. The estimated cost per airplane is between $325 and $7,995.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed 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 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 proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the 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 is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to 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. Section 39.13 is amended by adding the following new airworthiness directive:

Dassault Aviation: Docket 2002–NM–232–AD.

Applicability: Model Mystere-Falcon 50 series airplanes, having serial numbers (S/N) 253 through 278 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent early fatigue, corrosion, or fretting, which could result in structural failure of major components, and possible reduced structural integrity of the airplane, accomplish the following:

Inspections and Corrective Actions

(a) Within 78 months after the effective date of this AD, perform one-time detailed inspection(s) for structural discrepancies of the fuselage attachments at all applicable operating points specified in paragraph 2.B. of the Accomplishment Instructions of Dassault Service Bulletin F50–332, dated March 13, 2002. Perform the inspections in accordance with the Accomplishment Instructions of the service bulletin.

Note 1: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(b) If any structural discrepancy of the fuselage attachments (*e.g.*, missing rivets, and

loose or un-reinforced rivets and screws) is found during the inspections required by paragraph (a) of this AD: Prior to further flight, accomplish all applicable corrective actions (*e.g.*, installing new shims, installing new reinforcement fittings, re-torquing or re-installing screws, and installing missing rivets), as applicable, at the appropriate operating point(s) of the fuselage, in accordance with the Accomplishment Instructions of Dassault Service Bulletin F50–332, dated March 13, 2002.

No Reporting Requirements

(c) Although the service bulletin specifies to submit a reporting card to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in French airworthiness directive 2002–033–039(B) R1, dated May 15, 2002.

Issued in Renton, Washington, on January 9, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–1306 Filed 1–21–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–261–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes. This proposal would require repetitive inspections of the installation of the spoilers of the windshield wiper assemblies for discrepancies, and replacement with new spoilers if necessary. The proposal also would require eventual replacement of the spoilers of the windshield wiper assemblies with new spoilers. This action is necessary to prevent failure of the windshield wiper assembly, which could result in loss of visibility, damage to the propeller(s) and/or engine(s), or penetration of the fuselage skin and consequent rapid depressurization of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 23, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–261–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–261–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rosanne Ryburn, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2139; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–261–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–261–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 2000 series airplanes. The LFV advises that it has received reports of findings of cracked or missing spoilers of the windshield wiper assemblies on certain airplanes listed in Saab Service Bulletin 2000–56–002 (Replacement of Windshield Wiper Spoiler), dated November 28, 1998, on which the actions specified in that service bulletin have not been done. Parts that separate from the airplane in this area can cause damage to the propeller(s), engine(s), and structure. One report indicated that, after excessive vibration and subsequent separation of a windshield wiper spoiler, the spoiler fell into the propeller and subsequently hit the wing leading edge and fuselage. Such conditions, if not corrected, could result in loss of visibility, damage to the propeller(s) and/or engine(s), or penetration of the fuselage skin and consequent rapid depressurization of the airplane.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 2000–56–003, dated August 12, 2002, which describes procedures for repetitive detailed visual inspections of the installation of the spoilers of the windshield wiper assemblies for discrepancies (cracks, loose parts, deformation, general deterioration), and replacement with new spoilers if necessary. The service bulletin also describes procedures for an operational test of the windshield wipers after the inspection is done.

Saab also has issued Service Bulletin 2000–56–002, Revision 01, dated August 12, 2002, which describes procedures for replacement of the spoilers of the left and right windshield wiper assemblies with new spoilers. The replacement includes installation of a new spoiler/beam and spoiler angles. The service bulletin also describes procedures for an operational test of the windshield wipers after doing the replacement. Accomplishment of the replacement would eliminate the need for the repetitive inspections.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The LFV classified these service bulletins as mandatory and issued Swedish airworthiness directive 1–178, dated August 15, 2002, to ensure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept us informed of the situation described above. We have examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Among This Proposed AD, Swedish Airworthiness Directive, and Service Information

Service Bulletin 2000–56–003 refers to a ''detailed visual inspection'' of the left and right spoiler installation of the windshield wiper assemblies. We have determined that the procedures in the service bulletin should be described as a ''detailed inspection.'' Note 1 has been included in this proposed AD to define this type of inspection.

Service Bulletin 2000–56–002 and the referenced Swedish airworthiness directive do not give a specific compliance time for doing the replacement. The Swedish airworthiness directive does not recommend any compliance time, and the service bulletin merely specifies that compliance with the service bulletin is ''recommended.'' We have determined that a specific compliance time is necessary to ensure that operators address the unsafe condition in a timely manner. In developing an appropriate compliance time for this proposed AD, we considered not only the safety implications and the LFVs recommendations, but the manufacturer's recommendation and the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to do the proposed replacement (6 hours). In light of all of these factors, we find a compliance time of ''Within 2,000 flight cycles after the effective date of this AD'' for doing the proposed replacement to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

The FAA estimates that 3 airplanes of U.S. registry would be affected by this proposed AD.

It would take about 1 work hour per airplane to do the proposed inspection, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $195, or $65 per airplane, per inspection cycle.

It would take about 6 work hours per airplane to do the proposed replacement at an average labor rate of $65 per work hour. Required parts would be free of charge. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $1,170, or $390 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed 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 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 proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the 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 is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to 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. Section 39.13 is amended by adding the following new airworthiness directive:

Saab Aircraft AB: Docket 2002–NM–261–AD.

Applicability: Model SAAB 2000 series airplanes, as listed in Saab Service Bulletin 2000–56–003, dated August 12, 2002, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the windshield wiper assembly, which could result in loss of visibility, damage to the propeller(s) and/or engine(s), or penetration of the fuselage skin and consequent rapid depressurization of the airplane, accomplish the following:

Repetitive Inspections

(a) Within 400 flight hours after the effective date of this AD: Do a detailed inspection for discrepancies (including cracks, loose parts, deformation, general deterioration) of the installation of the spoilers of the windshield wiper assemblies (including doing an operational test), by doing all the actions per the Accomplishment Instructions of Saab Service Bulletin 2000–56–003, dated August 12, 2002.

Note 1: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) If no discrepancies are found, repeat the inspection thereafter at intervals not to exceed 400 flight hours, until the replacement required by paragraph (b) of this AD is done.

(2) If any discrepancies are found, before further flight, do the replacement required by paragraph (b) of this AD.

Replacement

(b) Except as required by paragraph (a)(2) of this AD: Within 2,000 flight cycles after the effective date of this AD; replace the spoilers of the windshield wiper assemblies (including doing an operational test) by doing all the actions per the Accomplishment Instructions of Saab Service Bulletin 2000–56–002, Revision 01, dated August 12, 2002. Such replacement ends the repetitive inspections required by this AD.

Replacement Done Per Previous Issue of Service Bulletin

(c) Replacements done before the effective date of this AD per Saab Service Bulletin 2000–56–002, dated November 28, 1996, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in Swedish airworthiness directive 1–178, dated August 15, 2002.

Issued in Renton, Washington, on January 9, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–1305 Filed 1–21–04; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 104–REC; FRL–7601–6]

Corrections to the California State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to delete various local rules and state statutes from the California State Implementation Plan (SIP) that were incorporated into the SIP in error. These primarily include rules and statutes concerning procedures before the local hearing board, local fees, enforcement authorities, administrative permit requirements, and appeals. EPA has determined that the continued presence of these rules and statutes in the SIP is potentially confusing and thus problematic for affected sources, the State, local agencies, and EPA. The intended effect of this proposal is to delete these rules and statutes to make the SIP consistent with the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments must arrive by February 23, 2004.

ADDRESSES: Send comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov.*

You may inspect copies of the rules to be deleted and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the rules by appointment at the locations listed in **SUPPLEMENTARY INFORMATION** under ''Public Inspection.''

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Region IX, (415) 947–4126. E-mail: *rose.julie@EPA.gov.*

SUPPLEMENTARY INFORMATION:

Public Inspection

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

Amador County Air Pollution Control District, 500 Argonaut Lane, Jackson, CA 95642.

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, Lancaster, CA 93539–4409.

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

Butte County Air Quality Management District, 2525 Dominic Drive, Suite J, Chico, CA 95928–7184.

Calaveras County Air Pollution Control District, 891 Mountain Ranch Road, San Andreas, CA 95249–9709.

Colusa County Air Pollution Control District, 100 Sunrise Blvd. Suite F, Colusa, CA 95932–3246.

El Dorado County Air Pollution Control District, 2850 Fairlane Court, Building C, Placerville, CA 95667–4100.

Feather River Air Quality Management District, 938—14th Street, Marysville, CA 95901–4149.

Glenn County Air Pollution Control District, 720 North Colusa Street, Willows, CA 95988–0351.

Great Basin Unified Air Pollution Control District, 157 Short Street, Suite 6, Bishop, CA 93514.

Imperial County Air Pollution Control District, 150 South Ninth Street, El Centro, CA 92243–2801.

Kern County (Southeast Desert) Air Pollution Control District, 2700 M. Street, Suite 302, Bakersfield, CA 93301–2370.

Lake County Air Quality Management District, 885 Lakeport Boulevard, Lakeport, CA 95453–5405.

Lassen County Air Pollution Control District, 175 Russell Avenue, Susanville, CA 96130–4215.

Mariposa County Air Pollution Control District, 5110 Bullion Street, Mariposa, CA 95338.

Mendocino County Air Quality Management District, 306 E. Gobbi Street, Ukiah, CA 95482.

Modoc County Air Pollution Control District, 202 W. Fourth Street, Alturas, CA 96101.

Mojave Desert Air Quality Management District, 14306 Park Avenue, Victorville, CA 92392–2310.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Ct., Monterey, CA 93940–6536.

North Coast Unified Air Quality Management District, 2300 Myrtle Avenue, Eureka, CA 95501–3327.

Northern Sierra Air Quality Management District, 200 Litton

Drive, Suite 320, Grass Valley, CA 95945–2509.
Northern Sonoma County Air Pollution Control District, 150 Matheson Street, Healdsburg, CA 95448–4908.
Placer County Air Pollution Control District, 11464 B Avenue, Auburn, CA 95603.
San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096.
San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg, Fresno, CA 93726.
San Luis Obispo County Air Pollution Control District, 3433 Roberto Court, San Luis Obispo, CA 93401–7126.
Santa Barbara County Air Pollution Control District, 26 Castilian Drive, B–23, Goleta, CA 93117.
Shasta County Air Quality Management District, 1855 Placer Street, Suite 101, Redding, CA 96001–1759.
Siskiyou County Air Pollution Control District, 525 South Foothill Drive, Yreka, CA 96097–3036.
South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.
Tehama County Air Pollution Control District, 1750 Walnut Street, Red Bluff, CA 96080.
Tuolumne County Air Pollution Control District, 22365 Airport, Columbia, CA 95310.
Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.
Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616.

Throughout this document wherever ''we,'' ''us,'' or ''our'' are used, we mean EPA.

Table of Contents

I. Why is EPA proposing to correct the SIP?
II. What rules are proposed for deletion?
III. Proposed action, public comment and final action
IV. Administrative Requirements

I. Why Is EPA Proposing To Correct the SIP?

The Clean Air Act was first enacted in 1970. In the 1970s and early 1980s, thousands of state and local agency regulations were submitted to EPA for incorporation into the SIP in order to fulfill the new federal requirements. In many cases, states submitted entire regulatory air pollution programs, including many elements not required by the Act. Due to time and resource constraints, EPA's review of these submittals focused primarily on the new substantive requirements and we approved many other elements into the SIP with minimal review.

We now recognize that many of these elements were not appropriate for approval into the SIP. In general, these elements are appropriate for state and local agencies to adopt and implement, but it is not necessary or appropriate to make them federally enforceable by incorporating them into the applicable SIP. These include:

A. Rules that govern local hearing board procedures and other administrative requirements such as frequency of meetings, salaries paid to board members, and procedures for petitioning for a local hearing.

B. Administrative permit rules such as those that describe procedures for action, denial, appeal, and reinstatement of permits to operate. Substantive local requirements to fulfill CAA new source review and operating permit provisions are federally approved or delegated elsewhere.

C. Variance provisions that provide for modification of the requirements of the applicable SIP. The variance procedures included in today's action are based in State law. *See* California Health & Safety Code sections 42350–42364. State- or district-issued variances provide an applicant with a mechanism to obtain relief from state enforcement of a state or local rule under certain conditions. Pursuant to federal law, specifically section 110(i) of the Clean Air Act, 42 U.S.C. 7410(i), neither EPA nor a state may revise a State Implementation Plan (SIP) by issuing an ''order, suspension, plan revision or other action modifying any requirement of an applicable implementation plan'' without a plan promulgation or revision. EPA and California have long recognized that a state-issued variance, though binding as a matter of state law, does not prevent EPA from enforcing the underlying SIP provisions unless and until EPA approves that variance as a SIP revision. The variance provisions included in today's action are deficient for various reasons, including their failure to address the fact that a state- or district-issued variance has no effect on federal enforceability unless the variance is submitted to and approved by EPA as a SIP revision. Therefore, their inclusion in the SIP is inconsistent with the Act and may be confusing to regulated industry and the general public. Moreover, because state-issued variances require independent EPA approval in order to modify the substantive requirements of a SIP, removal of these variance provisions from the SIP will have no effect on regulated entities. *See Industrial Environmental Association* v. *Browner,* No. 97–71117 (9th Cir., May 26, 2000).

D. Various provisions describing local agency investigative or enforcement authority including the authority to inspect or arrest, issue violation notices, and issue orders for abatement. States may need to adopt such rules to demonstrate adequate enforcement authority under section 110(a)(2) of the Act, but they should not be approved into the applicable SIP to avoid potential conflict with EPA's independent authorities provided in CAA section 113, section 114 and elsewhere.

E. Local fee provisions that are not economic incentive programs and are not designed to replace or relax a SIP emission limit. While it is appropriate for local agencies to implement fee provisions, for example, to recover costs for issuing permits, it is generally not appropriate to make local fee collection federally enforceable.

II. What Rules are Proposed for Deletion?

EPA has determined that the California rules listed in the tables below are inappropriate for inclusion in the SIP, but were previously approved into the SIP in error. Dates that these rules were submitted by the State and approved by EPA are provided. We are proposing deletion of these rules and any earlier versions of these rules from the individual air pollution control district portions of the California SIP under CAA section 110(k)(6) as inconsistent with the requirements of CAA section 110 and title I, part D.

CALIFORNIA STATE STATUTES

Statutory Provision	Title	Submittal date	Approval date
California Health & Safety Code, sections 24292, and 24296 to 24303 (1972).	Variances	02/21/72	05/31/72
California Health & Safety Code, sections 24310 to 24323 (1972)	Procedure	02/21/72	05/31/72

CALIFORNIA STATE STATUTES—Continued

Statutory Provision	Title	Submittal date	Approval date
California Health & Safety Code, sections 24362.6 to 24363 and 24365.1 to 24365.12 (1972).	Rules and Regulations	02/21/72	05/31/72

LOCAL AIR POLLUTION CONTROL RULES

Rule	Title	Submittal date	Approval date
Amador County Air Pollution Control District			
504	Action on Applications	10/16/85	04/17/87
506	Denial of Application	10/16/85	04/17/87
509	Authority to Inspect	10/16/85	04/17/87
519	Appeals	10/16/85	04/17/87
520	Reinstatement	10/16/85	04/17/87
717	Lack of Permit	04/21/76	01/24/78
Antelope Valley Air Pollution Control District			
211	Action on Permits	04/21/76	11/09/78
214	Denial of Permits	04/21/76	11/09/78
215	Permits Deemed Denied	04/21/76	11/09/78
216	Appeals	04/21/76	11/09/78
301	Permit Fees	07/19/83	10/19/84
301.1	Permit Fee Rates	07/19/83	10/19/84
301.2	Fee Schedules	07/19/83	10/19/84
302	Fees for Publication	02/03/83	11/18/83
303	Hearing Board Fees	02/03/83	11/18/83
304	Analysis Fees	02/03/83	10/19/84
1231	Judicial Review	01/02/79	05/09/80
Bay Area Air Quality Management District			
1–402.1/402.1	Status of Violation Notices During Variance Proceedings	02/16/99	06/28/99
Butte County Air Pollution Control District			
422	Required Information	03/26/96	05/02/01
423	Action on Applications	02/10/86	02/03/87
425	Appeals	02/10/86	02/03/87
Calaveras County Air Pollution Control District			
204	Applications	06/30/72	09/22/72
206	Action on Applications	06/30/72	09/22/72
210	Denial of Applications	06/30/72	09/22/72
211	Further Information	06/30/72	09/22/72
212	Application Deemed Denied	06/30/72	09/22/72
213	Appeals	06/30/72	09/22/72
717	Lack of Permit	07/22/75	08/22/77
Colusa County Air Pollution Control District			
1.6	Air Resources Board Power to Supersede	06/30/72	09/22/72
2.9	Denial of Applications	06/30/72	09/22/72
2.10	Further Information	06/30/72	09/22/72
2.11	Action on Applications	06/30/72	09/22/72
2.12	Appeals	06/30/72	09/22/72
4.2	Analyses Required	06/30/72	09/22/72
El Dorado County Air Pollution Control District El Dorado County			
77	Rejection of Applications	02/21/72	05/31/72
78	Further Information	02/21/72	05/31/72
79	Actions on Applications	02/21/72	05/31/72
80	Appeals	02/21/72	05/31/72
700	Applicable Articles of the Health and Safety Code	11/04/77	11/06/78
701	General	04/10/75	06/14/78
702	Filing Petitions	04/10/75	06/14/78
703	Contents of Petitions	11/04/77	11/06/78
704	Petitions for Variances	04/10/75	06/14/78
705	Appeal from Denial	04/10/75	06/14/78

LOCAL AIR POLLUTION CONTROL RULES—Continued

Rule	Title	Submittal date	Approval date
706	Failure to Comply With Rules	04/10/75	06/14/78
707	Answers	04/10/75	06/14/78
708	Dismissal of Petition	04/10/75	06/14/78
709	Place of Hearing	04/10/75	06/14/78
710	Notice of Public Hearing	11/04/77	11/06/78
711	Evidence	04/10/75	06/14/78
712	Preliminary Matters	04/10/75	06/14/78
713	Official Notice	04/10/75	06/14/78
714	Continuances	04/10/75	06/14/78
715	Decision	04/10/75	06/14/78
716	Effective Date of Decision	04/10/75	06/14/78
717	Lack of Permit	04/10/75	06/14/78
Lake Tahoe Air Basin			
512	Applications	02/11/80	05/18/81
514	Action on Applications	02/11/80	05/18/81
519	Further Information	02/11/80	05/18/81
520	Application Deemed Denied	02/11/80	05/18/81
521	Denial of Applications	02/11/80	05/18/81
522	Revocation of a Permit	02/11/80	05/18/81
523	Appeals	02/11/80	05/18/81
524	Reinstatement	02/11/80	05/18/81
702	Filing Petitions	05/23/79	05/18/81
703	Contents of Petitions	05/23/79	05/18/81
704	Petitions for Variances	05/23/79	05/18/81
707	Answers	05/23/79	05/18/81
708	Dismissal of Petition	05/23/79	05/18/81
709	Place of Hearing	05/23/79	05/18/81
710	Notice of Hearing	05/23/79	05/18/81
Mountain Counties Air Basin			
520	Reinstatement	04/17/80	05/27/82
700	Applicable Articles of the Health and Safety Code	04/11/83	11/18/83
702	Filing Petitions	04/11/83	11/18/83
703	Contents of Petitions	04/11/83	11/18/83
710	Notice of Public Hearing	10/23/81	05/27/82
Feather River Air Quality Management District Sutter County			
4.7	Denial of Applications	01/28/81	01/28/81
4.9	Action on Applications	01/28/81	01/28/81
4.10	Appeals	01/28/81	01/28/81
5.18	Lack of Permit	01/28/81	04/12/82
9.7	Permit Actions	01/28/81	04/12/82
9.8	Variance Actions	01/28/81	04/12/82
Yuba County			
4.7	Denial of Applications	03/30/81	04/12/82
4.8	Further Information	03/30/81	04/12/82
4.9	Action on Applications	03/30/81	04/12/82
4.10	Appeals	03/30/81	04/12/82
4.11	Variance Action	03/30/81	04/12/82
5.00	General	10/15/79	01/26/82
5.01	Hearing Board	10/15/79	01/26/82
5.02	Procedures	10/15/79	01/26/82
5.03	Hearings	10/15/79	01/26/82
5.04	Contents of Petition for Hearing	03/30/81	01/26/82
5.05	Request for Variances	10/15/79	04/12/82
5.06	Appeal from Denial	10/15/79	01/26/82
5.07	Failure to Comply with Rules	10/15/79	01/26/82
5.08	Answers	10/15/79	01/26/82
5.09	Dismissal of Request for a Hearing	10/15/79	01/26/82
5.10	Place of Hearing	10/15/79	01/26/82
5.11	Notice of Hearing	10/15/79	01/26/82
5.12	Evidence	10/15/79	01/26/82
5.13	Preliminary Matters	10/15/79	01/26/82
5.14	Official Notice	10/15/79	01/26/82
5.15	Continuances	10/15/79	01/26/82

LOCAL AIR POLLUTION CONTROL RULES—Continued

Rule	Title	Submittal date	Approval date
5.16	Decision	10/15/79	01/26/82
5.17	Effective Date of Decision	10/15/79	01/26/82
5.18	Lack of Permit	10/15/79	01/26/82
5.19	Record of Hearing	10/15/79	01/26/82
6.0	Variances	03/30/81	01/26/82
6.1	Interim Variances	10/15/79	01/26/82
6.2	Limitation of Granting Variance	10/15/79	01/26/82
6.3	Hearing Board May Impose Other Requirements	10/15/79	01/26/82
6.4	Cash Bond	10/15/79	01/26/82
6.5	Modifying or Revoking Variances	10/15/79	01/26/82
6.6	Variance Time Period	10/15/79	01/26/82
6.7	Variance Action	10/15/79	01/26/82
Glenn County Air Pollution Control District			
53	Denial of Permit	06/30/72	09/22/72
54	Action on Application	06/30/72	09/22/72
55	Appeals	06/30/72	09/22/72
96	Variances	11/03/80	01/26/82
97	Exceptions	06/30/72	09/22/72
Great Basin Unified Air Pollution Control District			
107	Constitutionality	04/21/76	06/06/77
203	Applications	12/17/79	06/18/82
211	Denial of Applications	04/21/76	12/08/76
214	Appeals	04/21/76	12/08/76
616	Effective Date of Decision	04/21/76	06/06/77
Imperial County Air Pollution Control District			
110	Appeals	02/21/72	05/31/72
204	Applications	06/09/87	02/03/89
210	Denial of Applications	06/09/87	02/03/89
Kern County Air Pollution Control District—Southeast Desert			
110	Arrests and Notices to Appear	12/15/80	07/06/82
204	Applications	06/30/72	09/22/72
206	Action on Applications	06/30/72	09/22/72
210	Denial of Applications	06/30/72	09/22/72
211	Further Information	06/30/72	09/22/72
212	Applications Deemed Denied	06/30/72	09/22/72
213	Appeals	06/30/72	09/22/72
518	Lack of Permit	07/19/74	08/22/77
Lake County Air Quality Management District			
631	Duplicate Permit	08/06/82	11/10/82
660	Renewal Fees	05/23/79	01/27/81
660.1	Permit Fee Penalty	08/06/82	11/10/82
660.2	Cancellation or Denial	08/06/82	11/10/82
660.3	Miscellaneous Charges	08/06/82	11/10/82
Lassen County Air Pollution Control District			
2.02	Time to Obtain Permit to Operate	06/30/72	09/22/72
2.04	Applications	06/30/72	09/22/72
2.06	Action on Applications	06/30/72	09/22/72
2.10	Denial of Applications	06/30/72	09/22/72
2.11	Further Information	06/30/72	09/22/72
2.12	Applications Deemed Denied	06/30/72	09/22/72
2.13	Appeals	06/30/72	09/22/72
Mariposa County Air Pollution Control District			
16	Revocation of Permit	06/30/72	09/22/72
514	Appeals	06/06/77	08/16/78
617	Lack of Permit	01/10/75	08/22/77
Mendocino County Air Quality Management District			
230	Action on Applications—Two Introductory Paragraphs	08/06/82	07/31/85

LOCAL AIR POLLUTION CONTROL RULES—Continued

Rule	Title	Submittal date	Approval date
230–C	Denial of Application	08/06/82	07/31/85
250	Appeals	04/17/80	06/18/82
630	Decisions	11/10/76	11/07/78
	Modoc County Air Pollution Control District		
2.02	Time to Obtain Permit to Operate	06/30/72	09/22/72
2.04	Applications	06/30/72	09/22/72
2.06	Action on Applications	06/30/72	09/22/72
2.10	Denial of Applications	06/30/72	09/22/72
2.12	Applications Deemed Denied	06/30/72	09/22/72
2.13	Appeals	06/30/72	09/22/72
	Mojave Desert Air Quality Management District Riverside County		
210	Applications	06/06/77	11/09/78
211	Action on Permits	06/06/77	11/09/78
214	Denial of Permits	06/06/77	11/09/78
215	Permits Deemed Denied	06/06/77	11/09/78
216	Appeals	06/06/77	11/09/78
302	Fees for Publication	02/03/83	11/18/83
303	Hearing Board Fees	02/03/83	11/18/83
304	Analysis Fees	02/03/83	11/18/83
517	Lack of Permit	06/06/77	09/08/78
1201	Discretion to Hold Hearing	01/02/79	05/09/80
1202	Notice	01/02/79	05/09/80
1203	Petitions	01/02/79	05/09/80
1204	Answers to Petitions	01/02/79	05/09/80
1205	Function of the Board	01/02/79	05/09/80
1206	Appearances	07/25/79	09/28/81
1207	Service and Filing	07/19/83	02/01/84
1208	Rejection of Documents	07/25/79	09/28/81
1209	Form and Size	01/02/79	05/09/80
1210	Copies	01/02/79	05/09/80
1211	Subpoenas	01/02/79	05/09/80
1212	Continuances	07/25/79	09/28/81
1213	Request for Continuances or Time Extensions	07/25/79	09/28/81
1214	Transcript and Record	01/02/79	05/09/80
1215	Conduct of Hearing	07/25/79	09/28/81
1216	Presiding Officer	07/25/79	09/28/81
1217	Disqualification of Hearing Officer or Board Officer	01/02/79	05/09/80
1218	Ex Parte Communications	07/25/79	09/28/81
1219	Evidence	07/25/79	09/28/81
1220	Prepared Testimony	01/02/79	05/09/80
1221	Official Notice	01/02/79	05/09/80
1222	Order of Proceedings	07/25/79	09/28/81
1223	Prehearing Conference	01/02/79	05/09/80
1224	Opening Statements	01/02/79	05/09/80
1225	Conduct of Cross-Examination	07/25/79	09/28/81
1226	Oral argument	07/25/79	09/28/81
1227	Briefs	07/25/79	09/28/81
1228	Motions	07/25/79	09/28/81
1229	Decisions	07/25/79	09/28/81
1230	Proposed Decisions and Exceptions	07/25/79	09/28/81
	San Bernardino County		
210	Applications	06/06/77	11/09/78
211	Action on Permits	06/06/77	11/09/78
214	Denial of Permits	06/06/77	11/09/78
215	Permits Deemed Denied	06/06/77	11/09/78
216	Appeals	06/06/77	11/09/78
517	Lack of Permit	06/06/77	09/08/78
	Monterey Bay Unified Air Pollution Control District		
203	Application	02/06/85	07/13/87
210	Denial of Applications	02/06/85	07/13/87
211	Appeals	02/06/85	07/13/87

LOCAL AIR POLLUTION CONTROL RULES—Continued

Rule	Title	Submittal date	Approval date
	North Coast Unified Air Quality Management District		
250	Appeals	03/23/81	06/18/82
2–502	Enforcement—Penalties	07/10/84	01/19/85
620	Hearing Procedures	08/06/82	11/10/82
	Northern Sierra Air Quality Management District Nevada County		
17	Denial of Applications	02/21/72	05/31/72
18	Further Information	02/21/72	05/31/72
19	Application Deemed Denied	02/21/72	05/31/72
514	Appeals	06/06/77	09/14/78
717	Lack of Permit	04/10/75	06/14/78
	Plumas County		
503	Applications	06/22/81	06/18/82
504	Action on Applications	06/22/81	06/18/82
506	Denial of Applications	06/22/81	06/18/82
518	Revocation of a Permit to Operate	06/22/81	06/18/82
519	Appeals	06/22/81	06/18/82
520	Reinstatement	06/22/81	06/18/82
521	Annual Renewal	06/22/81	06/18/82
717	Lack of Permit	01/10/75	06/14/78
	Sierra County		
46	General Enforcement	07/25/73	05/11/77
503	Applications	06/22/81	06/18/82
504	Action on Applications	06/22/81	06/18/82
506	Denial of Applications	06/22/81	06/18/82
518	Revocation of a Permit to Operate	06/22/81	06/18/82
519	Appeals	06/22/81	06/18/82
520	Reinstatement	06/22/81	06/18/82
521	Annual Renewal	06/22/81	06/18/82
600	Applicable Articles of the Health and Safety Code	06/06/77	09/14/78
612	Preliminary Matters	06/06/77	09/14/78
613	Official Notice	06/06/77	06/14/78
614	Continuances	06/06/77	09/14/78
615	Decision	06/06/77	09/14/78
616	Effective Date of Decision	06/06/77	09/14/78
617	Lack of Permit	06/06/77	09/14/78
619	Order of Abatement	01/10/75	08/22/77
620	Severability	01/10/75	08/22/77
	Northern Sonoma County Air Pollution Control District		
013	Applications	06/30/72	09/22/72
015	Action on Applications	06/30/72	09/22/72
019	Denial of Applications	06/30/72	09/22/72
020	Further Information	06/30/72	09/22/72
021	Applications Deemed Denied	06/30/72	09/22/72
022	Appeals	06/30/72	09/22/72
100	Penalties for Violations	06/30/72	09/22/72
	Placer County Air Pollution Control District Lake Tahoe Air Basin		
2–17	Denial of Applications	02/21/72	05/31/72
2–18	Further Information	02/21/72	05/31/72
2–19	Applications Deemed Denied	02/21/72	05/31/72
2–20	Appeals	02/21/72	05/31/72
504	Applications	08/21/79	06/23/82
506	Action on Applications	08/21/79	06/23/82
511	Revocation of a Permit	08/21/79	06/23/82
512	Appeals	08/21/79	06/23/82
513	Reinstatement	08/21/79	06/23/82
717	Lack of Permit	01/10/75	06/14/78
	Mountain Counties Air Basin		
2–17	Denial of Applications	02/21/72	05/31/72

LOCAL AIR POLLUTION CONTROL RULES—Continued

Rule	Title	Submittal date	Approval date
2–18	Further Information	02/21/72	05/31/72
2–19	Applications Deemed Denied	02/21/72	05/31/72
2–20	Appeals	02/21/72	05/31/72
504	Applications	10/15/79	05/18/81
506	Action on Applications	10/15/79	05/18/81
512	Appeals	10/15/79	05/18/81
513	Reinstatement	10/15/79	05/18/81
705	Appeal from Denial	01/10/75	06/14/78
706	Failure to Comply with Rules	10/13/77	11/15/78
717	Lack of Permit	01/10/75	06/14/78
Sacramento Valley Air Basin			
701	General	01/10/75	06/14/78
702	Filing Petitions	10/13/77	11/15/78
703	Contents of Petitions	10/13/77	11/15/78
704	Petitions for Variances	10/13/77	11/15/78
705	Appeal from Denial	01/10/75	06/14/78
706	Failure to Comply with Rules	10/13/77	11/15/78
707	Answers	01/10/75	06/14/78
708	Dismissal of Petition	10/13/77	11/15/78
709	Place of Hearing	10/13/77	11/15/78
710	Notice of Hearing	10/13/77	11/15/78
711	Evidence	01/10/75	06/14/78
712	Preliminary Notice	01/10/75	06/14/78
713	Official Notice	01/10/75	06/14/78
714	Continuances	01/10/75	06/14/78
715	Decision	10/13/77	11/15/78
716	Effective Date of Decision	01/10/75	06/14/78
717	Lack of Permit	01/10/75	06/14/78
San Diego County Air Pollution Control District			
14	Applications	06/02/80	09/28/81
18	Action on Applications	06/30/72	09/22/72
22	Denial of Application	06/30/72	09/22/72
23	Further Information	06/30/72	09/22/72
24	Applications Deemed Denied	06/30/72	09/22/72
San Joaquin Valley Unified Air Pollution Control District			
2040	Applications	12/17/92	09/28/94
Fresno County			
206	Action on Applications	06/30/72	09/22/72
518	Lack of Permit	07/19/74	08/22/77
Kern County			
104	Enforcement	11/10/76	03/22/78
107	Inspection	06/30/72	09/22/72
109	Penalty	06/30/72	09/22/72
206	Action on Applications	06/30/72	09/22/72
303	Analysis Fee Schedules	06/30/72	09/22/72
304	Technical Reports—Charges for	06/30/72	09/22/72
518	Lack of Permit	07/19/74	08/22/77
Kings County			
206	Action on Applications	06/30/72	09/22/72
518	Lack of Permit	06/30/72	09/22/72
Madera County			
206	Action on Applications	06/30/72	09/22/72
518	Combining an Appeal with a Petition for Variance	02/07/89	04/16/91
Merced County			
206	Action on Applications	06/30/72	09/22/72
505	Petitions for Variances	08/02/76	06/14/78

LOCAL AIR POLLUTION CONTROL RULES—Continued

Rule	Title	Submittal date	Approval date
518	Lack of Permit	08/02/76	06/14/78
San Joaquin County			
206	Action on Applications	06/30/72	09/22/72
519	Lack of Permit	10/23/74	08/22/77
Stanislaus County			
206	Action on Applications	06/30/72	09/22/72
518	Lack of Permit	10/23/74	08/22/77
Tulare County			
206	Action on Applications	06/30/72	09/22/72
San Luis Obispo County Air Pollution Control District			
202	Applications	11/10/76	02/01/84
206	Denial of Applications	11/10/76	02/01/84
207	Action on Applications—Time Limits	11/10/76	02/01/84
208	Appeals	11/10/76	02/01/84
Santa Barbara County Air Pollution Control District			
204	Applications	05/23/79	05/18/81
207	Denial of Applications	05/23/79	05/18/81
208	Action on Applications—Time Limits	05/23/79	05/18/81
209	Appeals	05/23/79	05/18/81
513	Evidence	05/23/79	05/18/81
517	Decision	05/23/79	05/18/81
519	Lack of Permit	05/23/79	05/18/81
Shasta County Air Quality Management District			
2.10	Applications	11/21/86	04/12/89
2:17	Status of Permit	06/30/72	09/22/72
2:18	Application Deemed Denied	07/19/83	02/01/84
2:19	Appeals	11/25/87	04/17/89
2.22	Change in Multi-Component System	06/30/72	09/22/72
2:26	Revocation of Permit	11/21/86	04/12/89
2:27	Submittal of Information	11/21/86	04/12/89
4:7	Petition for Abatement Order	11/21/86	04/12/89
Siskiyou County Air Pollution Control District			
2.4	Application	02/21/72	05/31/72
2.6	Action on Applications	02/21/72	05/31/72
2.8	Denial of Application	03/18/87	04/12/89
2.9	Appeals	03/18/87	04/12/89
2.10	Further Information	03/26/90	11/04/96
3.1	Hearing Board Fees	07/25/73	02/10/77
3.2	Permit Fees	07/25/73	02/10/77
3.3	Schedule of Fees	07/25/73	02/10/77
5.1	Applicable Articles of the Health and Safety Code	07/25/73	02/10/77
5.2	General	07/25/73	02/10/77
5.3	Filing Petitions	07/25/73	02/10/77
5.4	Contents of Petitions	07/25/73	02/10/77
5.5	Petitions for Variances	07/25/73	02/10/77
5.6	Failure to Comply with Rules	07/25/73	02/10/77
5.7	Answers	07/25/73	02/10/77
5.8	Withdrawal of Petition	07/25/73	02/10/77
5.9	Place of Hearing	07/25/73	02/10/77
5.10	Notice of Hearing	07/25/73	02/10/77
5.11	Rules of Evidence and Procedure	07/25/73	02/10/77
5.12	Records of Proceedings	07/25/73	02/10/77
5.13	Preliminary Matters	07/25/73	02/10/77
5.14	Official Notice	07/25/73	02/10/77
5.15	Continuances	07/25/73	02/10/77
5.16	Hearing and Decision	07/25/73	02/10/77
5.17	Effective Date of Decision	07/25/73	02/10/77
5.18	Issuance of Subpoenas	07/25/73	02/10/77

LOCAL AIR POLLUTION CONTROL RULES—Continued

Rule	Title	Submittal date	Approval date
	South Coast Air Quality Management District		
214	Denial of Permits	05/13/91	05/13/99
215	Permits Deemed Denied	05/31/91	05/13/99
216	Appeals	05/13/91	05/13/99
301	Permit Fees	07/19/83	10/19/84
301.1	Permit Fee Rates	07/19/83	10/19/84
301.2	Fee Schedules	07/19/83	10/19/84
1201	Discretion to Hold Hearing	01/02/79	05/09/80
1202	Notice	01/02/79	05/09/80
1203	Petitions	01/02/79	05/09/80
1204	Answers to Petitions	01/02/79	05/09/80
1205	Function of the Board	01/02/79	05/09/80
1206	Appearances	07/25/79	09/28/81
1207	Service and Filing	07/19/83	02/01/84
1208	Rejection of Documents	07/25/79	09/28/81
1209	Form and Size	01/02/79	05/09/80
1210	Copies	01/02/79	05/09/80
1211	Subpoenas	01/02/79	05/09/80
1212	Continuances	07/25/79	09/28/81
1213	Request for Continuances or Time Extensions	07/25/79	09/28/81
1214	Transcript and Record	01/02/79	05/09/80
1215	Conduct of Hearing	07/25/79	09/28/81
1216	Presiding Officer	07/25/79	09/28/81
1217	Disqualification of Hearing Officer or Board Officer	01/02/79	05/09/80
1218	Ex Parte Communications	07/25/79	09/28/81
1219	Evidence	07/25/79	09/28/81
1220	Prepared Testimony	01/02/79	05/09/80
1221	Official Notice	01/02/79	05/09/80
1222	Order of Proceedings	07/25/79	09/28/81
1223	Prehearing Conference	01/02/79	05/09/80
1224	Opening Statements	01/02/79	05/09/80
1225	Conduct of Cross-Examination	07/25/79	09/28/81
1226	Oral Argument	07/25/79	09/28/81
1227	Briefs	07/25/79	09/28/81
1228	Motions	07/25/79	09/28/81
1229	Decisions	07/25/79	09/28/81
1230	Proposed Decision and Exceptions	07/25/79	09/28/81
	Tehama County Air Pollution Control District		
2:7	Denial of Applications	12/15/80	04/12/82
2:8	Appeals	12/15/80	04/12/82
2:12	Status of Permit	02/10/86	02/03/87
3:15	Penalties	11/25/87	04/17/89
5:10	Service of Notices	02/10/86	07/12/90
	Tuolumne County Air Pollution Control District		
503	Applications	10/23/81	05/27/82
504	Action on Applications	10/23/81	05/27/82
506	Denial of Application	10/23/81	05/27/82
518	Revocation of a Permit to Operate	10/23/81	05/27/82
519	Appeals	10/23/81	05/27/82
520	Reinstatement	10/23/81	05/27/82
521	Annual Renewal	10/23/81	05/27/82
717	Lack of Permit	02/10/77	12/06/79
	Ventura County Air Pollution Control District		
3	Advisory Committee	07/19/74	08/15/77
8	Access to Facilities	05/23/79	06/18/82
22	Appeals	06/30/72	09/22/72
27	Suspension of Permits	03/17/80	06/18/82
73	National Emission Standards for Hazardous Air Pollutants	11/10/76	08/15/77
73.1	National Emission Standards for Asbestos	11/10/76	08/15/77
73.2	National Emission Standards for Beryllium	11/10/76	08/15/77
73.3	National Emission Standards for Beryllium Rocket Motor Firing	11/10/76	08/15/77
73.4	National Emission Standards for Mercury	11/10/76	08/18/77
127	Lack of Permit	05/23/79	06/18/82

LOCAL AIR POLLUTION CONTROL RULES—Continued

Rule	Title	Submittal date	Approval date
	Yolo-Solano Air Pollution Control District		
3.1	General Permit Requirements:		
403	Denial of Applications	10/19/94	07/07/97
406	Appeals	10/19/04	07/07/97
5.18	Lack of Permit	07/25/73	06/14/78

III. Proposed Action, Public Comment and Final Action

EPA has reviewed the rules listed in the tables above and determined that they were previously approved into the applicable California SIP in error. Deletion of these rules will not relax the applicable SIP and is consistent with the Act. Therefore, EPA is proposing to delete these rules under Section 110(k)(6) of the Act, which provides EPA authority to remove these rules without additional State submission. We will accept comments from the public on this proposal for the next 30 days. Unless we receive new information during the comment period supporting the maintenance of these rules in the SIP, we intend to publish a final action that will delete these rules from the federally enforceable SIP.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this proposed rule 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 a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In this proposed rule, EPA is not developing or adopting a technical standard. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

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

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

Dated: December 10, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 04–1234 Filed 1–21–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA275–0423b; FRL–7609–3]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the South Coast Air Quality Management District portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from food product manufacturing and processing, recordkeeping for VOC sources, and particulate matter (PM) emissions from woodworking operations. We are proposing to approve local rules to 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 February 23, 2004.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to steckel.andrew@epa.gov, or submit comments at *http://www.regulations.gov.*

You can inspect copies of the submitted SIP revisions, EPA's technical support documents (TSDs), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

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

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765–4182.

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: Jerald S. Wamsley, EPA Region IX, at either (415) 947–4111, or *wamsley.jerry@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: SCAQMD Rule 1131—Food Product Manufacturing and Processing Operations, SCAQMD Rule 109—Record Keeping for Volatile Organic Compound

Emissions, SCAQMD Rule 1137—PM–10 Emission Reductions from Woodworking Operations. In the Rules and Regulations 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. However, if we receive adverse comments, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this 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.

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: December 4, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 04–1038 Filed 1–21–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 25

[IB Docket No. 02–10, FCC No. 03–286]

Procedures To Govern the Use of Satellite Earth Stations on Board Vessels in the 5925–6425 MHz/3700–4200 MHz Bands and 14.0–14.5 GHz/11.7–12.2 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document is a summary of the Notice of Proposed Rulemaking adopted by the Commission in this proceeding. The Commission sought comment on proposals that seek to provide regulatory certainty to both terrestrial fixed service (FS) and fixed satellite service (FSS) operators in the C-; and Ku-bands by protecting existing terrestrial FS and FSS operations from harmful interference that may be caused by ESVs; by allowing for future growth of FS and FSS networks; and by promoting more efficient use of the spectrum by permitting new uses of the bands by ESVs, thereby enabling important new communications services to be provided to consumers on board vessels. The Commission also sought comment on rules and procedures to license ESV networks in the C- and Ku-band frequencies over GSO FSS satellites.

DATES: Comments are due to be filed by February 23, 2004, and reply comments are due to be filed by March 8, 2004. OMB, the general public, and other Federal agencies are invited to comment on the information collection requirements on or before March 22, 2004.

FOR FURTHER INFORMATION CONTACT: Belinda Nixon, Breck Blalock, or James Ball, Policy Division, International Bureau, (202) 418–1460. For information concerning the information collection(s) contained in this document, contact Judith B. Herman at 202–418–0214, or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* in IB Docket No. 02–10, FCC No. 03–286, adopted November 12, 2003 and released on November 24, 2003. The full text of this Commission decision 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 document is also available for download over the Internet at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-03-286A1.pdf.* The complete text may also be purchased from the Commission's copy contractor, Qualex International, in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 863–2893, via facsimile at (202) 863–2898, or via e-mail at *qualexint@aol.com.*

This Notice of Proposed Rulemaking (NPRM) contains proposed new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–3. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collections contained in this proceeding.

Summary of Notice of Proposed Rulemaking

In December 1991, Crescomm Transmission Services, Inc. (Crescomm), now Maritime Telecommunications Network (MTN) filed a Petition for Rulemaking to license ESVs in the C-band and Ku-band. In 1996, the IB and OET granted waivers of the Commission's rules to Qualcomm, Inc. (Qualcomm) and MTN to provide mobile-satellite service (MSS) using bands allocated to FSS and FS. The authorization placed conditions on the licenses, requiring them to protect against interference to, and accept interference from, other services or operations in the bands. Since that time, the Commission has authorized ESVs on U.S.-flagged vessels to operate pursuant to six month special temporary authorizations (STAs). The STAs require ESV service providers to operate on a non-harmful interference basis with respect to other radiocommunication services in the C-band and the Ku-band. In February, 2002, the Commission issued a Notice of Inquiry seeking comment on issues surrounding the operations and possible licensing of ESVs. The NOI focused on the bands that can best accommodate ESVs and on how to prevent interference to FS licensees.

In the Ku-band, the NPRM proposes to permit ESV operations on a primary basis with respect to other operations in the band. This band is extensively used by the FSS for VSAT operations. Various other satellite and terrestrial operations exist in the band to a lesser extent under other allocations. The NPRM seeks comment on how ESVs will co-exist with the other operations. The NPRM also seek comment on the following proposed requirements: Ku-band ESV networks would have automatic shut-off capability; ship location information would be provided to other operators in the Ku-band to identify and eliminate harmful interference that may be caused by an ESV; ESV equipped vessels must be 300 gross tons or larger; technical limitations to ensure compliance with two degree spacing and to prevent interference including: minimum antenna diameter of 1.2 meters, antenna pointing accuracy requirements, the NPRM proposes that Ku-band ESVs be authorized for a fifteen-year license term.

The NPRM proposes domestic rules that would authorize ESVs to operate on NIB in the C-band. The C-band is shared on a co-primary basis between the GSO FSS and terrestrial FS. The NPRM proposes that ESVs could be licensed following two approaches to address coordination issues between the ESVs and FS, the Coordination Approach and the Non-Coordination Approach. Under the Coordination Approach, ESVs operators would coordinate with FS operations prior to receiving a license for ES operations located within 300 kilometers of the United States coastline. ESVs would operate on a non-harmful interference basis with respect

to other operations in the band. However, the process of coordinating between FSS operators and terrestrial FS operators is designed to reduce the potential for interference that may be caused to terrestrial FS operators. Thus, once an ESV operator has coordinated the operations of an ESV, it is unlikely that the ESV will cause interference to terrestrial operators. Therefore, under this approach, if there is a claim that an ESV is causing interference, the ESV may continue to operate until the interference claim is resolved. In general, the NPRM seeks comment on the following: ESVs operators would be permitted to coordinate any portion of the C-band spectrum under the Coordination Approach, however, an ESV operator would be limited to accessing two GSO FSS satellites and 36 megahertz per satellite, per location (*e.g.*, port or waterway); ESV networks under the Coordination Approach would have automatic shut-off capability; ship location information would be maintained by the ESV operator for a 90-day period and would be provided, upon request, and in a secure fashion to other operators in the C-band, the Commission, or a third party for the purpose of identifying the source of harmful interference; ESV equipped vessels must be 300 gross tons or larger; several technical limitations would apply to C-band ESVs including: minimum antenna diameter of 2.4 meters, antenna pointing accuracy requirements, ESV networks under the Coordination Approach would be authorized for a 15-year license term.

Under the Non-Coordination Approach, ESVs would not have to coordinate with terrestrial FS operators prior to providing service. ESVs would be permitted to operate within 300 kilometers of the United States coastline on a non-harmful interference basis with respect to other operations in the band. An ESV would be subject to immediate shut-off of its service, however, if it is suspected that the ESV is causing harmful interference to a terrestrial FS operator. The ESV operator would have to resolve the interference claim prior to resuming operation of the ESV. In general, the NPRM seeks comment on the following: Non-Coordination ESV networks would have automatic shut-off capability; ship location information would be provided on a real time basis and via a secure method to terrestrial FS operators in the C-band to allow the terrestrial FS operators to identify harmful interference that may be caused by an ESV; ESV equipped vessels must be 300 gross tons or larger; and several technical limitations would apply to C-band ESVs including: minimum antenna diameter of 2.4 meters, antenna pointing accuracy requirements. Non-Coordination ESV networks would be authorized for a two-year license term.

The majority of cruise lines that operate from U.S. ports are foreign-flagged. By statute, the Commission cannot license ESVs on foreign-flagged vessels. In general, the NPRM seeks comment on the following: proposal to permit U.S.-licensed ESV hub operators to serve ESVs on foreign-flagged vessels in the C-band and Ku-band pursuant to the rules that would apply to U.S.-licensed ESV operations. If interference is caused by an ESV on a foreign-flagged vessel, the licensed ESV hub operator would have to eliminate the interference caused by the ESV operating in its network; proposal to permit, pursuant to bilateral agreements between the Commission and foreign regulators, ESV hub operators operating from foreign points to serve foreign-flagged vessels along the U.S. coastline in the C-band and Ku-band pursuant to the rules that would apply to U.S.-licensed ESV operations; in the alternative, we seek comment on whether ESV hub operators operating from foreign points should be required to shut off service to all ESVs on foreign-flagged vessels once the vessels enter the minimum distances (*i.e.* 125 km for Ku-band and 300 km for C-band) from the U.S. coast.

Procedural Matters

Paperwork Reduction Act

This NPRM contains a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection contained in this NPRM as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due March 22, 2004. A copy of any comments on the information collection contained herein should be submitted to Judy Boley, Federal Communications Commission, In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov*, and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Kim_A._Johnson@omb.eop.gov*.

Final Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a 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.'' *See* 5 U.S.C. 601–612, the RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. *See* 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**.'' 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 U.S. Small Business Administration (SBA). *See* 15 U.S.C. 632. The SBA has developed a small business size standard for Satellite Telecommunications, which consists of all such companies having $12.5 million or less in annual revenue. *See* 13 CFR 121.201, NAICS code 517410.

Pursuant to the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and actions considered in this NPRM. The text of the IRFA is set forth in Appendix B of the NPRM. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM.

The proposed rules would, if adopted, require satellite telecommunications operators to establish a database for tracking the location of ESV remote earth stations. The NPRM seeks

comment on this proposal, including the possible costs associated with the proposal, and seeks comment regarding possible alternatives. The proposed rules, if adopted, would also require ESV operators to maintain a point of contact for resolving possible claims of harmful interference, and seeks comment on this proposal and possible alternatives and the costs of compliance. The NPRM also proposes that wireless telecommunications providers nominate a person to serve as a point of contact for such claims of harmful interference. The Commission does not expect significant costs associated with this proposed rule, if adopted.

The NPRM seeks comment on possible methods for coordinating ESV operations with FS operations, including questions about the costs of such coordination, and also proposes and seeks comment on an alternative non-coordinated method for licensing. While the Commission does not expect that the cost of compliance with the coordination requirements, if adopted, would be burdensome to small business entities, the proposed alternative non-coordinated licensing approach would also be available to such entities and could help reduce costs to such entities.

This NPRM solicits comment on alternatives for more efficient processing of earth station on vessel (ESV) applications and simplifying ESV procedures, for example, by migrating from six-month special temporary licensing to a licensing method that would provide for licenses with terms from two to fifteen years. The NPRM also seeks comment on streamlining the application process for ESV operations by permitting blanket licensing of multiple ESV terminals in a single application. Adoption of some of these proposals would simplify the application process for ESVs and increase the licensing term for ESV operations. Accordingly, the Commission believes that adoption of these proposed rules would benefit all ESV applicants, including small entities, by significantly reducing the cost associated with obtaining and maintaining authority to operate an ESV network.

As described previously, the Commission also seeks comment on a number of alternative compliance and coordination processes, including seeking comments on the costs of such compliance. The Commission has taken care to consider the costs on business both large and small and has proposed alternatives to reduce the costs for both satellite and terrestrial operators.

Among these alternative is licensing on a non-coordination basis, which if adopted, could serve as a method for reducing costs for small entities by obviating the need to coordinate ESV operations with FS operations.

Ordering Clauses

Accordingly, pursuant to the authority contained in Sections 1, 4(i), 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 308 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i), 154(j), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), 308, this Notice of Proposed Rulemaking *is adopted.*

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center shall send a copy of this Notice of Proposed Rulemaking, including the initial regulatory flexibility analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* (1981).

List of Subjects in 47 CFR Parts 2 and 25

Radio, Satellites, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 2 and 25 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 2.1(c) is amended by adding a new definition in alphabetical order to read as follows:

§ 2.1 Terms and definitions.

* * * * *

(c) * * *

* * * * *

Baseline. The line from which maritime zones are measured, also known as the coast line. The baseline is a combination of the low-water line and closing lines across the mouths of inland water bodies and is adjusted from time-to-time by the U.S. Department of State's Baseline Committee.

* * * * *

3. Section 2.106 is amended by revising pages 55, 57, 64, and 66 of the Table of Frequency Allocations and adding footnotes USxxx, NGxxx, and NGyyy to read as follows:

§ 2.106 Table of Frequency Allocations.

BILLING CODE 6712–01–P

3700-5570 MHz (SHF) Page 55

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 3600-4200 MHz	3700-4200 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile		3700-4200	3700-4200 FIXED NG41 FIXED-SATELLITE (space-to-Earth) NGxxx	International Fixed (23) Satellite Communications (25) Fixed Microwave (101)
4200-4400 AERONAUTICAL RADIONAVIGATION 5.438 5.437 5.439 5.440			4200-4400 AERONAUTICAL RADIONAVIGATION 5.440 US261		Aviation (87)
4400-4500 FIXED MOBILE			4400-4500 FIXED MOBILE	4400-4500	
4500-4800 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 MOBILE			4500-4800 FIXED MOBILE US245	4500-4800 FIXED-SATELLITE (space-to-Earth) 5.441 US245	
4800-4990 FIXED MOBILE 5.442 Radio astronomy			4800-4940 FIXED MOBILE US203 US342	4800-4940 US203 US342	
5.149 5.339 5.443			4940-4990 5.339 US311 US342 G122	4940-4990 FIXED MOBILE except aeronautical mobile 5.339 US311 US342	Private Land Mobile (90) Fixed Microwave (101)
4990-5000 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY Space research (passive) 5.149			4990-5000 RADIO ASTRONOMY US74 Space research (passive) US246		
5000-5150 AERONAUTICAL RADIONAVIGATION 5.367 5.443A 5.443B 5.444 5.444A			5000-5250 AERONAUTICAL RADIO-NAVIGATION US260	5000-5150 AERONAUTICAL RADIO-NAVIGATION US260 5.367 5.444A US211 US344 US370	Satellite Communications (25) Aviation (87)

5570-7250 MHz (SHF) — Page 57

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
5570-5650 MARITIME RADIONAVIGATION MOBILE except aeronautical mobile 5.446A 5.450A RADIOLOCATION 5.450B 5.450 5.451 5.452			5570-5600 MARITIME RADIONAVIGATION US65 RADIOLOCATION G56 US50 G131	5570-5600 MARITIME RADIONAVIGATION US65 RADIOLOCATION US50	RF Devices (15) Maritime (80) Private Land Mobile (90)
			5600-5650 MARITIME RADIONAVIGATION US65 METEOROLOGICAL AIDS RADIOLOCATION US51 G56 5.452 G131	5600-5650 MARITIME RADIONAVIGATION US65 METEOROLOGICAL AIDS RADIOLOCATION US51 5.452	
5650-5725 RADIOLOCATION MOBILE except aeronautical mobile 5.446A 5.450A Amateur Space research (deep space) 5.282 5.451 5.453 5.454 5.455			5650-5925 RADIOLOCATION G2	5650-5830 Amateur 5.150 5.282	RF Devices (15) ISM Equipment (18) Amateur (97)
5725-5830 FIXED-SATELLITE (Earth-to-space) RADIOLOCATION Amateur 5.150 5.451 5.453 5.455 5.456	5725-5830 RADIOLOCATION Amateur 5.150 5.453 5.455				
5830-5850 FIXED-SATELLITE (Earth-to-space) RADIOLOCATION Amateur Amateur-satellite (space-to-Earth) 5.150 5.451 5.453 5.455 5.456	5830-5850 RADIOLOCATION Amateur Amateur-satellite (space-to-Earth) 5.150 5.453 5.455			5830-5850 Amateur Amateur-satellite (space-to-Earth) 5.150	ISM Equipment (18) Amateur (97)
5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE 5.150	5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE Amateur Radiolocation 5.150	5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE Radiolocation 5.150	5.150 US245	5850-5925 FIXED-SATELLITE (Earth-to-space) US245 MOBILE NG160 Amateur 5.150	ISM Equipment (18) Private Land Mobile (90) Amateur (97)
5925-6700 FIXED FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B MOBILE			5925-6425	5925-6425 FIXED NG41 FIXED-SATELLITE (Earth-to-space) NGxxx	International Fixed (23) Satellite Commun. (25) Fixed Microwave (101)

10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 5.484A (Earth-to-space) 5.484 MOBILE except aeronautical mobile	10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 5.484A MOBILE except aeronautical mobile		10.7-11.7 US211	10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 US211 NG104 US355	Satellite Communications (25) Fixed Microwave (101)
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	12.1-12.2 FIXED-SATELLITE (space-to-Earth) 5.484A 5.485 5.488 5.489	5.487 5.487A 5.492	12.1-12.2	5.486 5.488	
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12.5-12.75 FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.494 5.495 5.496	5.487A 5.488 5.490 5.492	12.5-12.75 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A MOBILE except aeronautical mobile BROADCASTING-SATELLITE 5.493	5.490	5.487A 5.488 5.490	
	See next page for 12.7-12.75 GHz		See next page for 12.7-12.75 GHz		See next page for 12.7-12.75 GHz

14-14.25 FIXED-SATELLITE (Earth-to-space) 5.484A 5.506 5.457A 5.506B 5.457B RADIONAVIGATION 5.504 Mobile-satellite (Earth-to-space) 5.504C 5.506A Space research 5.504A 5.505			14-14.2 RADIONAVIGATION US292 Space research USxxx	14-14.2 FIXED-SATELLITE (Earth-to-space) NGyyy RADIONAVIGATION US292 Mobile-satellite (Earth-to-space) Space research USxxx	Satellite Communications (25) Maritime (80) Aviation (87)
14.25-14.3 FIXED-SATELLITE (Earth-to-space) 5.484A 5.506 5.457A 5.457B 5.506B RADIONAVIGATION 5.504 Mobile-satellite (Earth-to-space) 5.506A 5.508A Space research 5.504A 5.505 5.508 5.509			14.2-14.4	14.2-14.4 FIXED-SATELLITE (Earth-to-space) NGyyy Mobile-satellite (Earth-to-space) Mobile except aeronautical mobile USxxx	Satellite Communications (25) Fixed Microwave (101)
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14.4-14.47 FIXED FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B 5.484A 5.506 5.506B MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) 5.506A 5.509A Space research (space-to-Earth) 5.504A			14.4-14.47 Fixed Mobile	14.4-14.47 FIXED-SATELLITE (Earth-to-space) NGyyy Mobile-satellite (Earth-to-space) USxxx	Satellite Communications (25)
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* * * * *

UNITED STATES (US) FOOTNOTES

* * * * *

USxxx Earth stations on vessels operating in the band 14–14.5 GHz shall not cause harmful interference to Federal Government stations of the space research service in the band 14–14.2 GHz nor to stations of the radio astronomy service in the band 14.47–14.5 GHz.

NON-FEDERAL GOVERNMENT (NG) FOOTNOTES

* * * * *

NGxxx In the bands 3700–4200 MHz (space-to-Earth) and 5925–6425 MHz (Earth-to-space), earth stations on board vessels (ESVs) may communicate with space stations of the fixed-satellite service on the condition that such use not cause harmful interference to, claim protection from, or otherwise impose constraints on the operation or development of fixed stations that operate in these bands. ESVs shall take all practical steps to comply with ITU Resolution 902 (WRC–03).

NGyyy In the bands 11.7–12.2 GHz (space-to-Earth) and 14.0–14.5 GHz (Earth-to-space), earth stations on board vessels (ESVs) may communicate with space stations of the fixed-satellite service on a primary basis. ESVs shall take all practical steps to comply with ITU Resolution 902 (WRC–03).

PART 25—SATELLITE COMMUNICATIONS

4. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

5. Section 25.103 is amended by adding a new paragraph (g) to read as follows:

§ 25.103 Definitions.

* * * * *

(g) *Earth stations on board vessels (ESVs).* An earth station located on board a vessel operating in certain bands of the fixed-satellite service, as distinct from a ship earth station, and intended to be used while in motion or during halts at unspecified points.

6. Section 25.115 is amended by adding paragraphs (c)(3) and (c)(4) to read as follows:

§ 25.115 Application for earth station authorizations.

* * * * *

(c)(3) Satellite earth station on board vessels (ESVs) or hub station applications for ESV networks operating in the 11.7–12.2 GHz/14.0–14.5 GHz (12/14 GHz or Ku-band).

(i) Applications to license networks of ESVs or hub earth stations for a network of ESVs operating in the 14.0–14.5 GHz frequency band under blanket operating authority shall be filed electronically on FCC Form 312, Main Form and Schedule B, for each large (5 meters or larger) hub station, and Schedule B for each representative type of small antenna (less than 5 meters) operating within the network.

(ii) The initial lead application shall provide a detailed overview of the complete network and fully identify the scope and nature of the service to be provided. The complete technical details of each representative type of small antenna shall also be provided. The lead application for a Ku-band ESV system must identify:

(A) The number of ESVs associated with the network;

(B) The operational area(s) where the proposed ESVs will operate. The description of the operational area should include a detailed description of any area within 125 km of the United States baseline, and in particular including ports and harbors where any ESV associated with the network may operate while in motion, halted for some unspecified time, moored or anchored, and all shipping channels and sea lanes where any ESV associated with the network may operate while in motion or halted for some unspecified time;

(C) Each licensee shall annually provide the Commission an updated list of all ports, harbors, shipping channels and sea lanes where any ESV associated with the network may operate;

(D) The ESV system's means of identification and location and method for maintaining a real-time secure database containing this information; and automatic mechanisms to terminate transmissions whenever the station operates outside of its authorized geographic area or operational limits; and a telephone number for the ESV operator point of contact to whom interference claims can be made 24-hours-a-day, seven-days-a-week;

(E) The ESV system's means to verify ESV performance and to terminate ESV transmissions immediately;

(F) The minimum antenna diameter (m);

(G) The pointing accuracy of the ESV antenna in degrees;

(H) The ESV transmitted power spectral density at the input to the antenna (dBw/40kHz);

(I) Demonstration of compliance with § 25.209 and § 25.132 of this section

(c)(4) Satellite earth stations on board vessels (ESVs) or hub station applications for ESV networks operating in the 3700–4200 MHz/5925–6425 MHz (4/6 GHz or C-band).

(i) Applications to license networks of ESVs or hub earth stations for a network of ESVs operating in 4/6 GHz band shall be filed electronically on FCC Form 312, Main Form and Schedule B, for each large hub station.

(ii) The initial lead application shall provide a detailed overview of the complete network and fully identify the scope and nature of the service to be provided. The lead application shall also provide an accurate list of the vessels the ESVs are located on, the frequency, bandwidth, and satellites that the ESVs are using, and an itinerary for each vessel from which the ESVs will be operating. The lead application shall also identify whether the services to be provided will be on a coordinated or non-coordinated basis. The complete technical details of each representative type of small antenna shall also be provided. The lead application for a C-band ESV system must identify:

(A) The number of ESVs associated with the network;

(B) The gross tonnage of each class of ship equipped with ESVs operating within the network;

(C) The ESV system's means of identification and location and, for non-coordinated ESV operations, method for maintaining a real-time secure database containing this information which can be accessed by FS operators, and automatic mechanisms to terminate transmissions whenever the station operates outside of its authorized geographic area or operational limits;

(D) The ESV system's means to verify ESV performance and to terminate ESV transmissions immediately, and a telephone number for the ESV operator point of contact to whom such request can be made 24-hours-a-day, seven-days-a-week;

(E) The antenna diameter (m);

(F) The pointing accuracy of the ESV antenna (°);

(G) The ESV transmitted power spectral density at the input to the antenna (dBw/40kHz);

(H) Demonstration of compliance with § 25.209 and § 25.132 of this section

(I) The operational area(s) where the proposed ESVs will operate. The description of the operational area should include a detailed description of any area within 300 km of the United States baseline, and in particular including ports and harbors where any ESV associated with the network may operate while in motion, halted for some unspecified time, moored or

anchored, and all shipping channels and sea lanes where any ESV associated with the network may operate while in motion or halted for some unspecified time, and where coordination between an ESV-equipped vessel operating in the 4/6 GHz frequency and terrestrial microwave services, may be required;

(J) Each licensee shall annually provide the Commission an updated list of all ports, harbors, shipping channels and sea lanes where any ESV associated with the network may operate;

(K) Where ESV coordination in the 4/6 GHz band is required:

(*1*) The initial lead application shall demonstrate that frequency coordination of each operational area (ports and sea lanes) has been completed prior to filing the application. The coordination must be conducted in accordance with §§ 25.130 and 25.203 of this section.

(*2*) Each licensee shall annually provide the Commission an updated list of all operational areas where coordinated operations are taking place as of the date of the report. The annual list shall also identify the satellites providing service to the network as of the date of the report.

(*3*) Each hub earth station application must indicate which satellite transponders (*i.e.* frequency range) it will use to provide service to ESVs. The amount of frequency bandwidth available to any ESV network operator is limited to a maximum of 36 megahertz of spectrum in each direction of transmission for each of two satellites per geographic location (*i.e.* port or harbor). The same 36 megahertz of uplink and 36 megahertz of downlink spectrum for each satellite may be accessed by all ESVs in the network. The 36 megahertz of uplink and 36 megahertz downlink of spectrum need not be the same at each satellite location.

7. Section 25.121(a) is revised to read as follows:

§ 25.121 License terms and renewals.

(a) *License Term.* Except for licenses for DBS facilities and non-coordinated ESV operations in the C-band, licenses for facilities governed by this part will be issued for a period of 15 years.

* * * * *

8. Section 25.134 is amended by adding new paragraphs (a)(3) and (a)(4) to read as follows:

§ 25.134 Licensing provisions of Very Small Aperture Terminal (VSAT), C-band Small Aperture Terminal (CSAT), and Satellite Earth Stations on Board Vessels (ESV) networks.

* * * * *

(a)(3) *ESV networks operating in the 12/14 GHz frequency band.* Applications for ESV networks in the Ku-bands that meet the requirements of § 25.134 (a)(1) of this section, that employ antennas that are 1.2 meters or larger in diameter, and have ESV antenna pointing accuracies of +/−0.2 degrees or better will be routinely processed. The use of smaller antennas or non-consistent power levels will require the filing of an initial lead application (§ 25.115(c)(4) of this section) that includes all technical analyses required to demonstrate that unacceptable interference will not be caused to any affected adjacent satellite operators by the operation of the non-conforming earth station as described in § 25.134(b) of this section for VSATs. The licenses shall be issued for ESV operations within 125 km of the United States coastline. The hub earth station licensee shall be responsible for all ESV compliance in its network including foreign-flagged ships.

(a)(4) *ESV networks operating in the 4/6 GHz frequency band.* All ESV network applications or applications for hub earth station operations will be routinely processed provided the network employs antennas on board ships with a minimum of 300 gross tonnage that are 4.5 meters or larger in diameter, that are consistent with § 25.209 of this section, that the antennas would operate with power levels that are consistent with §§ 25.211(d) and 25.212(d) of this section, that the antennas would have pointing accuracies of +/−0.2 degrees or better, and where frequency coordination, if necessary, has been satisfactorily completed. The use of smaller antennas or other power levels requires the filing of an initial lead application (§ 25.115(c)(4) of this section) that includes all technical analyses required to demonstrate that unacceptable interference will not be caused to any all affected adjacent satellite operators by the operation of the non-conforming earth station. The hub earth station licensee shall be responsible for mitigating any interference arising from ESV operations with its network, regardless of the state of registry of the vessel. ESV licensees will specify that ESV operations shall not cause harmful interference to, claim interference protection from, or otherwise impose constraints on the operations or development of other radio services operating in this frequency band. The licenses shall be issued for ESV operations within 300 km of the United States coastline. For coordinated ESV operations, information about the identification and location of the vessel shall be retained for at least 90 days and be available within 72 hours upon request. Licenses for non-coordinated ESV operations shall be issued for a period of two years.

9. Section 25.202 is amended by adding a new paragraph (a)(8) to read as follows:

§ 25.202 Frequencies, frequency tolerance and emission limitations.

* * * * *

(a)(8) The following frequencies are available for use by ESVs:

3700–4200 MHz space-to-Earth
5925–6425 MHz Earth-to-space
11.7–12.2 GHz space-to-Earth
14.0–14.5 GHz Earth-to-space

10. Section 25.203 is amended by adding a new paragraph (l) to read as follows:

§ 25.203 Choice of sites and frequencies.

* * * * *

(l) Applications for coordination of 4/6 GHz band earth stations on board vessels. Prior to the filing of its application, the ESV hub earth station applicant must coordinate the proposed frequency usage of the ESVs within its network with existing terrestrial users and with applicants for terrestrial station authorizations and with previously filed applications in accordance with the coordination procedures set forth in Recommendations ITU–R SF.1649.

[FR Doc. 04–1245 Filed 1–21–04; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT44

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Santa Barbara County Distinct Population Segment of the California Tiger Salamander

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Santa Barbara County Distinct Vertebrate Population Segment (DPS) of the California tiger salamander (*Ambystoma californiense*) (referred to here as the California tiger salamander) pursuant to the Endangered Species Act of 1973, as

amended (Act). In total, approximately 13,920 acres (ac) (5,633 hectares (ha)) fall within the boundaries of the proposed critical habitat designation. The proposed critical habitat is located in Santa Barbara County, California.

Critical habitat identifies specific areas that are essential to the conservation of a listed species and, with respect to areas within the geographic range occupied by the species, areas that may require special management considerations or protection. The primary constituent elements for the California tiger salamander are aquatic and upland areas where suitable breeding and nonbreeding habitats are interspersed throughout the landscape, and are interconnected by continuous dispersal habitat. All areas proposed for designation as critical habitat for the California tiger salamander contain one or more of the primary constituent elements.

Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat. Section 7 of the Act prohibits destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of designation. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will accept comments from all interested parties until March 22, 2004. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by March 8, 2004.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003.

2. You may hand-deliver written comments to our Ventura Office, at the address given above.

3. You may send comments by electronic mail (e-mail) to *fw1CTSCH@r1.fws.gov.* Please see the Public Comments Solicited section below for file format and other information about electronic filing.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California (telephone 805–644–1766).

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California, (telephone 805–644–1766; facsimile 805–644–3958).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of California tiger salamander habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities; and

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please submit Internet comments to *fw1CTSCH@r1.fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: California tiger salamander'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Ventura Fish and Wildlife Office at phone number 805–644–1766. Please note that the Internet address *fw1CTSCH@r1.fws.gov* will be closed out at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

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 available conservation resources. The Service's 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 and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return 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) stated, ''Because the Act 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

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 all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or to 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.

Background

The California tiger salamander was first described as a distinct species, *Ambystoma californiense*, by Gray in 1853 from specimens collected in Monterey (Grinnell and Camp 1917). Storer (1925) and Bishop (1943) likewise considered the California tiger salamander to be a distinct species. However, Dunn (1940), Gehlbach (1967), and Frost (1985) classified the California tiger salamander as a subspecies (*Ambystoma tigrinum californiense*) within the *A. tigrinum* complex. Based on recent morphological and genetic work, geographic isolation, and ecological differences among the members of the *A. tigrinum* complex, the California tiger salamander is currently considered to be a distinct species (Shaffer and Stanley 1991; Jones 1993; Shaffer and McKnight 1996; Irschick and Shaffer 1997) and was recognized as such in the November 21, 1991, Annual Notice of Review (56 FR 58804). The recent literature has uniformly accepted this position (Petranka 1998).

The California tiger salamander is a large terrestrial salamander with a broad, rounded snout. Adults may reach a total length of 8.2 in, with males generally averaging about 8 in and females averaging 6.8 in. The small eyes have black irises and protrude from the head. Coloration consists of white or pale yellow spots or bars on a black background on the back and sides and a yellowish belly. Males can be distinguished from females, especially during the breeding season, by their swollen cloacae (a common chamber into which the intestinal, urinary, and reproductive canals discharge), more developed tail fins, and larger overall size (Loredo and Van Vuren 1996).

California tiger salamanders are restricted to California, and their range does not overlap with any other species of tiger salamander (Stebbins 1985). Within California, the Santa Barbara County DPS is separated from the remainder of the range of the species by the Coast Ranges, particularly the La Panza and Sierra Madre Ranges, and the Carrizo Plain, which extends into the Temblor Range in eastern San Luis Obispo and western Kern Counties (Shaffer *et al.* 1993).

Santa Barbara County California tiger salamanders constitute a DPS with a potential range that is approximately 10 percent of Santa Barbara County's 2,738 square miles (mi ^{2}). Historically, the range likely included what are now urbanized areas of the Cities of Santa Maria and Orcutt. Much of the species' habitat in Santa Barbara County has been lost or degraded by urban development and conversion of rangeland to intensive agriculture, including vineyards. Forty-six breeding ponds have been documented within the County.

The 46 known California tiger salamander breeding ponds appear to be distributed in 6 general areas, which we refer to as ''populations'' or ''subpopulations'': western Santa Maria/Orcutt, eastern Santa Maria, western Los Alamos/Careaga, eastern Los Alamos, the Purisima Hills, and the Santa Rita Valley. Because known ponds in different populations are separated from each other by a minimum of 2.49 miles (mi), which is approximately twice the maximum distance that California tiger salamanders have been observed to travel from a breeding pond, these areas are treated as separate, unconnected populations for the purposes of this critical habitat designation. However, some areas with potential breeding ponds that have never been surveyed for California tiger salamanders may link these areas, especially around the Purisima Hills and Santa Rita Valley populations.

Although California tiger salamanders spend most of their lives in upland habitats, their reproduction is tied to aquatic habitats. The salamanders breeding in and living around a pool or seasonal pond, or a local complex of pools or seasonal ponds, constitute a local population. Historically, California tiger salamanders bred primarily in natural vernal pools, but they also breed successfully in human-made stock ponds created for ranching and agricultural purposes.

Migrations to and from breeding ponds occur during the rainy season (November to May), with the greatest activity from December to February (Storer 1925; Loredo and Van Vuren 1996; Trenham *et al.* 2000). Breeding migrations are strongly associated with rainfall events. Breeding may occur in

one major bout or during a prolonged period of several months, depending on the rainfall pattern. During drought years, adults (particularly females) migrate in low numbers. Males consistently arrive at the breeding pond before females and stay approximately 40 days, which is 4 times longer than females stay (Loredo and Van Vuren 1996; Trenham *et al.* 2000).

Female California tiger salamanders mate and lay their eggs singly or in small groups, typically attached to vegetation near the edge of the breeding pond (Twitty 1941; Shaffer *et al.* 1993). After breeding, adults leave the pond and return to small mammal burrows within upland habitats (Loredo *et al.* 1996; Trenham 2001), although they may continue to come out nightly for approximately the next 2 weeks to feed (Shaffer *et al.* 1993).

California tiger salamander eggs require 2 to 4 weeks to hatch into larvae (Storer 1925). After 3 to 6 months of development, the larvae metamorphose (change into a different physical form) into terrestrial juveniles. Amphibian larvae must grow to a critical minimum body size before they can metamorphose (Wilbur and Collins 1973). The longer the ponding duration, the larger the larvae and metamorphosed juveniles are able to grow, and the more likely they are to survive and reproduce (Pechmann *et al.* 1989; Semlitsch *et al.* 1988; Morey 1998; Trenham 1998b). The larvae will perish if a site dries before metamorphosis is complete (Anderson 1968; Feaver 1971).

In the late spring or early summer, before the ponds dry completely, metamorphosed juveniles leave them and enter upland habitat. This emigration occurs in both wet and dry conditions (Loredo and Van Vuren 1996; Loredo *et al.* 1996). Unlike during their winter migration, the wet conditions that California tiger salamanders prefer do not generally occur during the months when their breeding ponds begin to dry. As a result, juveniles may be forced to leave their ponds on rainless nights. Under these conditions, they may move only short distances to find temporary upland sites for the dry summer months, waiting until the next winter's rains to move further into suitable upland refugia. Once juvenile California tiger salamanders leave their birth ponds for upland refugia, they typically do not return to ponds to breed for an average of 4 to 5 years. However, they remain active in the uplands, coming to the surface during rainfall events to disperse or forage (Trenham and Shaffer, unpublished manuscript).

Habitat Requirements and Characteristics

The California tiger salamander inhabits low-elevation (typically below 1,400 ft (ft)), vernal pools and seasonal ponds and the associated grassland, oak savannah, and coastal scrub plant communities of the Santa Maria, Los Alamos, and Santa Rita Valleys in northwestern Santa Barbara County (Shaffer *et al.* 1993; Service 2000).

The aquatic component of the California tiger salamander's habitat consists of temporary ponded freshwater habitats. Historically, the vernal pools constituted the majority of California tiger salamander breeding habitat. Vernal pools typically form in topographic depressions underlain by an impervious layer (such as claypan, hardpan, or volcanic strata) that prevents downward percolation of water. Vernal pool hydrology is characterized by ponding of water during the late fall, winter, and spring, followed by complete desiccation during the summer dry season (Holland and Jain 1998).

In Santa Barbara County, California tiger salamanders are found in three general types of natural vernal pools, including (1) dunal or deflational pools and ponds in sandy terraces; (2) isolated fold and fault sag ponds within ridges or valleys; and (3) fluvial ponds of varying origins in intermittent drainages within or along the margins of terraces.

In addition to vernal pools and seasonal ponds, California tiger salamanders also use small artificial water bodies such as stockponds for breeding (Stebbins 1985; Zeiner *et al.* 1988; Shaffer *et al.* 1993). However, stockponds often are poorer habitat for California tiger salamanders than natural vernal pools. Hydroperiods may be so short that larvae cannot metamorphose (*e.g.*, early drawdown of irrigation ponds), or so long that predatory fish and bullfrogs (*Rana catesbeiana*) can colonize the pond (Shaffer *et al.* 1993; Seymour and Westphal 1994). Permanent wetlands can support breeding California tiger salamanders if fish are not present, but extirpation of the salamander population is likely if fish are introduced (Shaffer *et al.* 1993; Seymour and Westphal 1994). Artificial ponds also require ongoing maintenance and are often temporary structures. Periodic maintenance to remove silt from stockponds or to reinforce or strengthen berms may also cause a temporary loss of habitat.

Regardless of pond type, breeding ponds need to be inundated (hold water) for a minimum of 12 weeks to allow for successful metamorphosis.

California tiger salamanders spend the majority of their lives in upland habitats. The upland component of California tiger salamander habitat typically consists of grassland savannah with scattered oak trees. However, in Santa Barbara County, some occupied California tiger salamander breeding ponds exist within mixed grassland and woodland habitats, and a few ponds are found in woodlands, scrub, or chaparral habitats.

Within these upland habitats, adult California tiger salamanders spend the greater part of their lives in the underground burrows of small mammals, especially the burrows of California ground squirrels (*Spermophilus beecheyi*) and valley pocket gophers (*Thommomys bottae*) (Barry and Shaffer 1994), at depths ranging from 7.9 in to 3.3 ft beneath the ground surface (Trenham 2001). These burrows provide food for California tiger salamanders, as well as protection from the sun and wind associated with the dry California climate that can cause dessication (drying out) of amphibian skin. Although California tiger salamanders are members of a family of ''burrowing'' salamanders, California tiger salamanders are not known to create their own burrows in the wild, likely due to the hardness of soils in the California ecosystems in which they are found. Put simply, California tiger salamanders require small mammal burrows for survival. Because they live underground in the burrows of mammals, they are rarely encountered even where abundant.

The burrows may be active or inactive, but because they collapse within 18 months if not maintained, an active population of burrowing mammals is necessary to sustain sufficient underground refugia for the species (Loredo *et al.* 1996). Adult California tiger salamanders are rarely found on the surface or under logs or other debris, but they will emerge from their burrows to move around and apparently forage (Trenham and Shaffer unpublished manuscript).

Little is known about what California tiger salamanders are doing while in burrows, as they are difficult to observe while underground. Although the upland burrows inhabited by California tiger salamanders have often been referred to as ''aestivation'' sites, which implies a state of inactivity, most evidence suggests that California tiger salamanders remain active in their underground dwellings. Trenham (2001) recorded underground movements within burrow systems, and other

researchers have observed active California tiger salamanders using fiberoptic or infrared scopes (Semonsen 1998; Michael van Hattem, Lawrence Livermore National Laboratory, pers. comm. 2003). Because California tiger salamanders arrive at breeding ponds in good condition and are heavier when entering a pond than when leaving, researchers have long inferred that the California tiger salamanders are feeding while underground. Recent direct observations have confirmed this (Trenham 2001; van Hattem, pers. comm. 2003). Thus, ''upland'' or ''nonbreeding'' habitat is a more accurate description of the terrestrial areas used by California tiger salamanders.

Dispersal and Migration

Movements made by California tiger salamanders can be grouped into two main categories: (1) Breeding migration; and (2) interpond dispersal. Breeding migration is the movement of salamanders to and from a pond from the surrounding upland habitat. After metamorphosis, juveniles move away from breeding ponds into the surrounding uplands, where they live continuously for several years (on average, 4 years). Upon reaching sexual maturity, most individuals return to their natal/birth pond to breed, while 20 percent disperse to other ponds (Trenham *et al.* 2001). Following breeding, adult California tiger salamanders return to upland habitats, where they may live for one or more years before breeding again (Trenham *et al.* 2000).

California tiger salamanders are known to travel large distances from breeding ponds into upland habitats. Maximum distances moved are generally difficult to establish for any species, but California tiger salamanders have been recorded to disperse 1.2 mi (2 kilometers (km)) from breeding ponds. California tiger salamanders are known to travel between breeding ponds; one study found that 20 to 25 percent of the individuals captured at one pond were recaptured later at ponds approximately 1,900 and 2,200 ft away (Trenham *et al.* 2001).

On the Stanford University campus, California tiger salamanders have moved up to 1 mi from their natal/breeding ponds. In Santa Barbara County, an adult California tiger salamander was found more than 1.2 mi from a breeding pond (S. Sweet, in litt. 1998). In addition to traveling long distances during migration to or dispersal from ponds, California tiger salamanders actually reside in burrows that are far from ponds. In Santa Barbara County, an adult California tiger salamander was seen in the mouth of a burrow 1,900 ft from the nearest known breeding pond in June, a month when California tiger salamander dispersal is unlikely (Rob Schoenholtz, biologist, LSA Associates, pers. comm. 2002). At one site in Contra Costa County, hundreds of California tiger salamanders have been captured three years in a row in upland habitat approximately 0.5 mi (2,640 ft) from the nearest breeding pond (Sue Orloff, biologist, IBIS Environmental, in litt. 2003).

Although the observations above show that California tiger salamanders can travel far, typically they stay closer to breeding ponds. Evidence suggests that juvenile California tiger salamanders disperse further into upland habitats than adult California tiger salamanders. A trapping study conducted in Solano County during winter 2002–03 found that juveniles used upland habitats further from breeding ponds than adults (Trenham and Shaffer, unpublished manuscript). More juvenile salamanders were captured at distances of 328, 656, and 1,312 ft (100, 200 and 400 meters (m), respectively) from a breeding pond than at 164 ft (50 m). Large numbers (approximately 20 percent of total captures) were found 1,312 ft (400 m) from a breeding pond. Fitting a distribution curve to the data revealed that 95 percent of juvenile salamanders could be found within 2,099 ft (640 m) of the pond, with the remaining 5 percent being found at even greater distances. Preliminary results from the 2003–04 trapping efforts detected juvenile California tiger salamanders at even further distances, with a large proportion of the total salamanders caught at 2,297 ft (700 m) from the breeding pond (Trenham *et al.*, unpublished data). Surprisingly, most juveniles captured, even those at 700 m, were still moving away from ponds (Ben Fitzpatrick, University of California at Davis, pers. comm. 2004). In Santa Barbara County, juvenile California tiger salamanders have been trapped approximately 1,200 ft (366 m) away while dispersing from their natal pond (Science Applications International Corporation (SAIC), unpublished data). These data show that many California tiger salamanders travel far while still in the juvenile stage.

Post-breeding movements away from breeding ponds by adults appear to be much smaller. During post-breeding emigration, radio-equipped adult California tiger salamanders were tracked to burrows 62 to 813 ft (19 to 248 m) from their breeding ponds (Trenham, 2001). These reduced movements may be due to adult California tiger salamanders having depleted physical reserves post-breeding, or also due to the drier weather conditions that can occur during the period when adults leave the ponds.

The spatial distribution of California tiger salamanders in the uplands surrounding breeding ponds is a key issue for conservation planning. Although it might be supposed that California tiger salamanders will move only short distances if abundant burrows are found near their ponds, this is not the case. In the aforementioned study in Solano County, while abundant burrows are available near the pond, a nearly equal number of California tiger salamanders were captured at 328, 656, and 1,312 ft (100, 200 and 400 m, respectively) from the breeding pond (Trenham and Shaffer, unpublished manuscript). Similarly, Trenham (2001) tracked salamanders to burrows up to 814 ft (248 m) from a breeding pond, although burrows were abundant at distances nearer to the pond. In addition, rather than staying in a single burrow, most individuals used several successive burrows at increasing distances from the pond.

Although the studies discussed above provide an approximation of the distances that California tiger salamanders regularly move from their breeding ponds, upland habitat features will drive the details of movements in a particular landscape. Unlike other ambystomatid salamanders, California tiger salamanders and other tiger salamanders are grassland animals, and do not favor forested areas as corridors for movement or long-term residence. Trenham (2001) found that radio-tracked adults favored grasslands with scattered large oaks, over more densely wooded areas. A drift-fence survey at a Santa Barbara County pond that is bordered by a strawberry field found that many emigrating juveniles moved towards the strawberry field; however, no adults were captured entering the pond from this direction. Most of the California tiger salamanders entered the pond from extensive, overgrazed grassy flats rather than sandhill or eucalyptus habitats in other quadrants (Steve Sykes, University of California at Santa Barbara, unpublished data 2003).

Based on radio-tracked adults, there is no indication that certain habitat types are favored as corridors for terrestrial movements (Trenham 2001). In addition, at two ponds completely encircled by drift fences and pitfall traps, captures of arriving adults and dispersing new metamorphs were

distributed roughly evenly around the ponds. Thus, it appears that dispersal into the terrestrial habitat occurs randomly with respect to direction and habitat types.

Most California tiger salamanders breed in the pond where they hatched and developed as larvae, and we refer to these aggregations at specific breeding ponds as populations. Because random events, such as disease or droughts, may occasionally extirpate local populations (*i.e.*, drive them to local extinction), maintaining interpond dispersal is important for the long-term viability of California tiger salamanders in an area. In Monterey County, Trenham *et al.* (2001) showed that a significant minority of California tiger salamanders dispersed to other ponds. In that study, more than 20 percent of both first-time and experienced breeders were recaptured breeding at ponds other than where they were last captured. Documented dispersers had moved up to 2,200 ft (670 m), and, based on a projected exponential relationship between dispersal probability and distance, less than 1 percent of dispersers are likely to move between ponds separated by 0.70 mi (1,158 m). The frequency of dispersal among subpopulations will ultimately depend on the distance between the ponds or complexes and also on the intervening habitat (*e.g.*, salamanders may move more quickly through grassland than through more densely vegetated scrublands).

Adults may migrate long distances between summering and breeding sites. The distance from breeding sites may depend on local topography and vegetation, the distribution of ground squirrel or other rodent burrows, and climatic conditions (Stebbins 1989; Hunt 1998). Observations of California tiger salamanders on the surface away from ponds (presumably migrating to or from the breeding pond, moving from one burrow to another, or in search of food) almost inevitably coincide with recent rainfall, suggesting that surface movement is limited to periods of precipitation.

For a sustainable breeding population to exist, we need to ensure that a sufficient fraction of the adult and juvenile salamanders hatched in a given pond survive their excursions into the surrounding uplands and return to breed again. Taylor and Scott (1997) determined that for sustainable populations of a demographically similar species, *Ambystoma opacum,* survivorship in the uplands should be at least 70 percent per year. Because in Monterey County natural annual mortality in an undeveloped landscape was roughly 30 percent (Trenham *et al.* 2000), we need to ensure that upland habitat modifications in Santa Barbara County do not appreciably increase mortality.

Previous Federal Actions

On September 18, 1985, we published the Vertebrate Notice of Review (NOR) (50 FR 37958), which included the California tiger salamander as a category 2 candidate species for possible future listing as threatened or endangered. Category 2 candidates were those taxa for which information contained in our files indicated that listing may be appropriate but for which additional data were needed to support a listing proposal. The January 6, 1989, and November 21, 1991, candidate NORs (54 FR 554 and 56 FR 58804, respectively) also included the California tiger salamander as a category 2 candidate, soliciting information on the status of the species.

On February 21, 1992, we received a petition from Dr. H. Bradley Shaffer of the University of California at Davis, to list the California tiger salamander as an endangered species. We published a 90-day petition finding on November 19, 1992 (57 FR 54545), concluding that the petition presented substantial information indicating that listing may be warranted. On April 18, 1994, we published a 12-month petition finding (59 FR 18353) that the listing of the California tiger salamander was warranted but precluded by higher priority listing actions. We elevated the species to category 1 status at that time, which was reflected in the November 15, 1994, Animal NOR (59 FR 58982). Category 1 candidates were those taxa for which we had on file sufficient information on biological vulnerability and threats to support preparation of listing proposals. On April 10, 1995, Pub. L. 104–6 imposed a moratorium on listings and critical habitat designations and rescinded $1.5 million funding from our listing program. The moratorium was lifted and listing funding was restored through passage of the Omnibus Budget Reconciliation Act on April 26, 1996. We discontinued the use of different categories of candidates in the NOR published February 28, 1996 (61 FR 7596), and defined ''candidate species'' as those meeting the definition of former category 1. We maintained the California tiger salamander as a candidate species in that NOR, as well as in subsequent NORs published on September 19, 1997 (62 FR 49398), October 25, 1999 (64 FR 57533), and October 30, 2001 (66 FR 54808).

On January 19, 2000, we published an emergency rule listing the Santa Barbara County DPS of the California tiger salamander as endangered (65 FR 3096) together with a proposed rule to list the DPS as endangered (65 FR 3110). On September 21, 2000, we listed the Santa Barbara County DPS as endangered (65 FR 57242). On May 23, 2003, we published a proposed rule (1) to list the Central California DPS of the California tiger salamander as a threatened species, (2) to downlist both the Santa Barbara County and the Sonoma County DPSs of the California tiger salamander from endangered to threatened status, and (3) to exempt existing routine ranching operations under Section 4(d) of the Act from the take prohibition of section 9 of the Act in the event we list the Central California DPS and reclassify either the Santa Barbara County or Sonoma County DPSs from endangered to threatened (68 FR 28648). We have not yet published final decisions on any of the proposals in this proposed rule.

On February 25, 2003, the Environmental Defense Center and Center for Biological Diversity filed a complaint challenging our failure to designate critical habitat for the Santa Barbara County DPS of the California tiger salamander (*Environmental Defense Center et al.* v. *U.S. Fish and Wildlife Service et al.*, EVCD 03–00195 (C.D.Cal)). By an order dated August 7, 2003, the district court ordered us to publish a proposed rule to designate critical habitat for the Santa Barbara DPS by January 15, 2004. This proposed rule complies with the court order.

Critical Habitat

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

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to

result in the destruction or adverse modification of critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

To be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat at the time of listing and based on what we know at the time of the designation. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what, at the time of designation, we know to be critical habitat.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), that provide essential life cycle needs of the species. We have also excluded from this proposal some areas within the range of the species where California tiger salamanders are currently found, areas of suitable habitat where they might potentially occur, and some localities where they historically occurred. Only areas considered essential to the conservation of the species are included in this proposal.

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires Service biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, unpublished materials, and expert opinion or personal knowledge.

Habitat is often dynamic, and species 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 essential for the conservation of the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant to California tiger salamanders. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1), and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

In determining areas that are essential to conserve the California tiger salamander, we used the best scientific and commercial data available. We have reviewed the overall approach to the conservation of the California tiger salamander undertaken by local, State, and Federal agencies operating within the species' range since its listing in 2000, and recommended to us by the California tiger salamander recovery team.

We have also reviewed available information that pertains to the habitat requirements of this species. The material included data in reports submitted during section 7 consultations and by biologists holding section 10(a)(1)(A) recovery permits; research published in peer-reviewed articles and presented in academic theses and agency reports; and regional Geographic Information System (GIS) coverages.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements (PCEs)) that are essential to the conservation of the species, and that may require special management considerations and protection. These include, but are not limited to: space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of

the historic geographical and ecological distributions of a species.

The areas proposed for designation as critical habitat for the California tiger salamander are designed to provide sufficient aquatic habitat for breeding and upland habitat as refugia for adults to maintain and sustain populations of California tiger salamanders throughout their range, and provide those habitat components essential for the conservation of the species. Due to the complex life history and dispersal capabilities of California tiger salamanders, and the dynamic nature of the environments in which they are found, the primary constituent elements described below should be found throughout the units that are being designated as critical habitat. Special management, such as habitat rehabilitation efforts (*e.g.*, removal of nonnative predators, control of introduced tiger salamanders, erosion and sediment control measures), may be necessary throughout the area being designated. Critical habitat for California tiger salamanders will provide for breeding and nonbreeding habitat and for dispersal between these habitats, as well as allowing for an increase in the size of California tiger salamander populations, which is essential to the conservation of the subspecies.

Critical habitat includes: essential aquatic habitat, essential upland nonbreeding season habitat with underground refugia, and dispersal habitat connecting occupied California tiger salamander locations to each other.

Based on our current knowledge of the life history and ecology of the species and the relationship of its essential life history functions to its habitat, as summarized above in the **Background** section, we have determined that the California tiger salamander requires the following primary constituent elements:

(1) Standing bodies of fresh water, including natural and man-made (*e.g.*, stock) ponds, vernal pools, and dune ponds, and other ephemeral or permanent water bodies that typically become inundated during winter rains and hold water for a sufficient length of time (*i.e.*, 12 weeks) necessary for the species to complete the aquatic portion of its life cycle.

(2) Barrier-free uplands adjacent to breeding ponds that contain small mammal burrows, including but not limited to burrows created by the California ground squirrel (*Spermophilus beecheyi*) and Botta's pocket gopher (*Thommomys bottae*). Small mammals are essential in creating the underground habitat that adult California tiger salamanders depend upon for food, shelter, and protection from the elements and predation.

(3) Upland areas between breeding locations (PCE 1) and areas with small mammal burrows (PCE 2) that allow for dispersal among such sites.

We describe the relationship between each of these PCEs and the conservation of the salamander in more detail below.

The essential aquatic habitat described as the first PCE is essential for California tiger salamander breeding and for providing space, food, and cover necessary to sustain early life history stages of California tiger salamanders. Breeding habitat consists of fresh water bodies, including natural and man-made (*e.g.*, stock) ponds, vernal pools, and dune ponds. To be considered essential, aquatic habitats must have the potential to hold water for a minimum of 12 weeks in the winter or spring in a year of average rainfall because this is the amount of time needed for juveniles to complete metamorphosis and become capable of surviving in upland habitats. During periods of drought or less-than-average rainfall, these breeding sites may not hold water long enough for individuals to complete metamorphosis, but these sites would still be considered essential because they constitute breeding habitat in years of average rainfall. Without its essential aquatic habitat, the California tiger salamander would not survive, as no breeding could occur.

Associated upland habitat containing underground refugia described as the second PCE is essential for the survival of adult California tiger salamanders and juveniles that have recently undergone metamorphosis. Adult and juvenile California tiger salamanders are terrestrial, and they enter aquatic habitats only for short periods of time to breed. For the majority of their life cycle, California tiger salamanders depend for survival on upland habitats containing underground refugia in the form of small mammal burrows. These underground refugia provide protection from the hot, dry weather typical of Santa Barbara County in the nonbreeding season. California tiger salamanders also find food in small mammal burrows and rely on the burrows for protection from predators. The presence of small burrowing mammal populations is essential for constructing and maintaining burrows.

The dispersal habitat described as the third PCE is essential for the conservation of the California tiger salamander. Protecting the ability of California tiger salamanders to move freely across the landscape in search of breeding ponds is essential in maintaining gene flow and for recolonization of sites that are temporarily extirpated. Lifetime reproductive success for California and other tiger salamanders is low. Trenham *et al.* (2000) found the average female bred 1.4 times and produced 8.5 young that survived to metamorphosis per reproductive effort. This resulted in roughly 11 metamorphic offspring over the lifetime of a female. In part, this low reproductive success is due to the extended time it takes for California tiger salamanders to reach sexual maturity: most do not breed until 4 or 5 years of age. While individuals may survive for more than 10 years, many breed only once. Combined with low survivorship of metamorphosed individuals (in some populations, less than 5 percent of marked juveniles survive to become breeding adults (Trenham *et al.* 2000)), reproductive output in most years is not sufficient to maintain populations. This trend suggests that the species requires occasional ''boom'' breeding events to prevent extirpation (temporary or permanent loss of the species from a particular habitat) or extinction (Trenham *et al.* 2000). With such low recruitment, isolated populations are susceptible to unusual, randomly occurring natural events as well as from human-caused factors that reduce breeding success and individual survival. Factors that repeatedly lower breeding success in isolated pools can quickly extirpate a population. Therefore, a critical element for successful conservation is the maintenance of sets of interconnected sites that are within the ''rescue'' distance of other ponds (Trenham *et al.* 2001).

Dispersal habitat described as the third PCE is also essential in preserving the California tiger salamander's population structure. The life history and ecology of the California tiger salamander make it likely that this species has a metapopulation structure (Hanski and Gilpin 1991). A metapopulation is a set of local populations or breeding sites within an area, where typically migration from one local population or breeding site to other areas containing suitable habitat is possible, but not routine. Movement between areas containing suitable habitat (*i.e.*, dispersal) is restricted due to inhospitable conditions around and between areas of suitable habitat. Because many of the areas of suitable habitat may be small and support small numbers of salamanders, local extinction of these small units may be common. A metapopulation's

persistence depends on the combined dynamics of these local extinctions and the subsequent recolonization of these areas through dispersal (Hanski and Gilpin 1991; Hanski 1994).

Essential dispersal habitat generally consists of upland areas adjacent to essential aquatic habitat that are not isolated from breeding ponds by barriers that California tiger salamanders cannot cross. Essential dispersal habitat provides connectivity among California tiger salamander breeding ponds. While California tiger salamanders can bypass many obstacles, and do not require a particular type of habitat for dispersal, the habitat connecting essential aquatic habitat must be free of barriers (*e.g.*, a physical or biological feature that prevents salamanders from dispersing beyond the feature). Examples of barriers are areas of steep topography devoid of soil or vegetation and State Highway 101. Agricultural lands such as row crops, orchards, vineyards, and pastures do not constitute barriers to the dispersal of California tiger salamanders. In general, we propose critical habitat that allows for dispersal between breeding locations within 0.70 mi (1,158 m) of each other; however, we decreased or increased this distance based on site-specific conditions within each unit.

In summary, the primary constituent elements consist of three components. At a minimum, this will include suitable breeding locations and associated uplands surrounding these water bodies that are connected by dispersal habitat that is free of barriers.

Criteria Used To Identify Critical Habitat

To identify areas that are essential to the conservation of the California tiger salamander in Santa Barbara County, we first looked at the potential range of the species, as was mapped in spring of 2000 by biologists who had conducted California tiger salamander surveys throughout Santa Barbara County. The boundaries of the potential range were developed based on topography, geology, and survey information. In some areas (*e.g.*, Vandenberg Air Force Base), seemingly appropriate habitat was excluded based on several years of negative survey results. Other areas (*e.g.*, the Solomon Hills) had slopes too steep to support ponding necessary for California tiger salamander breeding. Other areas of intact habitat adjacent to known ponds were included, and areas with extensive ponded wetland habitat (*e.g.*, Guadalupe Lakes) were also included.

We then focused on areas within the range where we had credible records (*e.g.*, museum voucher specimens, reports filed by biologists holding section 10(a)(1)(A) recovery permits) indicating California tiger salamander presence. The known locations of California tiger salamanders fall into six disparate areas of Santa Barbara County. Our conservation strategy for the DPS focuses on providing sufficient breeding and upland habitat to ensure high enough adult survival to maintain and sustain existing populations of California tiger salamanders in each of these six areas within the County. Each of the six areas has a unique combination of habitat types, breeding pond types, landscape features, surrounding land uses, and topography. Because so few extant populations exist, and the threats to these are substantial, we determined that these six areas were essential to the conservation of the species.

Conserving California tiger salamanders over the long term requires a three-pronged approach: (1) Protecting the hydrology and water quality of breeding pools and ponds; (2) retaining or providing for connectivity between breeding locations for genetic exchange and recolonization; and (3) protecting sufficient upland habitat around each breeding location to allow for high enough adult survival to maintain a breeding population over the long term. An explanation of how we determined the amount of upland habitat that is essential for the conservation of the California tiger salamander in each critical habitat unit is described in more detail below.

Once we identified the known breeding locations, we mapped the upland watershed of each pond based on aerial photographs taken in 2002 (AirPhotoUSA Inc. 2002) overlain with topographic relief lines. Protecting the watersheds of breeding ponds is essential for two reasons: (1) To ensure that the amount of water entering the pond is not altered too much (which can allow for colonization of breeding sites by bullfrogs and fish, which can prey upon California tiger salamander eggs and larvae); and (2) to preserve water quality by minimizing the entry of sediments and other contaminants to the breeding ponds. Therefore, our proposed critical habitat boundaries include the watersheds of all known breeding ponds.

We then identified the upland habitat surrounding the ponds where juvenile and adult California tiger salamanders live during the majority of their life cycle. To determine a general guideline for the amount of upland habitat necessary to support a population of adult California tiger salamanders, we reviewed the primary literature regarding California tiger salamander upland habitat use, including Trenham (2000), Trenham *et al.* (2000), and Trenham and Shaffer (unpublished manuscript). We also reviewed information from other biologists who have conducted upland habitat use studies but have not yet written up the results (*e.g.*, Sue Orloff, Steve Sykes, SAIC—*see* Background section).

Extensive data indicate that California tiger salamanders do not remain primarily in burrows close to breeding ponds, but instead move some distance out into the surrounding landscape. As described in the Background section, California tiger salamanders have been found up to 1.2 mi (2 kms) from breeding ponds. However, most California tiger salamanders are found closer to the ponds. Two studies conducted in Monterey and Solano Counties provide the best available data on upland movement distances. First, the mark-recapture study of Trenham *et al.* (2001) showed that California tiger salamanders commonly moved between ponds separated by 2,200 ft (670 m), suggesting that movements of this magnitude are not rare. Second, the ongoing study at Olcott Lake (Solano County) has directly documented the presence of high densities of juvenile and adult California tiger salamanders at upland locations at least 1,312 ft (400 m) from this breeding pond. Recent trapping efforts captured large numbers (representing 16 percent of total captures) of juvenile salamanders at 2,296 ft (700 m) (Trenham *et al.* unpublished data). Trenham and Shaffer (unpublished manuscript) determined that conserving upland habitats within 2,200 ft (670 m) of breeding ponds would protect 95 percent of California tiger salamanders at their study location in Solano County. Based upon this information, we focused on protecting upland areas within 2,200 ft of a known breeding pond. Protecting an upland habitat area with a radius of 2,200 ft around a single pond yields a minimum area of 350 ac, but depending on the size of the pond, can be more than that.

We used 2,200 ft or 350 ac as a guide for the amount of upland habitat around known breeding locations to be mapped as critical habitat for the purposes of preserving California tiger salamanders within small mammal burrows (PCE 2). However, although the studies discussed above provide an approximation of the distances that California tiger salamanders can move from their breeding ponds in search of suitable upland refugia, we recognize that upland habitat features will influence California tiger salamander

movements in a particular landscape. Therefore, where we had site-specific information on those features such as land use, topography, and geologic landform, we altered critical habitat lines to reflect that information. In some locations, we protected a shorter distance than 2,200 ft if: (1) Commercial or residential developed areas were present (*e.g.*, Santa Maria); (2) the upland habitat was separated from the breeding habitat by a substantial barrier (*e.g.*, State Highway 101); (3) the habitat type within that distance was unsuitable for California tiger salamanders (*e.g.*, hard chaparral); or (4) the area did not provide underground refugia because it could not support small mammal burrowing systems due to geological features such as fractured shales. We also excluded areas based on a combination of topography and geology. If soil and vegetative conditions are appropriate, California tiger salamanders can traverse areas of steep topography. Some steep areas do not support soils or vegetation that allow for California tiger salamanders to traverse. Therefore, we excluded areas that we know to be both steep and devoid of vegetation or burrowing mammal potential.

In some cases, we extended the boundary of critical habitat beyond 2,200 ft if (1) potential but unsurveyed breeding locations were present that would augment California tiger salamander populations; (2) no barriers to California tiger salamander dispersal were present and the habitat was suitable; (3) watershed boundaries for known breeding ponds exceed distances of 2,200 ft; or (4) the upland area between breeding ponds was conducive to California tiger salamander travel because dispersal between ponds within the units is essential for California tiger salamander gene flow.

We excluded most areas of frequently harvested agricultural lands from the boundaries of critical habitat areas. Agricultural lands were only included if they were directly adjacent to known breeding ponds, thereby substantially reducing upland refugia for California tiger salamanders breeding in that pond, or were important for connectivity between known breeding locations, or in the case of the two units within the Santa Maria Valley, so little California tiger salamander upland habitat is left that restoration is necessary to provide sufficient upland refugia to sustain a population of adult California tiger salamanders.

To determine the areas to be mapped within each unit for the purposes of dispersal (*i.e.*, PCE 3), we used a distance of 0.70 mi (1,158 m) as a general guide. The only known study we are aware of that specifically investigated movement of California tiger salamanders between breeding ponds projected that 0.70 mi (1,158 m) would encompass 99 percent of interpond dispersal (Trenham *et al.* 2000). However, we recognize that (as with movements in search of suitable underground refugia) upland habitat features influence California tiger salamander movements within a particular landscape. Thus, we altered critical habitat unit boundaries to reflect site specific knowledge where we had it. In some units, we protected a shorter dispersal distance than 0.70 mi (1,158 m) for similar reasons as described for PCE 2 (*e.g.*, barriers prevented movement, no ponds existed in a given direction).

In one unit (the eastern Santa Maria Unit) we propose to include a dispersal corridor that extends a greater distance than 0.70 mi (1,158 m) between breeding locations. Given the observations by S. Sweet (*in litt.* 1998), which detect an adult California tiger salamander 1.2 mi from the closest breeding location, and S. Orloff's (*in litt.* 2003) detections of hundreds of California tiger salamanders approximately 0.5 mi from the closest breeding location, we determined the longer corridor within this unit was justified because of the relatively flat, barrier-free terrain between the breeding locations. We determined that the connection between the two known breeding areas is essential for the conservation of the California tiger salamander in this area, because without it these locations would become isolated and much more susceptible to extirpation.

We are proposing to designate critical habitat on lands that are considered essential to the conservation of the California tiger salamander. These areas have the primary constituent elements described above.

All of the known locations for the California tiger salamander in Santa Barbara County occur on non-Federal and private lands. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed 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 requested incidental take. We often exclude non-Federal public lands and private lands that are covered by an existing operative HCP and executed implementation agreement (IA) under section 10(a)(1)(B) of the Act from designated critical habitat because the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act. In the case of the California tiger salamander, no lands are covered by an existing operative HCP. We are aware of three HCPs under development; however, these draft HCPs are not proposed for exclusion because we have not yet made an initial determination that they meet our issuance criteria and are ready for public notice and comment.

When defining critical habitat boundaries, we made an effort to exclude all developed areas, such as towns, housing developments, and other lands unlikely to contain primary constituent elements essential for California tiger salamander conservation. However, our minimum mapping unit does not exclude all developed lands, such as lands supporting outbuildings, paddocks, roads, paved areas, lawns, and other lands unlikely to contain the primary constituent elements. Federal actions limited to these areas would not trigger a section 7 consultation, unless they affect the species and/or the primary constituent elements in adjacent critical habitat.

In summary, we propose six areas where populations of California tiger salamander are known to occur as critical habitat because we believe protection of those areas is essential to the conservation of the species. We then mapped as critical habitat sufficient habitat to ensure the conservation of the California tiger salamander.

Special Management Considerations

Management of the critical habitat areas in a manner that provides for the conservation of the California tiger salamander is essential. Areas in need of management include not only the immediate locations where the species may be present, but additional areas adjacent to these that can provide for normal population fluctuations that may occur in response to natural and unpredictable events. The California tiger salamander may be dependent upon habitat components beyond the immediate areas where individuals of the species occur, if these areas support the presence of small mammals or are important in maintaining ecological processes such as hydrology, expansion of distribution, recolonization, and maintenance of natural predator-prey relationships.

Our recommendations for special management that is needed for the critical habitat of the California tiger salamander are:

(1) Aquatic habitats should be free of non-native and introduced predators, such as bullfrogs and fish. We recommend that bullfrogs and fish within known or potential breeding ponds for the California tiger salamander should be removed. We recommend that human-made stockponds managed to prevent colonization by these predators.

(2) Disturbance to aquatic habitats should be minimized during the breeding season to minimize disturbance to the California tiger salamander's more sensitive life stages, and to reduce sedimentation and erosion into water bodies. Researchers and monitors should only enter ponds during the breeding season when the conservation benefits of obtaining scientific information outweigh the negative effects of disturbance.

(3) We recommend that stock pond maintenance occur after the breeding season.

(4) Aquatic habitats should be protected from contamination by chemicals such as those used for agricultural purposes. Operators should use best management practices to avoid contaminating wetlands. Ranchers should avoid placing salt licks for livestock adjacent to breeding ponds.

(5) Small mammal populations should be not be eliminated to provide California tiger salamanders with essential underground refugia used for foraging, protection from predators, and shelter from the elements.

(6) Upland habitats between breeding ponds should be managed to allow for successful California tiger salamander dispersal and to minimize impassable barriers. Sources of mortality such as roads should be designed to allow for safe California tiger salamander passage.

Proposed Critical Habitat Designation

We are proposing six units as critical habitat for the California tiger salamander. The critical habitat areas described below constitute our best assessment at this time of the areas essential for the conservation of the California tiger salamander. The six areas designated as critical habitat are: (1) Western Santa Maria/Orcutt; (2) eastern Santa Maria; (3) western Los Alamos/Careaga; (4) eastern Los Alamos; (5) Purisima Hills; and (6) Santa Rita.

The approximate area encompassed within each proposed critical habitat unit is shown in Table 1.

TABLE 1.—CRITICAL HABITAT UNITS PROPOSED FOR THE CALIFORNIA TIGER SALAMANDER

[Area estimates reflect all land within critical habitat unit boundaries, not just the areas supporting primary constituent elements.]

Critical habitat unit	Acres	Hectares
1. Western Santa Maria/Orcutt	4,349	1,760
2. Eastern Santa Maria	2,985	1,208
3. Western Los Alamos/Careaga	2,181	882
4. Eastern Los Alamos	1,302	527
5. Purisima	2,359	955
6. Santa Rita	744	301
Total	13,920	5,633

The majority of these acres occur on privately owned land. We know of no Federal, State, tribal, or military lands within these boundaries. A small portion of land within the western Santa Maria/Orcutt Unit is owned by local jurisdictions, including the County of Santa Barbara and the Laguna County Sanitation District.

Critical habitat includes California tiger salamander habitat throughout the species' range in Santa Barbara County, California. Brief descriptions of all units, and reasons why they are essential for the conservation of the California tiger salamander, are presented below. Each unit contains essential aquatic, upland, and dispersal habitat. Each unit is occupied by California tiger salamanders based upon observations recorded since 2000.

Unit 1: Western Santa Maria/Orcutt

Unit 1 consists of 4,349 ac (1,760 ha) west and southwest of the City of Santa Maria, mostly in unincorporated areas of the County and the community of Orcutt. This area encompasses the known California tiger salamander breeding sites extending from the Casmalia Hills on the south to the Santa Maria Airport on the north and from west of Black Road eastward to Highway 135. The unit contains 11 known California tiger salamander breeding ponds and several water bodies that could potentially support breeding California tiger salamanders but that have never been surveyed.

Seven of the known breeding ponds in this unit occur on the Orcutt Dune Sheet. The Orcutt Dune Sheet is an ancient windblown sand deposit that covers the southern one-half to two-thirds of the Santa Maria Valley (Hunt 1993). All natural California tiger salamander breeding sites occurring on the sheet are classified as dunal or deflation pools and ponds, a type of California tiger salamander breeding pond occurring only within the two units within the Santa Maria Valley. The four remaining known ponds occur along the base of the Casmalia Hills, just off the southwestern edge of the Orcutt Dune Sheet.

Based on an examination of aerial photographs taken in the late 1920's and late 1930's, the Orcutt Dune Sheet contained more potential breeding sites for California tiger salamanders than all other occupied habitat in Santa Barbara County combined. This area has suffered the greatest loss of potential California tiger salamander breeding and upland habitat. At least 500 vernal wetlands were present on the Orcutt Dune Sheet in 1938 aerial photographs, less than 150 were present in 2000. This number of ponds represents a 75 percent loss of these habitats (Larry Hunt, biological consultant, pers. comm. 2003).

Population growth and the concomitant residential and commercial development are the greatest threat to California tiger salamanders within this unit. The City of Santa Maria currently sustains a population of 82,148 people and is anticipated to reach a population of 110,800 people by 2020, with an annual growth rate of 1.8 percent (Santa Barbara County Association of Governments 2002). Annexations to further development are proposed in the remaining California tiger salamander habitat (Marc Bierdzinski, Santa Maria Community Development Department 2003).

Several development projects have been proposed within the Unit. The Santa Maria Airport District proposes to build a 400-ac (162-ha) research park and golf course just south of the airport on a parcel with three known California tiger salamander breeding ponds (Rincon 2002). The Orcutt Community Plan identifies Key Site 22 as a site for 60 percent buildout to a maximum of 3,000 units of dwellings (Santa Barbara County 2002). This site lies entirely within the critical habitat unit. Additional proposed development projects include Union Valley Parkway (City of Santa Maria 2003) and expansion of the Laguna County Sanitation District's wastewater treatment plan.

This unit is essential to the conservation of the California tiger salamander because it constitutes the largest number of occupied ponds on the Orcutt Dune Sheet, a rare and disappearing habitat type. California tiger salamanders in this location may be adapted to unique conditions not found in other units. It is critical for the

conservation of the species to conserve the California tiger salamander within the range of habitat types where it is found in nature. Protecting a variety of habitat conditions will increase the ability of the species to survive stochastic events.

This unit also requires special management to conserve California tiger salamanders. One pond is known to have introduced fish, another is subject to berm failure, and bullfrogs breed in close proximity to a third site. Addressing these threats through special management is essential for the conservation of the California tiger salamander.

Unit 2: Eastern Santa Maria

This unit covers a portion of the eastern half of the Orcutt Dune Sheet, but is separated from the western Santa Maria Valley unit by a broad area of urban and agricultural development, including State Highways 135 and 101. The unit is 2,985 ac (1,208 ha) in size and is bordered by State Highway 101 on the west, the Solomon Hills on the south, the Sisquoc River on the east, and the Santa Maria River floodplain on the north. Although this area is at least as large as the area encompassed by the western Santa Maria Valley populations, only four known ponds exist here. All the ponds have had substantial alterations to the surrounding upland habitats, and substantial fragmentation of the habitat between breeding ponds has occurred. Restoration of upland habitat and the creation of additional breeding ponds within this unit will be essential to allow a self-sustaining California tiger salamander population to persist. At least 10 additional ponds that appear suitable for California tiger salamander breeding exist within the unit.

California tiger salamander upland habitat in this area has experienced widespread losses due to the conversion of rangeland for agricultural purposes. Some proposed projects further threaten the remaining California tiger salamander habitat, including the 2000-ac Bradley Ranch proposed development project (John L. Wallace & Associates 2002), scattered low-density residential development, two soil remediation projects, and the construction of a radio tower.

All of the extant and most of the potential ponds lie on the Orcutt Dune Sheet at an average elevation of 530 ft above sea level (range = 390–601 ft above sea level). Because this unit represents one of only two units on the Orcutt Dune sheet, it is essential to the conservation of the species in that California tiger salamanders here are adapted to conditions not found in two-thirds of its range. The unit requires special management in the form of restoration, erosion control, and implementation of measures to minimize the number of California tiger salamanders killed on roads. The unit also represents an area that in large part is not slated for residential development, in contrast to the western Santa Maria area. Because of this and the fact that many of the converted upland habitats remain as open space, this unit has high restoration potential.

Unit 3: Western Los Alamos/Careaga

This unit consists of 2,181 ac (883 ha) to the west of Highway 101, bordered on the west by the Careaga Divide. This unit includes the location where the California tiger salamander was first discovered in Santa Barbara County in the 1960s. Nine ponds within this unit have been documented as breeding habitat by California tiger salamanders. Five of these ponds are natural ponds, three are human-made bermed agricultural/oil field impoundments, and one is a scour pool situated in a tributary to Canada de Las Flores Creek. Several other agricultural impoundments are located within dispersal distance of the California tiger salamander breeding ponds in the western Los Alamos valley. These human-made ponds may also be used by California tiger salamanders for breeding.

In contrast to the dunal or deflation ponds found in the two units to the north within the Santa Maria Valley, the natural breeding ponds within the Western Los Alamos/Careaga Unit are found in structural basin ponds. These ponds occur in the valleys or depressions along the axes of the synclines. The natural ponds within the unit occur along the axis of the Los Alamos Syncline and an unnamed syncline occurring parallel to and west of the Los Alamos Syncline.

The area in the southeastern half of the unit was proposed for conversion to vineyards. The landowner in this area supports California tiger salamander conservation and has been working with the lessee to develop a vineyard proposal that would conserve California tiger salamanders breeding in the known ponds.

This unit is essential to the conservation of the California tiger salamander because it contains some of the highest-quality natural California tiger salamander breeding pools remaining in the County. The Careaga Divide pond, located on the western side of the unit, is one of the most unique and pristine vernal ponds where California tiger salamanders breed. The wetland is unusual in that it is enclosed on two sides by an extensive and dense coast live oak woodland and on the north and east by coastal sage scrub and grasslands. The unit also provides large blocks of continuous unfragmented upland habitat with few known sources of mortality, all occurring within a working rangeland landscape. The unit requires special management in the form of fish removal from at least one pond and sediment control at three ponds.

Unit 4: Eastern Los Alamos

This unit consists of 1,302 ac (527 ha) on the Los Robles Ranch, which is located south of Highway 101 and southeast of the town of Los Alamos. The population is currently comprised of four ponds that have been used by California tiger salamanders for breeding. Two of the ponds are natural structural basin ponds found in depressions that are believed to be associated with the inferred location of the Los Alamos Syncline (Dibblee 1993). The other two ponds are bermed agricultural impoundments located in an unnamed, intermittent drainage located 1.0 to 1.5 mi southeast of the two natural ponds. Although there are three other unsurveyed human-made ponds in the immediate vicinity of the eastern Los Alamos population, only one is believed to have a hydrologic regime that could support breeding by California tiger salamanders. This bermed vineyard reservoir is located on the north side of the small hill that borders the northeast side of Los Robles Pond 1.

The property within the Unit was purchased in the 1990s for the purpose of vineyard development. California tiger salamanders were discovered on the property shortly after the listing in 2000 (Monk and Associates 2000). The property owner approached us about developing an HCP to cover vineyard installation in 2001; however, we have not received a permit application pursuant to section 10(a)(1)(B) for the site.

Given the small number of known breeding populations, this unit is essential for the conservation of the California tiger salamander because, in spite of its location adjacent to State Highway 101, the habitat within this unit is of high quality. In addition, the contiguous block of habitat within the unit is free of fragmentation and is of sufficient size to maintain a self-sustaining population of California tiger salamanders. Furthermore, the populations within this unit constitute the easternmost location of the species.

As with the Western Lost Alamos/Careaga Unit, the natural ponds on the site are structural basin ponds formed by compressional forces between the transverse and coastal ranges.

The unit requires special management in the form of maintenance of the two human-made breeding ponds, measures to reduce road mortality, and preservation of water quality.

Unit 5: Purisima Hills

Unit 5 consists of 2,359 ac (955 ha) along the crest and south slope of the west-central portion of the Purisima Hills. The unit encompasses 14 of the 16 documented breeding ponds in the subpopulation. The portion of the Purisima Hills that contains suitable habitat lies upon the lower Careaga Formation, bounded to the east-southeast by outcrops of Sisquoc Formation, and bounded to the west-northwest by badlands topography of sandier horizons within the upper Careaga Formation. Neither the Sisquoc nor the upper Careaga formations will retain water in unlined ponds. Pond elevations range from 500 to 1400 ft.

The documented breeding localities are all stock ponds, most of which were constructed in the mid to late 1950s (Thomas Silva, Sr., pers. comm. 2001); of these, only one may have been based on a preexisting natural depression. The unit also contains a large natural vernal lake referred to as Laguna Seca. Although Laguna Seca did not contain California tiger salamanders during surveys conducted in 2002, it was likely the natural source of California tiger salamanders for the human-made ponds in the Purisima Hills to the south and southwest of the pond. Largemouth bass (*Micropterus salmoides*) and mosquitofish (*Gambusia affinis*) were recorded during surveys in 2002 (Paul Collins, Santa Barbara Museum of Natural History, pers. comm. 2002). The introduced fish likely preclude successful breeding, although adult California tiger salamanders are inevitably present in the adjacent uplands, given the successful breeding occurring in the other known ponds in the vicinity. We have been working with the landowners in this area on a proposed fish removal project. Based on present knowledge of the distribution and history of occupied ponds, the pattern of California tiger salamander presence in the ponds within the Purisima Hills indicates a considerable role for dispersing animals, as all 16 localities have been colonized sometime in the past 40 to 50 years.

This unit is essential for the conservation of the California tiger salamander. Although the majority of occupied ponds are human made and thus require frequent maintenance, the unit is the most remote of all the units and has the fewest documented threats. Because of the steepness of the topography, conversion to farmland or high-intensity development is not feasible. The unit is unique in that it is steeper terrain and is more densely vegetated than all other units. This location contains the only known California tiger salamander breeding ponds completely surrounded by coastal sage chaparral vegetation. Of the 16 ponds, 4 are surrounded by grasslands, 3 are enclosed in chaparral, and the remainder have mixed grassland/chaparral habitats within a 328-ft (100-m) radius (2 of these 9 also have oak woodland components). Few other locations in Santa Barbara are within chaparral or mixed chaparral habitats. Therefore, California tiger salamanders within this unit are adapted to unique habitat conditions.

The Purisima Unit is also essential in that it provides a linkage between the Santa Rita Unit to the southwest and the Western Los Alamos/Careaga Unit to the north. Although many of the units may be permanently separated from each other by urban development and State Highway 101, these three units still likely retain some connectivity. Preliminary genetic analyses of five loci indicate high levels of gene exchange between the Purisima and Western Los Alamos units, despite a distance of almost 4 mi between these units (Wes Savage, University of California at Davis, unpublished data). Several stockponds which have never been surveyed lie between the units; some of these ponds are likely occupied by California tiger salamanders and provide genetic exchange between the two proposed critical habitat units. The Santa Rita Unit is a similar distance from the Purisima Unit, but appears to have slightly less genetic exchange than the other two units (W. Savage, unpublished data).

The unit also requires special management. Because the ponds are human-made stock ponds, they are subject to failure. Two potential locations have breached dams and do not hold water, two are silted up, and four dry out soon after rainfall events. Special management can restore these ponds and augment the California tiger salamander populations within the unit. Special management is also needed to remove introduced fish from Laguna Seca.

Unit 6: Santa Rita Valley

This 744-ac (301 ha) unit constitutes the southernmost locality for California tiger salamanders in Santa Barbara County. The unit is bisected by Highway 246, a heavily traveled thoroughfare between the towns of Buellton and Lompoc. Two confirmed breeding locations (representing three ponds) lie in the general Santa Rita Valley; however, one of these is a human-made pond isolated from other units and is not included within the boundaries of critical habitat. The other confirmed breeding locality consists of two hydrobasins within 50 ft of one another and adjacent to Highway 246. Adult California tiger salamanders were often found dead on roads after rain events during the 1980s. Three ponds on a neighboring property to the east and two ponds on the south side of Highway 246 likely formed a complex with this pond in the past; however, the ponds to the east were degraded by introduced fish and vineyards, while Highway 246 forms a substantial barrier to the southern ponds. The ponds south of Highway 246 have never been surveyed for California tiger salamanders. Although one landowner reported finding a California tiger salamander in a water pump in 2000, we have been unable to obtain permission to conduct surveys to confirm or refute this record.

The known ponds are based on natural features developed on an active syncline in the Careaga Formation east of the Santa Rita-Drum Canyon divide along the north side of California Highway 246. The ponds are natural but have been excavated so that the smaller pond appears to retain water year round.

This unit is essential to the conservation of the California tiger salamander because it constitutes the only extant population remaining within the Santa Rita valley. As stated previously, given the small number of remaining breeding locations, all six units are essential. In addition, due to the numbers of salamanders found dead on the roads in the 1980s, the ponds were likely productive in the past. Highway 246 constitutes the main threat to the breeding location; furthermore, Caltrans has proposed to widen this road, which would substantially infringe upon the footprint of the ponds. Even without widening, the mortality by vehicular traffic and contaminated runoff entering the pond provide substantial threats to the breeding site.

The unit requires special management. Based on past observations, mosquitofish (*Gambusia affinis*) and sunfish (*Lepomis* spp.) occurred in these ponds (Service 2000). We do not know if fish currently exist in the ponds (the ponds dry completely

in most years); however, if they do, they should be removed to conserve this population. In addition, bullfrogs have also been reported (Grace McLaughlin, Service, pers. obs. 2000) and should also be removed. The precarious position of the pond directly adjacent to a busy road requires measures to reduce the threat contaminants entering the pond and to enhance survival of California tiger salamanders attempting to cross the road. In addition, connectivity to potential breeding locations to the south of the highway should be facilitated in some manner. The California tiger salamander science subteam of the recovery team recommends restoring or creating additional ponds in this unit, due to the risk of extinction associated with having only one breeding location. Because California tiger salamander population dynamics involve several connecting breeding populations, increasing the number of breeding ponds in this unit is necessary to conserve the population.

Effects of Critical Habitat Designation

Section 7 Consultation

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. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer 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. 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, we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat. Conference reports assist the agency in eliminating conflicts that may be caused by the proposed action, and may include recommendations on actions to eliminate conflicts with, or adverse modifications to, proposed critical habitat. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Activities on Federal lands that may affect the California tiger salamander or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the Army Corps under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.*, Federal Highway Administration or Federal Emergency Management Agency funding), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

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 destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that appreciably reduce the value of critical habitat for both the survival and recovery of the California tiger salamander. Within critical habitat, this pertains only to those areas containing primary constituent elements. We note that such activities may also jeopardize the continued existence of the species.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species.

Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to ''destroy or adversely modify'' critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. Designation of critical habitat in areas occupied by the California tiger salamander is not likely to result in a regulatory burden above that already in place due to the presence of the listed species.

Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the United States by the Army Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by any Federal agency;

(3) Road construction and maintenance, right-of-way designation, and regulation funded or permitted by the Federal Highway Administration;

(4) Voluntary conservation measures by private landowners funded by the Natural Resources Conservation Service;

(5) Regulation of airport improvement activities by the Federal Aviation Administration;

(6) Licensing of construction of communication sites by the Federal Communications Commission; and,

(7) Funding of activities by the U.S. Environmental Protection Agency, Department of Energy, Federal Emergency Management Agency, Federal Highway Administration, or any other Federal agency.

All lands proposed for designation as critical habitat are within the geographic area occupied by the species (based on observations made within the last 3 years), and are likely to be used by the California tiger salamander, whether for foraging, breeding, growth of larvae and juveniles, dispersal, migration, genetic exchange, or sheltering. Thus, we consider all critical habitat units to be occupied by the species. Federal agencies already consult with us on activities in areas currently occupied by the species or if the species may be affected by the action to ensure that their actions do not jeopardize the continued existence of the species. Therefore, we believe that the designation of critical habitat is not likely to result in a significant regulatory burden above that already in place due to the presence of the listed species. Few additional consultations are likely to be conducted due to the designation of critical habitat. Nevertheless, at any given time some portions of a unit may not be occupied by California tiger salamanders, due to climatic fluctuations, changes in population numbers, flood events, or other causes. Additional consultations could arise if a project is proposed within an unoccupied portion of a critical habitat unit and the primary constituent elements may be adversely affected by the project.

Application of Section 3(5)(A) and Exclusions Under Section 4(b)(2) of the Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations and protection. As such, for an area to be designated as critical habitat for a species, it must meet both provisions of the definition. In those cases where a specific area does not provide those physical and biological features essential to the conservation of the species, it has been our policy to not include the area in designated critical habitat. Likewise, if an area determined to be biologically essential has an adequate management plan that covers the species, then special management and protection are already being provided. These areas would not meet the second provision of the definition and would not be proposed as critical habitat.

We consider a current plan to provide adequate management or protection if it meets three criteria: (1) The plan is complete and provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that the conservation management strategies and actions will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, and have an implementation schedule or adequate funding for implementing the management plan); and (3) the plan provides assurances that the conservation strategies and measures will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives).

Further, section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. Consequently, we may exclude an area from critical habitat based on economic impacts, or other relevant impacts such as preservation of conservation partnerships or military readiness considerations, if we determine that the benefits of excluding an area from critical habitat outweigh the benefits of including the area in critical habitat, provided that exclusion will not result in the extinction of the species.

In summary, we use both the definitions in section 3(5)(A) and the provisions of section 4(b)(2) of the Act to evaluate those specific areas that are proposed for designation as critical habitat as well as for those areas that are subsequently finalized (*i.e.*, designated as critical habitat). On that basis, it has been our policy to not include in proposed critical habitat, or exclude from designated critical habitat, those areas: (1) Not biologically essential to the conservation of a species, (2) covered by an individual (project-specific) or regional Habitat Conservation Plan (HCP) that covers the subject species, (3) covered by a complete and approved Integrated Natural Resource Management Plan (INRMP) for specific DOD installations, (4) covered by an adequate management plan or agreement that protects the primary constituent elements of the habitat.

We have not excluded any lands from this proposal pursuant to section 3(5)(A) and 4(b)(2) of the Act. No HCPs that

include the California tiger salamander are near completion, the proposal does not include any DOD installations, and no management plans that protect the California tiger salamander have been developed. During the proposal period, we hope to work with private landowners on developing conservation agreements that would protect the species. If these are finalized, we may exclude them from final critical habitat for the California tiger salamander.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as part of critical habitat. We cannot exclude such areas from critical habitat if such exclusion would result in the extinction of the species.

An analysis of the economic impacts of proposing critical habitat for the California tiger salamander is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://ventura.fws.gov,* or by contacting the Ventura Fish and Wildlife Office directly (see **ADDRESSES** section)

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 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 this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule 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: *Exsec@ios.doi.gov*.

Required Determinations

Regulatory Planning and Review

This document has been reviewed by the Office of Management and Budget (OMB), in accordance with Executive Order 12866. OMB makes the final determination under Executive Order 12866. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific area as critical habitat.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Army Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by any Federal agency;

(3) Road construction and maintenance, right-of-way designation, and regulation funded or permitted by the Federal Highways Administration;

(4) Voluntary conservation measures by private landowners funded by the Natural Resources Conservation Service;

(5) Regulation of airport improvement activities by the Federal Aviation Administration;

(6) Licensing of construction of communication sites by the Federal Communications Commission; and,

(7) Funding of activities by the U.S. Environmental Protection Agency, Department of Energy, Federal Emergency Management Agency, Federal Highway Administration, or any other Federal agency.

The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The 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. However, the SBREFA does not explicitly define ''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 an area. The 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 considered the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting, *etc.*). We considered each industry individually 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.

If this critical habitat designation is finalized, Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

Since the Santa Barbara County DPS of the California tiger salamander was listed (2000), we have conducted approximately five formal consultations involving this species. These formal consultations, which all involved Federal actions, included a sewer line installation, an expansion and upgrade of wastewater treatment facilities, pond restoration activities, one bridge replacement, and one culvert removal. These five consultations resulted in non-jeopardy biological opinions.

We also conducted approximately 21 informal consultations since this species was listed. These informal consultations concerned activities such as repair, maintenance, or improvement of drainage and wastewater treatment facilities, cleanup of a superfund facility, closed landfill repair activities, soil remediation activities, oil well and sump closures, vineyard development, and other developments 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 California tiger salamander usually resulted in recommendations to employ erosion control measures, conduct certain activities by hand, and avoid small mammal burrows, 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 we have concluded that it would not. Future consultations are not likely to affect a substantial number of small entities. We have 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 six of the proposed critical habitat units are currently occupied by California tiger salamanders, and the consultation requirement would be triggered by the presence of a listed species.

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 the Santa Barbara County DPS of the California tiger salamander 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 ESA and E.O. 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).

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for the California tiger salamander 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.*), we will use the economic analysis to further evaluate this situation.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. The designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the California tiger salamander. Due to current public knowledge of the species' protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values will be affected by the proposed critical habitat designation. While real estate market values may temporarily decline following designation, due to the perception that critical habitat designation may impose additional regulatory burdens on land use, we expect any such impacts to be short term. Additionally, critical habitat

designation does not preclude development of HCPs and issuance of incidental take permits. Owners of areas that are included in the designated critical habitat will continue to have opportunity to use their property in ways consistent with the survival of the California tiger salamander.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by the California tiger salamander imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. 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 waiting 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 meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Endangered Species Act. This proposed 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 California tiger salamander.

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

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This final determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of 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 the California tiger salamander. Therefore, designation of critical habitat for the California tiger salamander has not been designated on Tribal lands.

References Cited

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

Author(s)

The primary author of this package is the Ventura Fish and Wildlife Office staff.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

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

2. In § 17.11(h), revise the entry for ''Salamander, California tiger, Santa Barbara County DPS'' under ''AMPHIBIANS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
AMPHIBIANS							
*	*	*	*	*	*	*	
Salamander, California tiger, Santa Barbara County DPS.	*Ambystoma californiense*.	U.S.A. (CA)	Entire	E	677E, 702	17.95(d)	NA
*	*	*	*	*	*	*	

3. In § 17.95(d), revise the entry for ''*Ambystoma californiense*'' under ''AMPHIBIANS'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) Amphibians.

* * * * *

Santa Barbara County Distinct Population Segment of the California Tiger Salamander (*Ambystoma californiense*)

(1) Critical habitat units are depicted for Santa Barbara County, California, on the maps below.

(2) The primary constituent elements of critical habitat for the Santa Barbara County Distinct Population Segment of the California tiger salamander are the habitat components that provide:

(i) Standing bodies of fresh water, including natural and man-made (*e.g.,* stock) ponds, vernal pools, and dune ponds, and other ephemeral or permanent water bodies that typically become inundated during winter rains and hold water for a sufficient length of time (*i.e.,* 12 weeks) necessary for the species to complete the aquatic portion of its life cycle.

(ii) Barrier-free uplands adjacent to breeding ponds that contain small mammal burrows, including but not limited to burrows created by the California ground squirrel (*Spermophilus beecheyi*) and Botta's pocket gopher (*Thommomys bottae*). Small mammals are essential in creating the underground habitat that adult California tiger salamanders depend upon for food, shelter, and protection from the elements and predation.

(iii) Upland areas between breeding locations and areas with small mammal burrows that allow for dispersal among such sites.

(3) Critical habitat does not include existing features and structures, such as buildings, aqueducts, airports, roads, and other developed areas not containing one or more of the primary constituent elements.

Critical Habitat Map Units

(4) Data layers defining map units were created on a base of USGS 7.5′ quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) **Note:** Map 1 (index map) follows.

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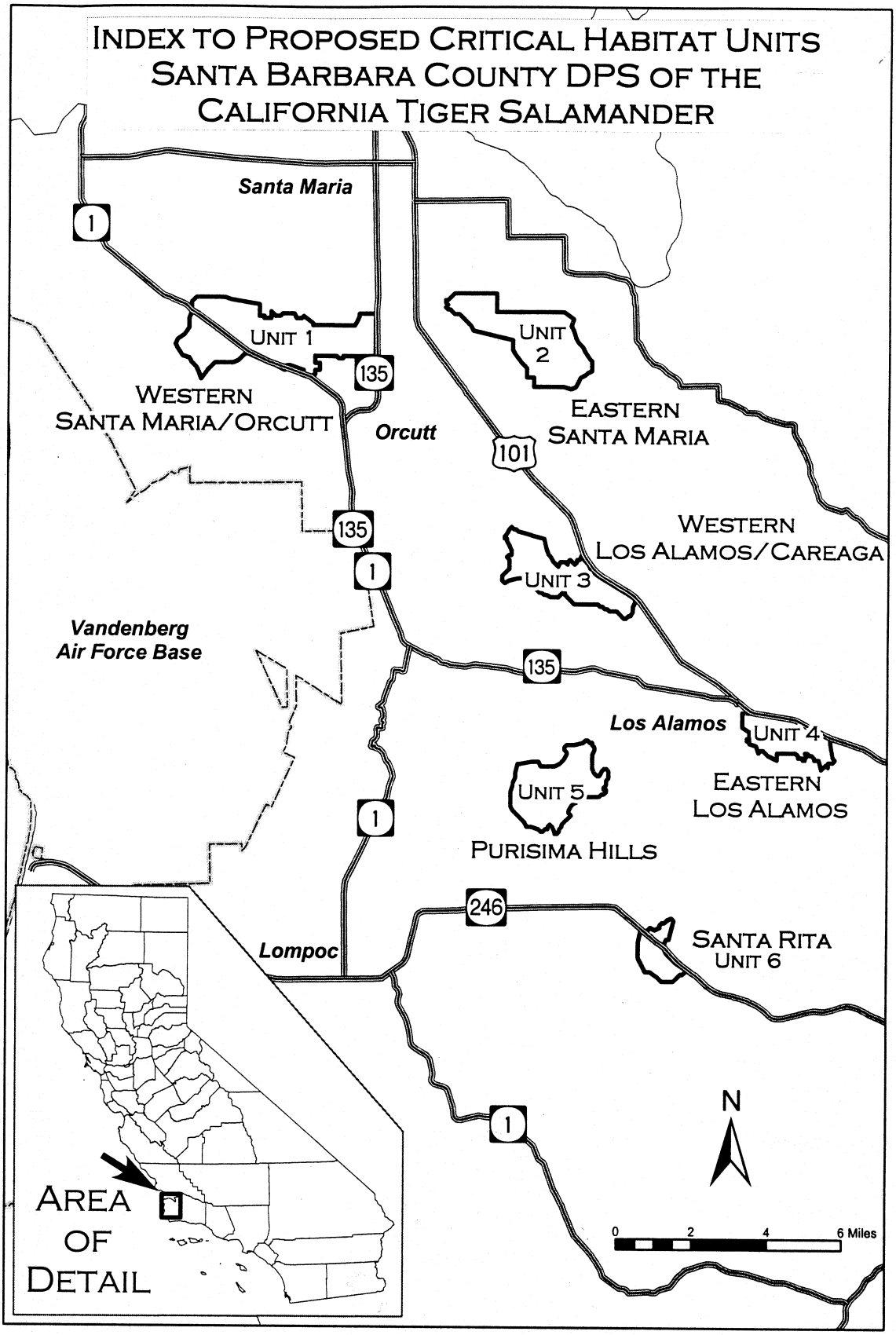

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(6) Unit 1: Western Santa Maria/Orcutt Unit, Santa Barbara County, California.

(i) From USGS 1:24,000 scale quadrangle maps Guadalupe, Santa Maria, Orcutt and Casmalia. Lands bounded by UTM Zone 10, NAD 1927 coordinates (E, N): 727900, 3864900; 728200, 3864800; 729400, 3864600; 729400, 3864100; 729600, 3864100; 729600, 3864000; 729900, 3864000; 729900, 3864300; 730100, 3864100; 730300, 3864100; 730400, 3864200; 730900, 3864200; 731000, 3864000; 731200, 3864000; 731300, 3864100; 731700, 3863800; 731700, 3863700; 733500, 3863700; 733600, 3863900; 733700, 3864100; 733700, 3864200; 734400, 3864200; 734400, 3862400; 733000, 3862400; 733000, 3862300; 732800, 3862300; 732700, 3862400; 731800, 3862400; 731800, 3862100; 732000, 3862100; 732000, 3861800; 731800, 3861800; 731800, 3861600; 731500, 3861500; 731200, 3861600; 731300, 3861800; 730700, 3862000; 730600, 3862000; 730500, 3861800; 730100, 3862000; 729800, 3862100; 728900, 3862500; 728800, 3862500; 728600, 3862300; 728500, 3862200; 728300, 3862100; 727500, 3862100; 727200, 3861800; 726900, 3861400; 726800, 3861700; 726700, 3861900; 726500, 3862100; 726400, 3862300; 726100, 3862400; 725900, 3862700; 725800, 3862900; 725900, 3863100; 726200, 3863300; 726400, 3863600; 726400, 3864000; 726500, 3864300; 726500, 3864700; 726600, 3864800; 726700, 3864900; 727900, 3864900.

(ii) **Note:** Unit 1 (Map 2) follows.

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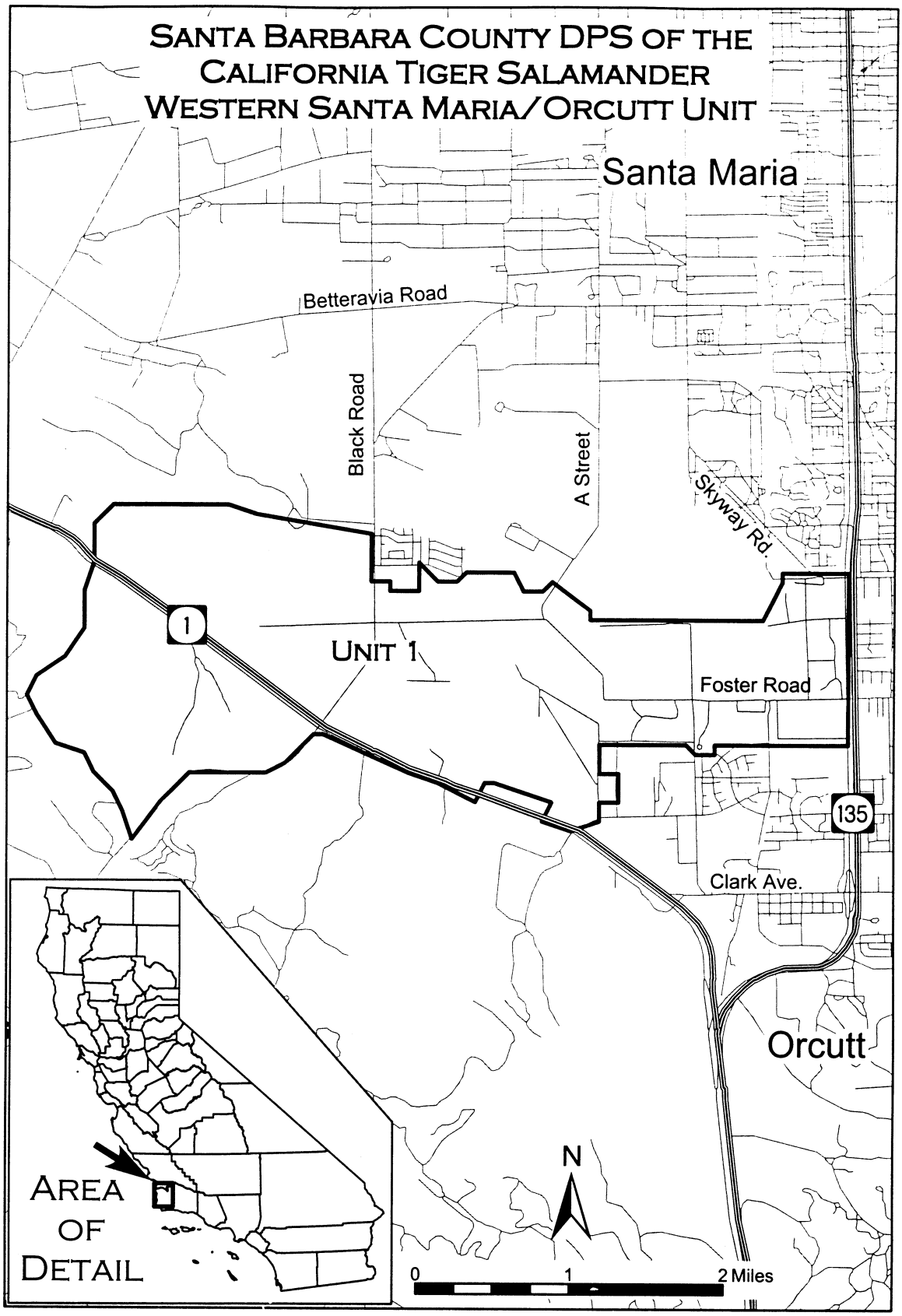

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(7) Unit 2: Eastern Santa Maria Unit, Santa Barbara County, California.

(i) From USGS 1:24,000 scale quadrangle maps Guadalupe, Santa Maria, Twitchell Dam, Orcutt and Sisquoc. Lands bounded by UTM Zone 10, NAD 1927 coordinates (E, N): 737400, 3864500; 737500, 3864600; 737400, 3864700; 737400, 3864800; 737500, 3864800; 737800, 3865100; 739600, 3865100; 739600, 3864300; 742500, 3864300; 742900, 3864000; 742800, 3863700; 742900, 3863500; 743000, 3863200; 743100, 3863000; 743200, 3862900; 743300, 3862800; 743400, 3862600; 743600, 3862300; 743700, 3862200; 743700, 3861800; 743500, 3861700; 743400, 3861600; 743200, 3861500; 743100, 3861300; 743000, 3861100; 742800, 3861000; 742500, 3861100; 741200, 3861100; 741200, 3861500; 740900, 3861500; 740900, 3861900; 740700, 3862100; 740400, 3862500; 740300,3862700; 740300,3863100; 738600, 3863500; 738500, 3863700; 738000, 3864200; 737800, 3864200; 737700, 3864300; 737600, 3864400; 737500, 3864400; 737400, 3864500.

(ii) **Note:** Unit 2 (Map 3) follows.

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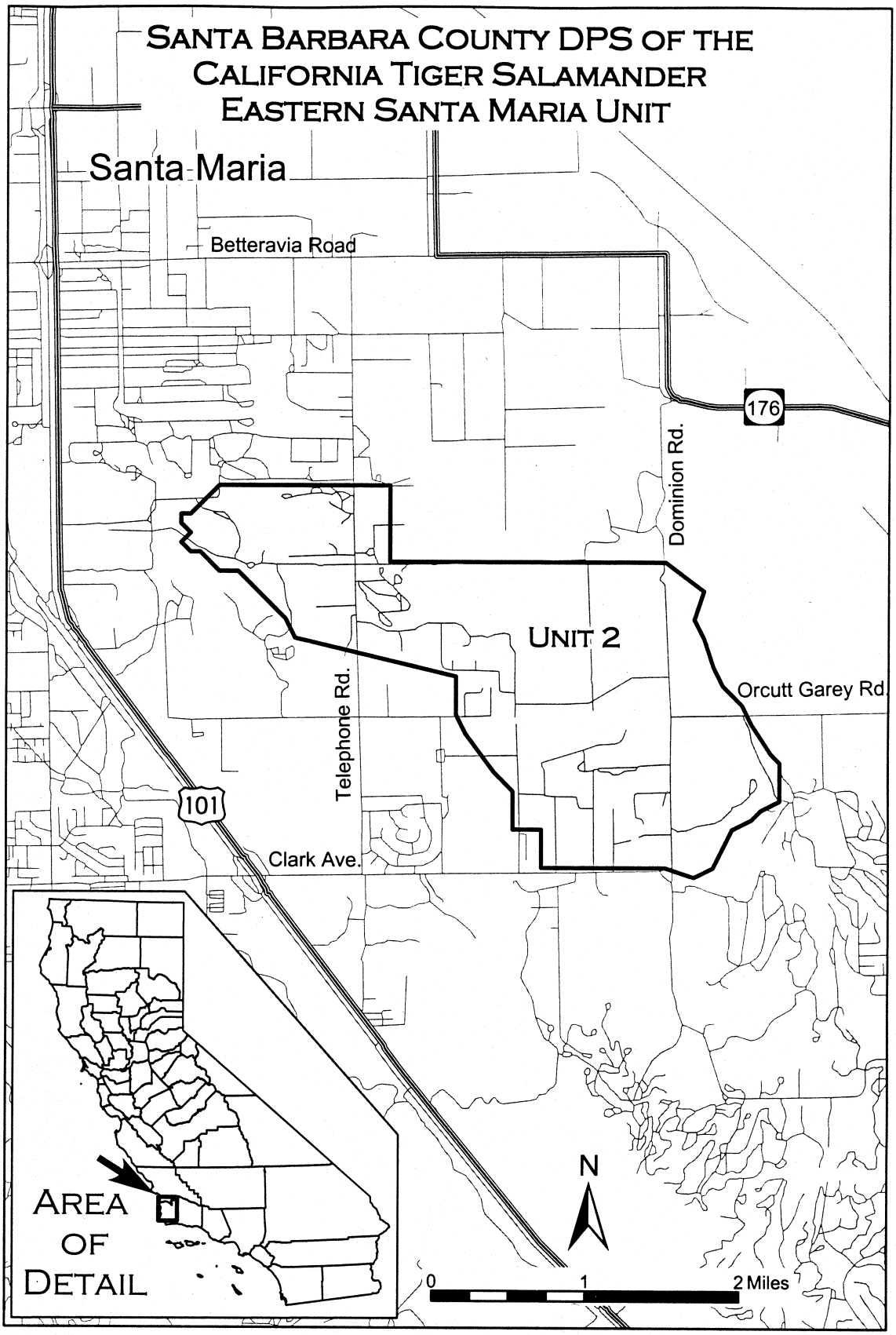

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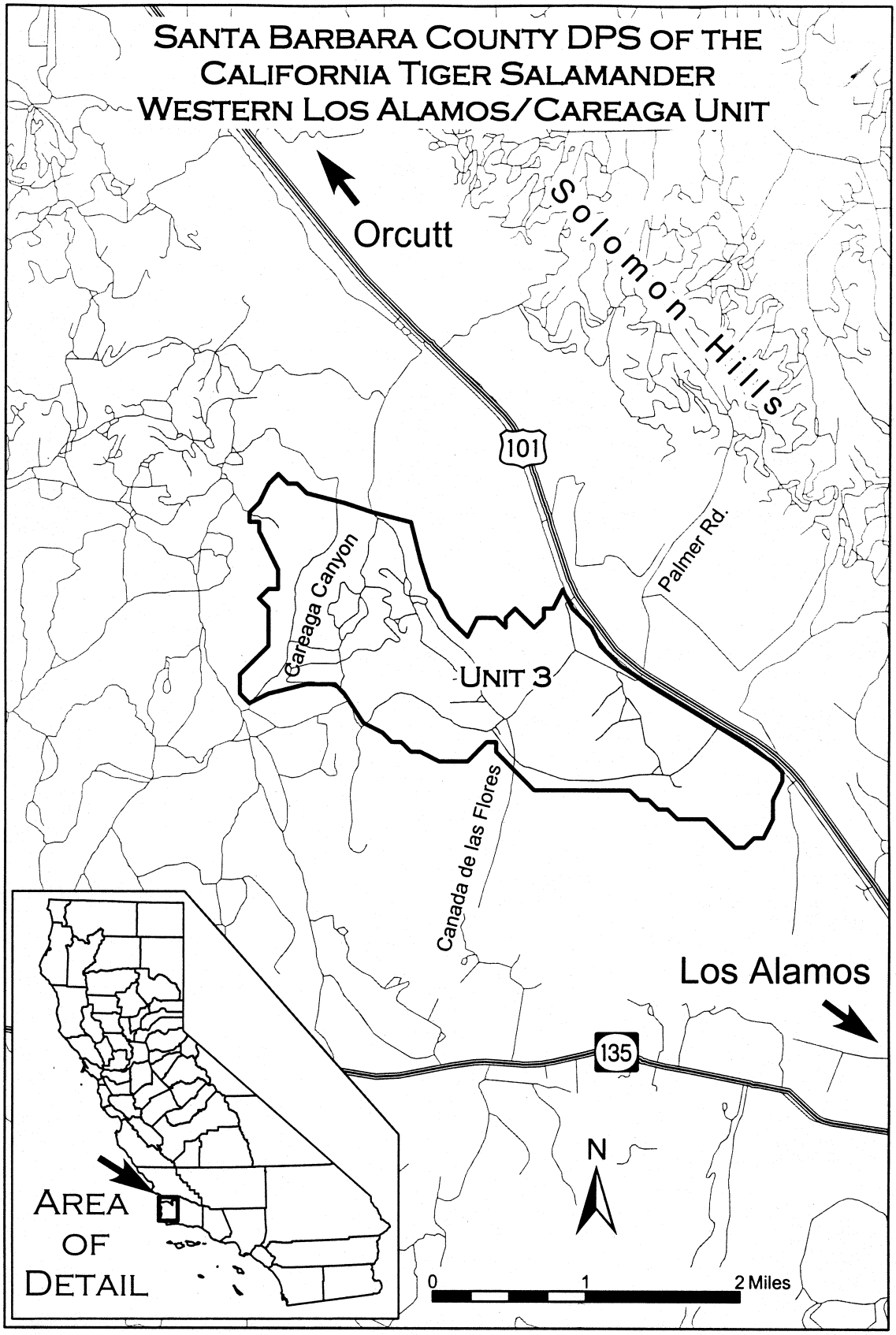
(8) Unit 3: Western Los Alamos/Careaga Unit, Santa Barbara County, California.

(i) From USGS 1:24,000 scale quadrangle maps Orcutt and Sisquoc. Lands bounded by UTM Zone 10, NAD 1927 coordinates (E, N): 739900, 3853000; 740200, 3853300; 740200, 3853700; 740100, 3853800; 740200, 3853900; 740300, 3853900; 740300, 3854100; 740200, 3854300; 740100, 3854500; 740100, 3854600; 740000, 3854600; 740000, 3854700; 740100, 3854800; 740200, 3855000; 740300, 3855100; 740400, 3855000; 740500, 3855000; 740600, 3854900; 741000, 3854800; 741300, 3854700; 741700, 3854600; 741800, 3854200; 741900, 3853900; 742000, 3853800; 742100, 3853600; 742300, 3853400; 742400, 3853600; 742600, 3853600; 742700, 3853500; 742700, 3853600; 742800, 3853700; 742900, 3853600; 743000, 3853500; 743100, 3853600; 743100, 3853700; 743200, 3853700; 743300, 3853900; 743400, 3853700; 743600, 3853500; 743700, 3853300; 743900, 3853100; 744200, 3852900; 744700, 3852600; 745200, 3852300; 745500, 3852100; 745600, 3852000; 745600, 3851900; 745500, 3851700; 745500, 3851500; 745400, 3851300; 745300, 3851300; 745200, 3851200; 745100, 3851200; 745000, 3851300; 744800, 3851500; 744500, 3851500; 744400, 3851600; 744300, 3851600; 744200, 3851700; 744100, 3851700; 744000, 3851800; 743000, 3851800; 742700, 3852100; 742600, 3852200; 742600, 3852300; 742500, 3852300; 742400, 3852200; 742300, 3852100; 742000, 3852100; 741800, 3852200; 741700, 3852200; 741600, 3852300; 741500, 3852300; 741400, 3852400; 741200, 3852500; 741000, 3852800; 740900, 3852900; 740600, 3852900; 740200, 3852800; 740000, 3852700; 739900, 3852800; 739900, 3853000.

(ii) **Note:** Unit 3 (Map 4) follows.

BILLING CODE 4310–55–P



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(9) Unit 4: Eastern Los Alamos Unit, Santa Barbara County, California.

(i) From USGS 1:24,000 scale quadrangle maps Los Alamos and Zaca Creek. Lands bounded by UTM Zone 10, NAD 1927 coordinates (E, N): 750500, 3846400; 750200, 3846600; 750200, 3847200; 750600, 3847200; 751100, 3847100; 751900, 3847000; 752000, 3847000; 752400, 3846900; 752600, 3846800; 753900, 3846200; 754000, 3846200; 754000, 3845900; 754100, 3845300; 754200, 3845200; 754100, 3845100; 753900, 3845100; 753900, 3844900; 753800, 3845000; 753600, 3844800; 753500, 3845200; 753300, 3845200; 753300, 3845300; 753200, 3845400; 753100, 3845400; 753000, 3845500; 752900, 3845500; 753000, 3845400; 752900, 3845300; 752900, 3845200; 752800, 3845200; 752800, 3845300; 752600, 3845300; 752600, 3845400; 752500, 3845500; 752300, 3845500; 751700, 3845500; 751700, 3845200; 751300, 3845400; 751100, 3845600; 751000, 3845600; 750900, 3845500; 750800, 3845800; 750500, 3845900; 750500, 3846000; 750400, 3846000; 750400, 3846100; 750500, 3846100; 750500, 3846400.

(ii) **Note:** Unit 4 (Map 5) follows.

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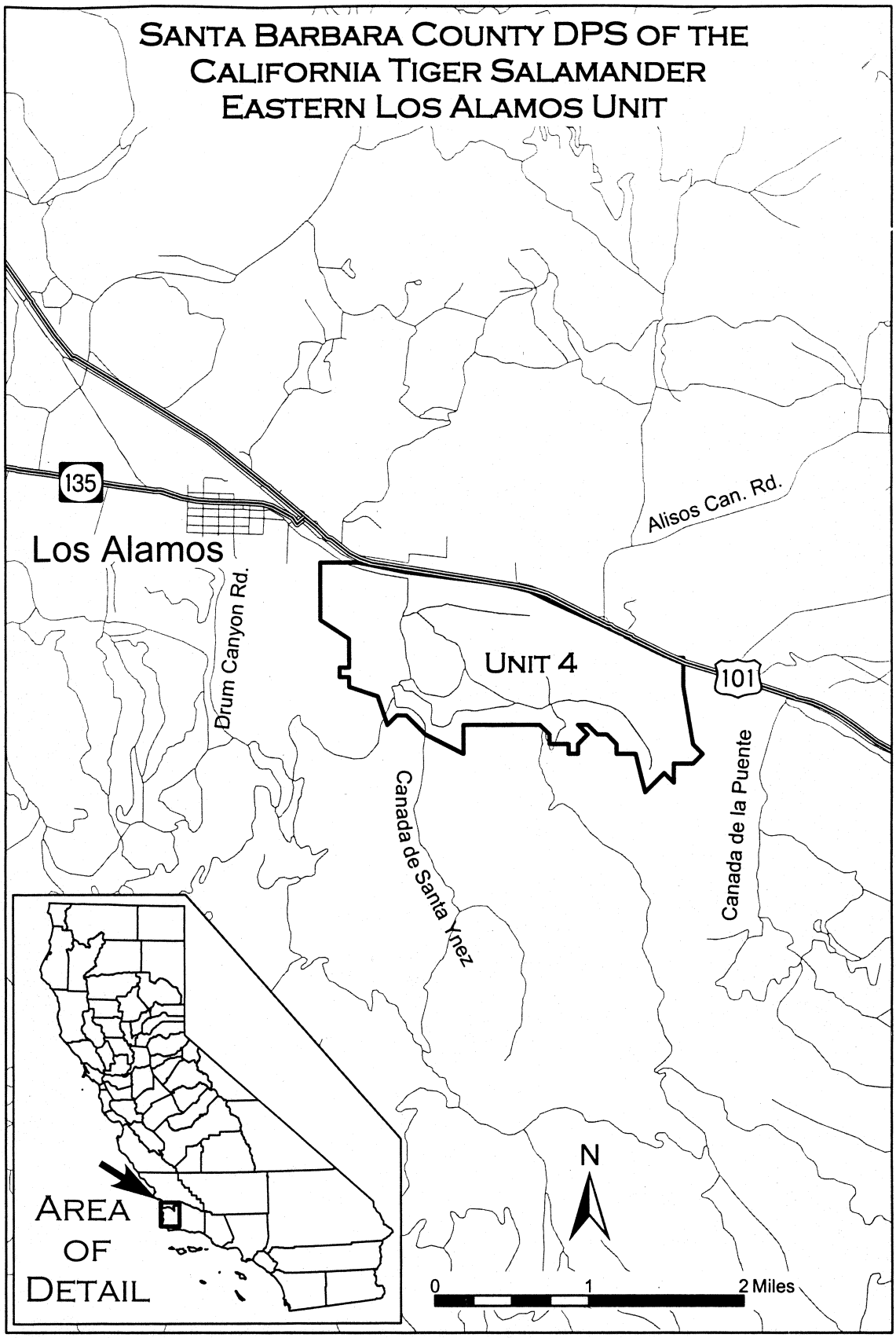

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(10) Units 5 and 6: The Purisima Hills and Santa Rita Units, Santa Barbara County, California.

(i) From USGS 1:24,000 scale quadrangle maps Lompoc and Los Alamos. Lands bounded by UTM Zone 10, NAD 1927 coordinates (E, N): 740300, 3843800; 740400, 3844100; 740400, 3844200; 740500, 3844400; 740500, 3844600; 740600, 3845000; 740700, 3845000; 741200, 3845100; 741400, 3845100; 741500, 3845100; 741600, 3844900; 742100, 3844900; 742200, 3844900; 742400, 3845000; 742600, 3845200; 742700, 3845400; 742700, 3845500; 742600, 3845600; 742600, 3845700; 742700, 3845800; 742900, 3845800; 743000, 3845800; 743400, 3845900; 743500, 3846000; 743600, 3846000; 743700, 3845900; 743800, 3845900; 743800, 3845800; 743900, 3845700; 743900, 3845600; 743800, 3845400; 743800, 3845300; 743800, 3844800; 743900, 3844600; 744000, 3844500; 744100, 3844500; 744200, 3844700; 744300, 3844800; 744400, 3844800; 744500, 3844700; 744500, 3844400; 744400, 3844300; 744400, 3844100; 744300, 3844000; 744300, 3843900; 744400, 3843900; 744400, 3843800; 744300, 3843700; 744200, 3843700; 744100, 3843600; 743500, 3843600; 743400, 3843500; 743200, 3843400; 743000, 3843300; 742900, 3843200; 742800, 3843000; 742800, 3842900; 742900, 3842800; 742800, 3842700; 742700, 3842600; 742500, 3842400; 742500, 3842300; 742400, 3842200; 742400, 3842100; 742300, 3842000; 742200, 3842000; 742200, 3842100; 742100, 3842300; 742000, 3842400; 741900, 3842300; 741900, 3842200; 741800, 3842200; 741700, 3842100; 741600, 3842100; 741500, 3842200; 741200, 3842300; 741000, 3842300; 740900, 3842500; 740800, 3842600; 740700, 3842700; 740400, 3843000; 740300, 3843200; 740300, 3843800.

(ii) From USGS 1:24,000 scale quadrangle map Los Alamos. Lands bounded by UTM Zone 10, NAD 1927 coordinates (E, N): 745900, 3837900; 746000, 3837800; 746100, 3837800; 746300, 3838000; 746500, 3837900; 746700, 3838000; 746700, 3838100; 746800, 3838200; 746900, 3838200; 747000, 3838300; 747200, 3838400; 747300, 3838300; 747200, 3837900; 747100, 3837500; 747000, 3837500; 746900, 3837300; 746900, 3837100; 747000, 3836900; 747400, 3836500; 747700, 3836300; 747900, 3836200; 747700, 3836000; 747600, 3836000; 747300, 3835700; 747200, 3835700; 746800, 3835700; 746600, 3835900; 746300, 3836100; 746100, 3836100; 745800, 3836700; 745800, 3837400; 745900, 3837900.

(iii) **Note:** Units 5 and 6 (Map 6) follow.

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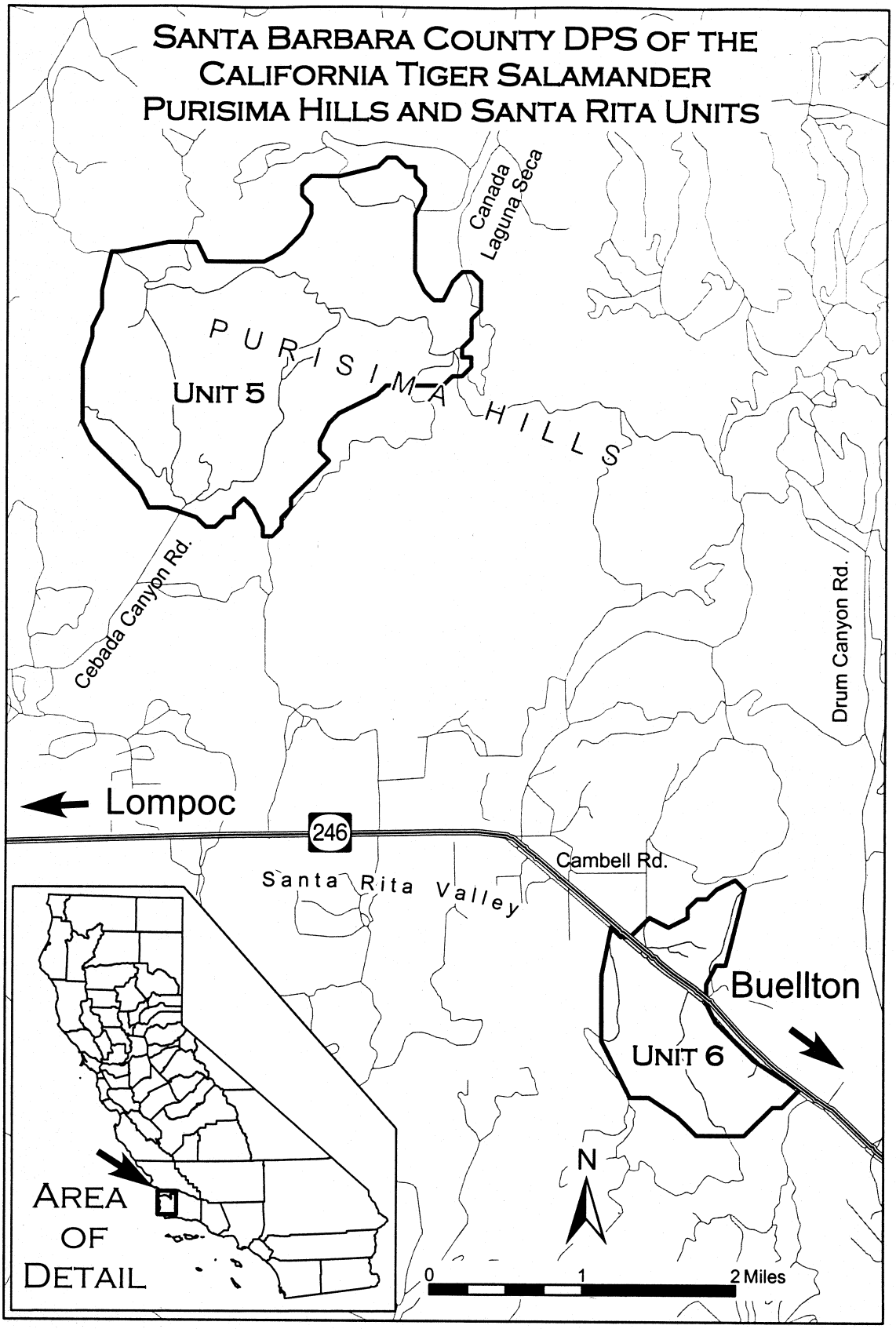

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Dated: January 14, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–1296 Filed 1–21–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI50

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule To List *Lepidium papilliferum* (Slickspot Peppergrass) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), withdraw the proposed rule, published in the **Federal Register** on July 15, 2002 (67 FR 46441), to list *Lepidium papilliferum* (slickspot peppergrass) as endangered. This withdrawal is based on our conclusion that there is a lack of strong evidence of a negative population trend, and the conservation efforts contained in formalized plans have sufficient certainty that they will be implemented and will be effective such that the risk to the species is reduced to a level below the statutory definition of endangered or threatened. Therefore, we are withdrawing the proposed determination to list *L. papilliferum* as endangered.

ADDRESSES: The supporting record for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Snake River Fish and Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, ID 83709.

FOR FURTHER INFORMATION CONTACT: Jeff Foss, Field Supervisor, Snake River Fish and Wildlife Office (*see* **ADDRESSES** section) (telephone 208/378–5243; facsimile 208/378–5262).

SUPPLEMENTARY INFORMATION:

Background

Biological Overview and Survey History

Lepidium papilliferum is a herbaceous annual or biennial plant that occurs exclusively in sagebrush-steppe (*Artemisia* spp.) ecosystem at approximately 2,200 feet (ft) (670 meters (m)) to 5,400 ft (1,645 m) elevation in southwestern Idaho. This species is found along the Snake River Plain and Owyhee Plateau in Ada, Canyon, Gem, Elmore, Payette, and Owyhee Counties, Idaho. Efforts have been made to determine whether or not suitable habitat occurs in eastern Oregon. The Bureau of Land Management (BLM) determined that the only suitable habitat available for the species in Oregon was in the Succor Creek area of the Vale District of the BLM. Surveys were conducted in the spring of 2003 in Succor Creek (J. Findley, BLM, botanist, *in litt.* 2003). Based on these surveys and a review of the habitat, it was determined that the species does not occur nor does suitable habitat exist for this species in Oregon (Findley, *in litt.* 2003). BLM has also conducted limited surveys for *L. papilliferum* to the east of the current known range of the species within the Shoshone and Burley Field Office areas that have yielded no observations of plants (BLM, *in litt.* 2000).

Plant Characteristics and Life History Traits

Lepidium papilliferum was originally described as *L. montanum* var. *papilliferum* in 1900 by Louis Henderson. It was included as a distinct species in a recent review of taxa in the mustard family (*Brassicaceae*) (Rollins 1993). Rollins (1993) based his justification on difference in physical features between the two species such as: (1) *L. papilliferum* has trichomes (hairlike structures) occurring on the filaments of stamens (part of flower that produces pollen), but *L. montanum* does not; (2) all the leaves on *L. papilliferum* are pinnately divided, whereas *L. montanum* has some leaves that are not divided; (3) the shape of the silique (seed capsule) of *L. papilliferum* is different from that of *L. montanum*; and (4) the silique of *L. papilliferum* has no wings, or even vestiges of wings, at its apex (end of the capsule), unlike that of *L. montanum* (Moseley 1994). A recent review of the taxonomic status by R. Lichvar (*in litt.* 2002) concluded that, using classic morphological features and study of herbarium specimens, *L. papilliferum* has distinct features that may warrant species recognition. Also Meyer *et al.* (in press) concluded that the ecological and life history features of *L. papilliferum* are distinct from those of *L. montanum* and argued for the preservation of *L. papilliferum* as a distinct taxon.

Lepidium papilliferum is a taprooted annual or biennial plant that reaches 4 to 12 inches (in) (10 to 30 centimeters (cm)) in height. The species is a monocarpic plant that displays two life cycles. The annual life form matures, reproduces by setting seed, and dies in one growing season, whereas the biennial life form initiates growth in the first year, and does not produce seed and die until the second year. Leaves and stems are pubescent (covered with fine, soft hairs), and the divided leaves have linear segments (Moseley 1994). Numerous small, white 4-petalled flowers terminate the branches. This species produces small, orbicular (spherical) fruits, which are approximately 0.1 in (3 millimeters) long.

Lepidium papilliferum is mainly visited and pollinated by bees (*Anthophoridae, Apidae, Colletidae, Chrysididae, Formicidae, Halictidae, Sphecidae,* and *Vespidae* families), flies (*Bombyliidae, Syrphidae,* and *Tachinidae* families), and some beetle species (*Cerambycidae, Chrysomelidae, Dermestidae* and *Melyridae* families). Limited visitation has also been observed by butterflies (*Gelechiidae* family) and bugs (*Miridae* family) (Robertson and Klemish 2003). Bees appear to be the most significant pollinators of *L. papilliferum*, with the highest pollen loads of all species observed (Robertson and Klemish 2003). Insect visitations have been shown to be essential for *L. papilliferum* pollination and fruit production (Robertson and Klemish 2003). The possibility of wind-mediated self- or cross-pollination is remote given that the structure of *L. papilliferum* flowers and pollen grains are not consistent with those of wind pollinated species (Robertson and Klemish 2003).

The primary seed dispersal mechanism for *Lepidium papilliferum* has not been definitively identified. Belnap (*in litt.* 2002) stated that, ''dispersal mechanisms cannot be established based on size, weight, or appendages of seeds, and it is not known how readily this plant can colonize new habitats.'' Animal transport, water, and wind may play a minor role, but the seed lacks structures to facilitate dispersal by animals, wind, or water (Moseley 1994). Due to the high winds at Juniper Butte and the weight of *L. papilliferum* seeds, it has been hypothesized that *L. papilliferum* is dispersed by wind (U.S. Air Force, *in litt.* 2002b) (Air Force). The weight of 100 *L. papilliferum* seeds ranges from 0.035 to 0.05 grams (Air Force, *in litt.* 2002b).

Like many short-lived plants growing in arid environments, the above-ground number of *Lepidium papilliferum* individuals at any one site can naturally fluctuate widely from one year to the next, depending primarily on seasonal precipitation patterns (Mancuso and

Moseley 1998; Mancuso 2001; Meyer *et al.*, in press). Above-ground plants represent only a portion of the population, with the seed bank (a reserve of dormant seeds, generally found in the soil) contributing the remainder, and apparently the majority, in many years (Mancuso and Moseley 1998). A seed bank includes all of the seeds in a population and generally covers a larger area than the extent of observable plants seen in a given year (Given 1994). The number and location of standing plants (the observable plants) in a population varies annually due to a number of factors, including the amount and timing of rainfall, temperature, soil conditions, and the extent and nature of the seed bank. Therefore, estimates of above-ground plants do not reflect actual population levels because the majority of the population exists in the seed bank (Moseley 1994). The extent of seed bank reserves is variable from occurrence to occurrence, and large fluctuations in the number of standing plants at a given site may occur from one year to the next. Depending on individual plant vigor, which is largely determined by the amount and timing of annual precipitation, and the effectiveness of pollination, dozens, if not thousands of seeds could be produced (Quinney 1998; Meyer *et al.* in press; M. Mancuso, Idaho Conservation Data Center (ICDC), pers. comm. 2003). Individual biennial plants generally produce a much greater number of seeds than individual annual plants, depending on the site (Robertson 2003; Meyer *et al.* in press). Because annual plants typically are more numerous than biennial plants, the total amount of seed produced by all successfully reproducing biennial plants in any given year is low in relation to the total amount of seed produced by all annual plants in the same year. Seeds produced in a given year may remain viable in the soil for up to 12 years (D. Quinney, Idaho Army National Guard (IDARNG), *in litt.* 2002; Meyer *et al.*, in press).

Meyer *et al.* (in press) concluded that *Lepidium papilliferum* cannot succeed with an annual life history strategy within its variable habitat without a persistent seed bank. The majority of *L. papilliferum* seeds that are contributed to the seed bank in any given year are produced by annual plants rather than biennial plants because the survival of biennial plants through the dry summer conditions is low (Meyer *et al.*, in press). Generally, seeds produced in a given year do not germinate that same year, and are dormant for at least a full year before any germination takes place. A constant proportion (approximately 6 percent) of seeds produced from a given preceding year germinate annually. Depending on the timing and amount of annual precipitation, these young plants may or may not survive to flower and produce seed (Meyer *et al.*, in press). Population modeling of stochastic (naturally and randomly occurring) events for *L. papilliferum* demonstrates the importance of years with above-average precipitation in restocking the seed bank. The model predicts that if yearly annual precipitation over a 100-year period meets or is below average precipitation levels, the population would not persist (Meyer *et al.*, unpublished manuscript). Two research projects that further examine *L. papilliferum* seed banks and slickspot soils are currently being pursued by IDARNG and Air Force (Meyer *et al. in litt.* 2002, Air Force 2002c).

Research on other species (as well as theoretical models) has shown that species exhibiting wide population fluctuations, such as *L. papilliferum*, are more at risk of extinction than those with stable populations (S. Novak, Boise State University, *in litt.* 2002). Such species that experience wide population fluctuations can be entirely lost due to the process of demographic stochasticity (chance events that lead to the loss of individuals) in years when their numbers are at low levels. Seed banks are adaptations for survival in a ''risky environment,'' as they buffer a species from stochastic impacts such as lack of soil moisture, which could result in no seed production for a population in a given year (Baskin and Baskin 2001). The *L. papilliferum* seed bank and seed viability of up to 12 years are examples of such adaptations (Meyer *et al.*, in press).

Habitat Features

Associated native species in the sagebrush-steppe habitat include *Artemisia tridentata* ssp. *wyomingensis* (Wyoming big sagebrush), *A. tridentata* ssp. *tridentata* (basin big sagebrush), *Agropyron spicatum* (bluebunch wheatgrass), *Stipa thurberiana* (Thurber's needlegrass), *Poa secunda* (Sandberg's bluegrass), and *Sitanion hystrix* (bottlebrush squirreltail). Nonnative species frequently associated with *L. papilliferum* include *Bromus tectorum* (cheatgrass), *Sisymbrium altissimum* (tumble mustard), *Ranunculus testiculatus* (bur buttercup), *Lepidium perfoliatum* (clasping pepperweed), *Agropyron cristatum* (crested wheatgrass), and *Kochia prostrata* (forage kochia) (Moseley 1994; Mancuso and Moseley 1998; Meyer *et al.*, in press).

Lepidium papilliferum is associated with small areas known as slickspots which are interspersed within the larger sagebrush-steppe habitat. Slickspots are also called mini-playas or natric sites (sites containing a subsurface horizon, characterized by a sharp increase in clay, columnar or prismatic structure, and high alkalinity). Slickspots are small, natural soil inclusions that exhibit unique physical characteristics in relation to the surrounding matrix of non-natric soils. These sparsely vegetated microsites are very distinct from the surrounding shrubland vegetation; slickspots are characterized by a near-surface distribution of soluble sodium salts, thin vesicular (small cavity) surface crusts, and shallow well-developed argillic (relating to clay mineral) horizons or layers (Fisher *et al.* 1996) that are impermeable when wet (A. Harkness, Natural Resource Conservation Service (NRCS), pers. comm. 2003).

Recent studies in 2002 and 2003 by the IDARNG and NRCS conducted at the Orchard Training Area in southwestern Idaho, have shown that slickspots are distinguishable from the surrounding soils by higher percent clay content below the first 0.8 in (2 cm) of soil. For example, at one site the percent of clay changed from 5.0 percent at 0 to 0.8 in (0 to 2 cm) (the first horizon) to 27.8 percent at 0.8 to 5.5 in (2 to 14 cm) (second horizon) (National Soil Survey Laboratory, *in litt.* 2003). The large shift in clay content is indicative of heavy soils, and the change from the first horizon to the second is an indication of the presence of a clay pan and a change in permeability (Harkness, pers. comm. 2003). All three horizons sampled also indicated a high level of sodium ranging from 10 to 31 percent. Soils with greater than 15 percent sodium are considered natric soils (Harkness, pers. comm. 2003). Soils in the surrounding environment had a clay content of 7.4 percent at a depth of 0 to 1.6 in (0 to 4 cm) in the first horizon, and a percent sodium of 2 (National Soil Survey Laboratory, *in litt.* 2003). In the winter, spring, and after thundershowers, slickspots often contain some surface water (Fisher *et al.* 1996; J. Klott, BLM, pers. comm. 2000). According to NRCS (unpublished report, 2001), the drainage class of slickspots is ''well-drained with frequent ponding in winter and early spring.'' Slickspots are further described in this soil survey as small, low areas that stay moist a few weeks longer than the surrounding soils. As the soil surface dries, the slickspot argillic soil layer contracts, creating cracks that

allow roots of plants such as *L. papilliferum* to extend deep into the underlying soil (A. Harkness, pers. comm. 2003). Compared to surrounding habitat areas, slickspots also have reduced levels of organic matter and nutrients, due to the lower biomass production (Fisher *et al.* 1996). The majority of slickspots range in size from less than 10 square feet (ft^2) (1 square meter (m^2)) to about 110 ft^2 (10 m^2) and occur within communities dominated by other plants. Some slickspot complexes may range up to 1,076 ft^2 (100 m^2) (Mancuso *et al.* 1998).

Rangewide, *Lepidium papilliferum* is associated with slickspots that cover a relatively small cumulative area within the larger sagebrush-steppe ecosystem. For example, it is estimated that only 1 to 4 percent of slickspots are occupied by above-ground *L. papilliferum* plants in the Inside Desert (an interior portion of the Bruneau Desert) area of southwest Idaho (Popovich 2002). A slickspot is considered to be occupied if above-ground *L. papilliferum* plants are observed during the year of survey. Slickspots that do not contain above-ground plants during surveys may contain viable seeds; therefore, several years of surveys may be necessary to determine if slickspots are occupied. *L. papilliferum* has occasionally been documented as occurring on disturbed soils such as those along graded roadsides or adjacent to animal burrows. These appear to be uncommon situations, and the vast majority of plants documented over 10 years of surveys and monitoring for this species are associated with slickspots. For example, in 2002, a complete census of an 11,070-acre (ac) (4,480-hectare (ha)) area recorded approximately 56,500 slickspots (Air Force, *in litt.* 2003), of which approximately 2,450 (about 4 percent) were occupied by *L. papilliferum* plants (Bashore, pers. comm. 2003). Of the approximately 11,300 *L. papilliferum* plants documented during the survey effort, only 11 plants were documented outside of slickspots (Air Force 2002a). Similarly, in 3 years of annual surveys, *L. papilliferum* was only detected within 4 slickspots in 2002 (63 plants), and within 2 slickspots in 2003 (36 plants) along the same 39 miles (62.7 kilometers) of road rights of way in the Inside Desert subsequent to widening and improvement of the road (CH2MHill 2003). No plants were observed during the 2001 survey effort. The restricted and scattered distribution of *L. papilliferum* is likely a product of (a) the limited availability of these extremely localized, specific slickspot soil conditions, (b) the fragmentation of the sagebrush-steppe ecosystem in southwestern Idaho from agricultural and urban development, and (c) the conversion to annual, nonnative grasslands.

Documented Occurrences

An ''occurrence'' or ''element occurrence'' as defined by the ICDC represents a specific geographical location containing a species (or some other ''element'') of conservation concern. It is the standard database record used throughout the Natural Heritage Program/Conservation Data Center network (ICDC 2002), of which ICDC is part (Mancuso and Moseley 1998). Occurrences of *Lepidium papilliferum* are comprised of one to many slickspot microsites documented to contain the plant. The area delineated by an occurrence contains slickspots known to be occupied by *L. papilliferum* interspersed within a matrix of unoccupied sagebrush-steppe habitat. Therefore, an occurrence includes slickspot habitat directly occupied by *L. papilliferum*, as well as part of the surrounding landscape not directly occupied. In many cases, this leads to only a small fraction of an occurrence area being directly occupied by *L. papilliferum*.

Occurrence boundaries are based on estimates delineating the extent of occupied *Lepidium papilliferum* habitat in an area. Occurrences may be depicted as a point (small occurrences comprised of only one or a few clustered occupied slickspots); a single polygon (occurrences comprised of occupied slickspots scattered over a more or less contiguous area); or of multiple polygons (occurrences comprised of two or more discrete areas having occupied slickspots). Occurrences range in size from less than 1 ac (0.40 ha) to 8,970 ac (3,630 ha) based on information provided by the ICDC (2003). The total estimated area of all extant occurrences as of February 2003 was approximately 20,500 ac (8,300 ha). Of this estimated total area, approximately 91 percent (18,655 ac (7,550 ha)) occurred on Federal land; 3 percent (615 ac (249 ha)) on private land; and 6 percent (1,230 ac (498 ha)) on State land.

The largest occurrence is located on the Air Force's Juniper Butte Training Range. In 1998, the Air Force acquired BLM land to establish the Juniper Butte ETR, under the Juniper Butte Range Withdrawal Act (PL 105–261), which provided for the withdrawal and management of this area by the Air Force for military activities (Air Force 2000). Juniper Butte ETR is approximately 12,000 ac (4,856 ha) in size, and the landscape is a mosaic of sagebrush-steppe and nonnative plant communities, some of which has been impacted by past wildfire and subsequent conversion from the native sagebrush-perennial grassland vegetation to nonnative perennial or annual grasslands (Air Force 2000). Slickspot habitat and *Lepidium papilliferum* plants have been observed scattered throughout the Juniper Butte ETR, and this single large occurrence constitutes 44 percent of the total known *L. papilliferum* occurrence area (ICDC 2003). Due to its expansive area and large numbers of plants, this occurrence has high conservation value for *L. papilliferum*. The value of this occurrence could be further enhanced through restoration of sagebrush-steppe habitat within the area. A very thorough field inventory within the Juniper Butte Training Range in 2002 found that of the 11,070 ac (4,480) surveyed, approximately 1 percent (109 ac (44.1 ha)) consisted of slickspot microsite habitat; however, only 4 percent of this slickspot habitat was occupied by *L. papilliferum* (Air Force 2002a). This makes the total amount of occupied slickspot habitat within this large occurrence approximately 4 ac (1.6 ha) at the time it was surveyed.

The ICDC database contains a total of 93 *Lepidium papilliferum* occurrences. Of this total, 75 are extant (exist), 5 are historical, and 13 are considered extirpated (ICDC 2003). Historical occurrences are those based on collections made between 1911 and 1974, but which have not been relocated in more recent years. In most cases, the collections have vague location information, making their relocation problematic. The historical category has an implied expectation that the occurrences may be relocated in the future. Occurrences are considered extirpated if the native vegetation has been converted to cropland or urban/commercial uses, or the habitat is so severely modified that it is no longer capable of supporting *L. papilliferum* (ICDC 2003). As of February 2003, and since publication of the proposed rule in (67 FR 46441; July 15, 2002), the number of extant occurrences has increased by 5 (from 70 to 75), as a result of recent field survey efforts. The five new *L. papilliferum* occurrences total approximately 50 ac (20 ha). New *L. papilliferum* occurrences have been discovered in the Inside Desert on BLM lands during survey efforts in 2003 (Vision Air Research 2003). The new *L. papilliferum* locations identified during the 2003 field season have not yet been incorporated into the ICDC database at

the time of publication of this rule, and so are not reflected in the discussion of *L. papilliferum* occurrences or area.

Forty-nine of the 75 extant occurrences (65 percent) are located completely on Federal land managed by the BLM or Air Force, and 6 occur completely on private land (8 percent). Three occurrences (4 percent) are located completely on either county or city lands. The 17 remaining occurrences (23 percent) encompass areas of multiple land ownership, representing a mixture of Federal, State, and/or private lands.

Ranking of Occurrence Quality

Sixty of the 75 extant occurrences of *Lepidium papilliferum* have been ranked by ICDC using 4 definitions, A through D, with A representing sites with the greatest number of above-ground plants, best quality habitat, and highest probability of long-term survivability (Moseley 1994). In general, the number of *L. papilliferum* individuals at each extant occurrence can range from 1 to greater than 10,000 (M. Mancuso, pers. comm. 2003a; ICDC 2003); however, the majority (42) of the 60 ranked extant occurrences contain less than 200 individuals. The total area of all ranked occurrences is approximately 20,131 ac (8,147 ha). The remaining 15 of the 75 extant occurrences are not yet ranked by ICDC due to a lack of information on habitat characteristics (S. Cooke, pers. comm. 2003). The total area of the unranked occurrences is approximately 366 ac (148 ha), with an average size of approximately 24 ac (10 ha) (ICDC 2003).

While we recognize the inherent limitations of this occurrence quality ranking methodology as not being quantitative and difficult to replicate, we believe it to represent the best available tool in which to examine and rank *Lepidium papilliferum* occurrences and habitat quality. As a result, we have used it as a tool in our analysis for this final determination.

''A''-ranked occurrences, as defined by ICDC, ''consist of those with large population numbers occurring in high-quality sagebrush-steppe communities. The occurrences also tend to be large in area, consisting of many slickspots spread over a contiguous area. 'A'-ranked populations generally consist of populations with greater than 1,000 above-ground individuals in sagebrush stands consisting mostly of native perennials; these sites generally have not burned and do not support exotic annuals'' (Moseley 1994). Of the 60 extant ranked occurrences, 7 (12 percent) are considered ''high-quality'' or ''A''-ranked. The 7 ''A''-ranked occurrences are estimated to encompass approximately 6,596 ac (2,669 ha), which is 33 percent of the total estimated acreage of all ranked occurrences. Approximately 4,430 ac (1,793 ha), or 67 percent, of this ''A''-ranked area is located within 2 occurrences on the IDARNG's Orchard Training Area (OTA) (ICDC 2003).

''B''-ranked occurrences, as defined by ICDC, range from ''about 400 to 2,000 individuals,'' however, the ''average'' occurrence of this rank consists of several hundred plants in good-to high-quality sites. ''B''-ranked occurrences can include sites containing 400 to 600 individual plants (low end of the range) occurring in high-quality habitat and/or thousands of individuals (high end of the range) that occur in fair-to low-quality sites (burned-over cheatgrass stands or crested wheatgrass seedings) (Moseley 1994). Nine (15 percent) of the 60 ranked extant occurrences are ''B''-ranked. The 9 ''B''-ranked occurrences total approximately 10,683 ac (4,323 ha), or 53 percent of the total area of all ranked occurrences. Approximately 8,970 ac (3,630 ha) of this 10,683 ac area is located within one large occurrence on the Air Force's Juniper Butte Training Range. This single large occurrence was assigned a ''B''-ranking (the proposed rule erroneously identified this as a ''C''-ranking) because much of the habitat within this occurrence has been degraded by wildfires and subsequent seedings of crested and intermediate wheatgrass prior to the land being withdrawn for Air Force management (Air Force 2002b; ICDC 2003). The average size of the ''B''-ranked occurrences is approximately 1,187 ac (480 ha).

''C''-ranked occurrences, as defined by ICDC, ''consist of as few as 25 to greater than 1,000 individuals.'' The ''average'' ''C''-ranked occurrence consists of 100 to 200 individuals in fair-to low-quality habitat. The occurrences with smaller numbers of above-ground plants occur in large tracts of high-quality habitat, while occurrences at the high end of the range of the numbers of above-ground plants are in severely disturbed habitats or those that are adjacent to recent developments and are not expected to remain viable (Moseley 1994). Of the 60 extant ranked occurrences, 21 (35 percent) are ''C''-ranked. The 21 ''C''-ranked occurrences total approximately 731 ac (296 ha), or 3 percent of the total area of all ranked occurrences. The average size of the 21 ''C''-ranked occurrences is approximately 35 ac (14 ha) (ICDC 2003).

''D''-ranked occurrences, as defined by ICDC, ''consist of generally less than 50 individuals (often less than 25) occurring as isolated populations in degraded habitats,'' and are not expected to remain viable (Moseley 1994). Eighteen (30 percent) of the 60 extant ranked occurrences are ''D''-ranked. The 18 ''D''-ranked occurrences total approximately 1,890 ac (765 ha), or 9 percent of the acreage of all ranked occurrences, with an average size of approximately 105 ac (43 ha). The average size of the ''D''-ranked occurrences is biased by a single 1,495-ac (605-ha) occurrence. The average size of the ''D''-ranked occurrences is reduced to approximately 23 ac (9 ha) if this single 1,495-ac (605-ha) occurrence is excluded from the calculation.

Five of the 60 extant ranked occurrences have been categorized by ICDC as intermediate between the 4 defined ranks. Four (7 percent) are identified as ''B/C''-ranked, and total approximately 208 ac (84 ha), or 1 percent of the area of all ranked occurrences. The 4 ''B/C''-ranked occurrences have an average size of approximately 52 ac (21 ha). The remaining ranked occurrence is identified as ''C/D''-ranked. The single ''C/D''-ranked occurrence totals approximately 23 ac (9 ha), and constitutes 1 percent of the area of all ranked occurrences (ICDC 2003). Given the definition of rankings by ICDC, approximately 27 percent of all ranked occurrences or approximately 86 percent of the estimated area of all ranked occurrences are ranked as A or B, populations considered to have a high to moderate probability of long-term survival.

Over the period from 1994 through the 2002 field season, 13 of the extant *Lepidium papilliferum* occurrences have decreased in quality. Because of the effects of habitat degradation and fragmentation, 1 declined to a ''B'' rank and 12 declined to a ''C'' or ''D'' rank (ICDC 2003). The total area of occurrences documented as declining in rank is approximately 3,278 ac (1,326 ha), 16 percent of the total area of all ranked occurrences. Decreases in rank as documented from evaluation of ICDC data reflect additional impacts to the habitat quality or habitat defensibility beyond those in the original ranking of the occurrence (ICDC 2003).

During the same period, 8 (10 percent of) documented *L. papilliferum* occurrences have increased in quality because of the acquisition of better information from subsequent surveys since their original 1994 ranking: four increased to an ''A'' rank, three

increased to a ''B'' rank, and one increased to a ''C'' rank (ICDC 2003). The total area of occurrences documented as increasing in rank is approximately 3,251 ac (1,316 ha), 16 percent of the total area of all ranked occurrences. Increases in rank as documented from evaluation of ICDC data are attributed to expansion of known occurrences (greater area documented as containing plants, or greater numbers of plants) due to increased survey effort and do not reflect an improvement in the habitat quality or defensibility (ICDC 2003).

Some disagreement as to the accuracy of some *L. papilliferum* locations, area extent, and rankings within the ICDC database has been raised. ICDC has indicated that review and update of the ICDC database for *L. papilliferum* is a priority for 2004 section 6 funding (ICDC, in. litt. 2003). In any event, the current ICDC database constitutes the best available scientific information on *L. papilliferum* location and occurrence quality.

Habitat Integrity Index Monitoring of Occurrences

To provide a consistent monitoring methodology for use by management agencies, the ICDC in 1997 initiated a collaborative effort that included participation by the IDARNG, BLM, Air Force, and the Service. The result of this effort was development of a habitat integrity index (HII) for use in assessing and monitoring occupied *Lepidium papilliferum* habitat in southwestern Idaho (Mancuso and Moseley 1998). Index methodology is commonly used in ecological monitoring, and the HII protocol has been used since 1998 by ICDC, BLM, Air Force, and IDARNG to collect data on slickspot microsites and surrounding habitats. Effective monitoring of an annual plant species with a long-lived seed bank is often difficult, so use of a monitoring method that focuses on habitat condition may be more successful than monitoring of the above-ground expression of the seed bank (Elzinga *et al.* 1998).

The HII data represents the best available site-specific data for the occurrences of *L. papilliferum*. The HII data has its limitations, including a relatively short survey period of 5-years, not all occurrences are sampled each year, and the qualitative or subjective nature of some of its determinations. HII provides valuable information about occurrences of *L. papilliferum* and its habitat, but it was not designed to be a scientifically rigorous methodology that lends itself to statistical analysis.

The abundance of above-ground plants may fluctuate significantly from year to year due to site-specific microclimate conditions, especially precipitation. HII was developed to assess the overall habitat condition that includes those attributes associated with the slickspot microsite and the sagebrush-steppe habitat, and to assess the prospects that an occurrence will persist over time, including factors affecting the viability and defensibility (degree of protection from human-caused impacts) of the occurrence (Mancuso 2001). This HII monitoring protocol consists of four components: (1) Sampling along a transect to acquire specific slickspot microsite and adjacent habitat information; (2) vegetation plot sampling; (3) photo points; and (4) an Occurrence Viability scorecard.

Monitoring of fixed transects using HII has taken place annually since 1998. A core set of 38 transects were monitored annually over the period 1998–2001 with some years including monitoring of transects beyond the core set of 38. HII results illustrate how the number of *Lepidium papilliferum* counted at any one site can fluctuate from year to year. For example, in 1998, approximately 16,000 *L. papilliferum* plants were counted along 45 transects situated within 40 occurrences monitored by Mancuso (2000). In 1999, only 3,060 *L. papilliferum* plants were counted along these same transects and 2 additional transects. Mancuso (2001) continued his monitoring of these transects in 2000, documenting approximately 7,100 *L. papilliferum* plants. In 2001, approximately 4,045 *L. papilliferum* plants were observed on 48 transects, including core set of 38 occurrences (Mancuso 2002). The core set of 38 occurrences monitored using HII represent 51 percent of the 75 extant occurrences and 94 percent (approximately 19,243 ac (7,787 ha)) of the total known area occupied by *L. papilliferum*. In 2002, approximately 372 *L. papilliferum* were counted along 27 transects situated within 21 occurrences, representing the lowest cumulative total recorded for this set of transects in 5 years (Mancuso 2003).

In summary, ICDC HII monitoring results from 1998 through 2001 revealed there has not been a dramatic, rapid, widespread decline in the condition of slickspot peppergrass habitat (Mancuso 2002). It also shows habitat improvement is limited to a few sites. The pattern the past four years has been a slow, but steady decline, affecting a few occurrences each year. For example, after the 2001 monitoring season conditions did not seem too much different or worse than the 2000 monitoring season (Mancuso 2002). HII monitoring results for the 2002 field season revealed no transects with an overall improving trend, two transects showed decline, and the remaining 15 transects were either stable or showed no clear upward or downward trend (Mancuso 2003).

Previous Federal Action

Federal Government actions for the plant began in 1990 when this species (as *Lepidium montanum* var. *papilliferum*) was designated as a category 2 candidate in the February 21, 1990 (55 FR 6184), Notice of Review. Category 2 candidates were those for which information in our possession indicated that proposing to list as endangered or threatened was possibly appropriate, but sufficient data to support proposed rules were not currently available. This taxon was retained as a category 2 candidate in the September 30, 1993 (58 FR 51144), Notice of Review. Upon publication of the February 28, 1996, Notice of Review (61 FR 7596), we ceased using candidate category designations. *Lepidium papilliferum* was not included as a candidate species in this notice. We reinstated the species as a candidate species, with a listing priority number of 2, in the October 25, 1999, Notice of Review (64 FR 57534). The species was again listed as a candidate in the October 30, 2001, Notice of Review (66 FR 54808).

On April 9, 2001, we received a petition dated April 4, 2001, from the Committee for Idaho's High Desert, the Western Watersheds Project, the Wilderness Society, and the Idaho Conservation League (Petitioners) requesting emergency listing of *Lepidium papilliferum* as threatened or endangered. The petition included information on threats to the species, including: competition with nonnative annual and perennial vegetation, incompatible livestock grazing practices, incompatible herbicide application, inbreeding depression, and fire rehabilitation. We responded to the Petitioners with a letter dated April 27, 2001, stating that the species was already identified as a candidate, and we do not publish petition findings separately on candidate species because we have already determined that their listing is warranted (Service, *in litt.* 2001). We also stated that our initial review of their petition did not indicate an emergency action was warranted.

On November 6, 2001, the Petitioners filed a complaint for our failure to emergency list *Lepidium papilliferum* as threatened or endangered, and our failure to proceed with a proposed rule to list *L. papilliferum* as endangered or threatened on a nonemergency basis

(*Committee for Idaho's High Desert and Western Watersheds Project* v. *Anne Badgley, et al.* (Case No. CV 01–1641–AS)). On April 2, 2002, based on a settlement agreement with the Petitioners, the U.S. District Court for the District of Oregon signed an order requiring us to submit for publication in the **Federal Register** a proposal to list the species by July 15, 2002, and a final determination by July 15, 2003.

On July 15, 2002, we published a proposed rule to list *Lepidium papilliferum* as an endangered species (67 FR 46441). The initial 60-day public comment period closed on September 13, 2002. Legal notices of the proposed rule were published in the Mountain Home News in Elmore County on July 17, 2002, The Idaho Statesman in Ada County on July 18, 2002, and The Owyhee Avalanche in Owyhee County on July 24, 2002. These published legal notices invited the public to comment and to attend a public hearing in Boise, Idaho, on August 28, 2002. On July 22, 2002, we received a congressional request to have additional public hearings. Following that request, we published additional notices of the proposed rule, comment period, and modified hearing schedule in The Owyhee Avalanche, the Independent-Enterprise in Payette County, and the Emmett Messenger-Index in Gem County on August 14, 2002. On August 29, 2002, we held a public hearing on the proposal in Grand View, Idaho. On September 25, 2002, we reopened the comment period for an additional 60 days to allow additional time for all interested parties to submit written comments on the proposal (67 FR 60206). The second comment period closed on November 25, 2002.

After review of public comments and additional information received during the second comment period, we determined there was substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the proposed listing rule, making it necessary to solicit and evaluate additional data to address this disagreement. On July 18, 2003, we published a finding (68 FR 42666) announcing a 6-month extension of the deadline for a final listing determination for *L. papilliferum*. In accordance with section 4(b)(6)(B)(i) of the Act, the 6-month extension of the deadline for our final determination on whether to list *L. papilliferum* was used to solicit and evaluate additional data to further address the sufficiency or accuracy of the available data. A third public comment period was opened for 30 days on July 18, 2003, and closed on August 18, 2003. During the 6-month extension period, we updated the best available scientific information on *L. papilliferum*, using information received during the two 60-day comment periods, and the subsequent 30-day comment period associated with the extension. We also employed additional techniques (*e.g.*, science panel review) for organizing the data for further analysis and evaluation of the status of the species and the risks it faces.

In addition to soliciting data and conducting further analysis to address the disagreement in the sufficiency and accuracy of the available data, we worked with the Air Force and IDARNG to update their Integrated Natural Resource Management Plans (INRMPs) and to further address the conservation needs of *L. papilliferum*. We reviewed and commented on the INRMPs and we also provided technical assistance on policy and science to several partner agencies and affected private individuals in their development of the Candidate Conservation Agreement for Slickspot Peppergrass (*Lepidium papilliferum*) (Idaho Office of Species Conservation 2003) (CCA). The CCA was developed between July and December 2003 by the Idaho Governor's Office of Species Conservation (OSC), the Idaho Department of Agriculture, the Idaho Department of Fish and Game, the Idaho Department of Lands, the IDARNG, the BLM, and several private property owners who hold grazing permits on BLM-managed and maintained lands, collectively referred to as Cooperating Parties. The purpose of the CCA is to join the BLM, State of Idaho, and IDARNG with nongovernmental cooperators to implement conservation measures for slickspot peppergrass. The goal of the CCA is to conserve the species and its habitat while protecting the long-term sustainability of predictable levels of land use in southern Idaho. We attended meetings and provided technical assistance and guidance in the development of the CCA.

On October 30, 2003, we published a notice announcing the availability of, and soliciting review and comment on the draft CCA and our document, ''Best Available Information on *Lepidium papilliferum*'' (68 FR 61821). Both documents contained information we planned to utilize in making a final listing determination for the species. This 14-day public comment period closed November 14, 2003. Comments received on both documents were received and taken into consideration in the development of this final determination. Further, comments received on the CCA were made available to the Idaho Governor's Office of Species Conservation (OSC) and their Cooperating Parties so that they could evaluate and incorporate them into the final CCA as appropriate.

Summary of Comments and Recommendations

Summary of Public Comments on Proposed Rule

Following the publication of the proposed rule on July 15, 2002 (67 FR 46441), we contacted and provided copies of the proposal to Federal, State, and local agencies, county governments, elected officials, scientific organizations, and other interested parties and asked that they comment. We requested comments and any additional data and information that might assist us in making a final decision on our proposal to list *Lepidium papilliferum*. During 120 nonconsecutive days of open comment periods in 2002, we received input from 39 commenters. Six commenters submitted duplicate comments, either by submitting a written comment and also testifying at a hearing, or by testifying at two separate hearings. Each of these duplicate comments was tallied only once. Of the 39 unique comments, 26 opposed the listing action, 9 were supportive, and 4 indicated no preference. Comments were received from Federal, State, and county agencies and government offices, industry and environmental organizations, researchers, and private citizens.

Another public comment period was opened for 30 days from July 18, 2003, to August 18, 2003, during the 6-month extension of the deadline for our final determination (68 FR 42666). Due to substantial disagreement among interested parties over the sufficiency or accuracy of our available data on *L. papilliferum*, we solicited comments on biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species; the location of any additional populations; additional information concerning the range, distribution, and population size of the species; and current or planned activities within the range of the species and the possible impacts on the species.

We prepared a summary document entitled, ''Primary Issues of Disagreement Regarding the Status and Threats to *Lepidium papilliferum*,'' and distributed it to 25 experts identified by the Service, BLM, Air Force, and OSC including the 12 peer reviewers discussed herein who were asked for comments on the proposed rule and made it available to the public on our website. The 25 experts were identified

upon our request to the State of Idaho, BLM, and Air Force and included the peer reviewers for the proposed rule of July 2002. The purpose of this document was to provide the public with information we had about the issues of scientific disagreement that were identified and to request that reviewers provide us with any additional data, information, and comments relevant to the issues, especially information pertaining to potential threats to the species and their relationship to the status, distribution, and likely survival of the species.

Peer Review

In accordance with our July 1, 1994, Interagency Cooperative Policy on Peer Review (59 FR 34270), we requested the expert opinions of 12 independent specialists regarding pertinent scientific or commercial data and assumptions relating to supportive biological and ecological information in the proposed rule. The purpose of such a review is to ensure that the listing decision is based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists.

The 12 reviewers we requested to review the proposed rule were selected on the basis of their expertise on *Lepidium papilliferum* natural history and ecology. We requested that they review the proposed rule and provide any relevant scientific data relating to taxonomy, distribution, population status, or the supporting biological and ecological data used in our analyses of the listing factors. Five of the 12 scientific reviewers provided us comments during the initial peer review process. All five provided information meant to correct, clarify, or support statements contained in the proposed rule. We have incorporated their comments into the final determination, as appropriate.

Some of the comments received during the public comment periods suggested that the proposed rule inappropriately extrapolated beyond the limited data available and thus drew unsupported, possibly erroneous conclusions about the effects of various environmental factors. Additionally, the Service accepted scientific review comments from the Air Force. The Air Force comments were a compilation of reviews conducted by five Ph.D. scientists and one research agronomist. The Air Force comments raised substantial concerns about the certainty of the information we had relied upon to propose the species as endangered. In addition, the Department of Defense filed an Information Quality Act petition challenging the Service's use and interpretation of available information used in the proposed rule. Information focusing specifically on *Lepidium papilliferum* is limited to surveys, unpublished reports, and a few publications in regional journals. Data are lacking from which to draw strong inferences about population trends across the entire range. On the other hand, a large body of scientific information documents the changing community ecology of the sagebrush steppe ecosystem, in which *L. papilliferum* is endemic. It is reasonable, therefore, to assess the risk of *L. papilliferum* extinction from the threat of these ecosystem changes. After reviewing all comments received we determined that it would be appropriate to reevaluate the level of risk faced by *L. papilliferum.* Thus, on July 18, 2003, we published a notice explaining that we would take six months, in accordance with section 4(b)(6)(B)(i) of the Act, to collect new information and reassess the status of the species.

At issue were the likelihood of *Lepidium papilliferum* becoming extinct and the process of assessing this extinction risk given the limited information available on the species. We decided to perform a risk analysis through structured solicitation of expert opinion as another resource to use in our final determination process. We convened a panel of six experts in plant community ecology, *L. papilliferum* ecology, plant population biology, range management and livestock behavior to participate to participate in this facilitated assessment of risk.

The experts participated only in a biological assessment of extinction risk. Following the biological panel, the Service held a session, attended exclusively by Service employees, to assess whether *Lepidium papilliferum* meets the definition of threatened or endangered under the Act. The Service's assessment used all available information on record including, but not limited to, the biological risk assessment which did not introduce any new information but rather focused on the major threat factors previously discussed in the proposed rule, and extinction risk for *L. papilliferum.*

During the risk assessment we asked each expert to analyze risk to *Lepidium papilliferum* under two hypothetical futures, one with continuation of status quo management and one with revised management as described in the INRMPs and conservation agreement. The panel participated in a series of facilitated exercises and discussions that addressed factors that affect *L. papilliferum* and the level of certainty of knowledge about the occurrence and biological consequences of these factors. At the conclusion of the analyses under the two hypothetical futures the experts described gaps in knowledge and other areas of uncertainty, which, if resolved, could influence the distribution or reduce variance in their estimates of extinction risk.

Finally, panelists discussed ongoing and hypothetical research programs that could resolve some of the uncertainty about what the future holds for *Lepidium papilliferum.* In some cases, rough experimental designs, costs, and times for completion were discussed and recorded.

In one exercise the panelists evaluated the various threat factors. Non-native annual grasses and the related effects of fire were, by far, the most important extinction factors. Other relatively high-ranking threats were livestock, drill-seeding and the forage species planted in fire rehabilitation, and vehicles. Other factors such as the herbicides used in fire rehabilitation, climate variables, and herbivory were less important. While there has been no previous attempt to rank these factors, the rankings more or less conform to the levels of emphasis placed on these factors in the proposed rule.

The expert's estimates of risk also conform to the Service's conclusion that, over the next few decades, the likelihood of extinction is more probable for *Lepidium papilliferum* without the proposed conservation measures.

Comments and Our Responses

We received 32 comments from Federal, State, and county agencies and government offices, industry and environmental organizations, researchers, and private citizens. These comments are summarized with the other public comments in the comments section. We assembled these comments and other new information we had received in a document entitled ''Best Available Information on *Lepidium pappilliferum.*'' A notice of availability for this document was published in the **Federal Register** on October 30, 2003. Comments received on this document have also been summarized with the other public comments and changes have been incorporated within this final determination.

This final determination reflects the comments and information we received during the three public comment periods on the proposed listing rule, and the one comment period on the ''Best Available Information on *Lepidium papilliferum*'' document. Since comments were solicited on two

different documents, they will be summarized separately. For all public comments received, substantive comments and new information were either incorporated into or addressed directly in the final determination, where appropriate, or have been addressed below. Comments are grouped together by issue below for the purpose of this summary, along with our response to each.

Comments on the Proposed Rule and ''Primary Issues of Disagreement Regarding the Status and Threats of *Lepidium Papilliferum*''

Issue 1: Several commenters, including the Idaho Transportation Department (ITD), were concerned that listing and designation of critical habitat for *Lepidium papilliferum* under the Act would threaten family ranching by restricting use of public and private lands, and could ultimately impact local economies. A few commenters inquired whether the economic impact of listing *Lepidium papilliferum* or its critical habitat had been analyzed. Several commenters, including the OSC, were concerned that the processes associated with listing species under the Act would impact efforts to conduct research and hinder management of the sagebrush-steppe ecosystem (*e.g.*, fire suppression, range management, and fire rehabilitation). Others opposed using the Act to acquire private property for conservation of the species.

Our Response: The listing of *Lepidium papilliferum* as an endangered or threatened species would result in regulatory protections for the plant on federally managed lands, but would not likely lead to greater or increased restrictions on privately owned property. For endangered plant species, section 9 of the Act provides prohibitions from activities that ''remove, cut, dig up, or damage or destroy any [endangered plant] species'' in knowing violation of any law or regulation of any state or in the course of any violation of a state criminal trespass law.'' Because our current action is to withdraw the proposal to list the species as endangered, these provisions of section 9 and concerns regarding economic and other impacts are not applicable. In any event, the Act prohibits us from considering economic impacts in listing determinations, so we have excluded economic consideration from this determination.

Issue 2: Several commenters stated that the management of *Lepidium papilliferum* on public lands is politically influenced, and the only alternative to ensure the conservation of the species is to list it under the Act. Additionally, several commenters, including the Air Force, Idaho Office of Attorney General (OAG), OSC, and ITD suggested that our listing process was not based on the best available scientific information, and that there is inadequate data to indicate that listing *L. papilliferum* is warranted. One commenter stated that our use of some references does not meet definition of transparency in our Information Quality Guidelines (44 U.S.C. 3502, 67 FR 8452; February 22, 2002) and, therefore, these references should not be used to justify listing of the species. Some commenters, including the OAG, believed that opportunities for public involvement in the listing process had been inadequate. Finally, some commenters asserted that the information gathered through the process associated with the Air Force appeal under the Data Quality Act should be made available to the public.

Our Response: The Act requires us to make listing decisions based solely on the best scientific and commercial information available at the time the decision is being made (section 4(b)(1)(A)). We thoroughly reviewed all available scientific and commercial data in preparing the proposed and final listing determination. We sought and reviewed historical and recent publications and unpublished reports concerning *Lepidium papilliferum* and sagebrush-steppe habitat of southwestern Idaho. We also convened a panel of scientific experts to review the scientific information available to us pertaining to *L. papilliferum*. Finally, we produced the document ''Best Available Information on *Lepidium papilliferum*'' and solicited public comment on additional scientific information pertaining to the species. We followed our Information Quality Guidelines in preparing this final determination.

Our evaluation of the significance of these numerous ongoing threats across the range of *L. papilliferum* is discussed in the ''Summary of Factors Affecting the Species'' section of this final determination. This analysis includes looking at the adequacy of existing regulatory mechanisms, including public land management practices. During the listing process, we provided three public comment periods that were open for a total of 150 nonconsecutive days, and also held two public hearings so that the public would have an adequate opportunity to provide us comments on our proposal to list the species.

We have received new information since the proposed rule specific to *Lepidium papilliferum*. This information ranged from additional ICDC survey data to slickspot soils information. While the body of available information specific to this species is limited, we have a legal obligation to make a final listing determination and we must act based on the best available information.

Issue 3: Some commenters, including ITD, said past survey efforts did not provide adequate population and range data to support a listing decision for *Lepidium papilliferum*, while others thought past survey efforts were adequate. Some commenters questioned the validity of the methodologies used for *L. papilliferum* surveys, and a few asserted that further research is needed before a listing determination can be made. One commenter indicated that ICDC data documents an 84 percent increase in *L. papilliferum* occurrences since 1994 in spite of alleged threats, weakening the case for listing the species. Comments, including those from the OSC, noted that a comprehensive inventory of *L. papilliferum* throughout its range has never been conducted; that there are significant amounts of potential habitat on private and State lands that have not been inventoried; and that there appears to be sampling bias in that most occurrences are near roads. Others commented that despite the numerous *L. papilliferum* surveys conducted throughout most of the species' range, and the discovery of a few new sites, the known range of *L. papilliferum* has not been expanded.

Our Response: As discussed in Issue 2 above, the Act requires us to make listing decisions based solely on the best scientific and commercial information available at the time the decision is being made (section 4(b)(1)(A)). We thoroughly reviewed all available scientific and commercial data in preparing the proposed rule and this final listing determination. We sought and reviewed historical and recent publications and unpublished reports concerning *Lepidium papilliferum* and sagebrush-steppe habitat of southwestern Idaho. We agree that undiscovered sites occupied by *Lepidium papilliferum* likely exist and there may be other areas where *L. papilliferum* and suitable habitat may occur. For example, inventories for *L. papilliferum* have not been completed on the majority of private lands within its range due to restricted access to these areas. We must base our status review for *L. papilliferum* not only on the plant's current known population status, but also the known condition of its habitat and on the current factors affecting the species, along with ongoing conservation efforts, as described in the

Summary of Factors Affecting the Species section of this final determination.

Increased survey efforts by ICDC and BLM since Moseley produced his 1994 status review have resulted in an increase in the number of known *Lepidium papilliferum* occurrences and total habitat acreage (Moseley 1994; ICDC 2003). A total of 36 occurrences with a cumulative area of 10,251 ac (4,148 ha) have been located between 1995 and present, essentially doubling the 1994 documented occupied area. However, these survey efforts did not result in an expansion of the currently known range of the species. Approximately 8,971 ac (3,630 ha) (87 percent) of this 10,251-ac (4,148–ha) increase in *L. papilliferum*-occupied habitat represent the location of a single large occurrence on the Air Force's Juniper Butte ETR. In addition, 24 of these 36 recently discovered occurrences (67 percent) are less than 20 ac (8 ha) in size, and only 3 of the 36 occurrences (8 percent) are greater than 100 ac (40 ha) in size.

Surveys for species such as *Lepidium papilliferum* are conducted according to agency survey methodologies for special interest species developed for inventories of large blocks of land. We have expanded and clarified the discussion of the monitoring survey protocol utilized by the ICDC in the Background section of this final determination. In addition, BLM conducts extensive site-specific botanical surveys for proposed management projects. While roads may have been used as part of the methodology for some *L. papilliferum* inventories, the use of roads in surveys is not a standard survey procedure in all situations. For example, Popovich (2002) surveyed over 52,300 ac (21,165 ha) of BLM land for *L. papilliferum* using linear 1-mi-long (1.6-km-long) transects located 0.25 mi (0.40 km) apart that were independent of the location of roads in the Inside Desert.

We agree that further research and continued surveys and monitoring will provide additional information to benefit management of this species. The CCA and the two INRMPs provide for this important future work to be accomplished. Although there is some disagreement as to the accuracy of some *L. papillliferum* locations and the current information regarding the total occupied range of *L. papilliferum* is incomplete, we believe we have sufficient information to support our determination not to list the species at this time.

Issue 4: Some commenters suggested that, rather than listing, that an alternative course of action be used for conservation of the species. Several commenters, including the OSC, thought Federal land management agencies are currently managing the land to conserve *Lepidium papilliferum* through regulatory and mitigation efforts to minimize significant impacts from management activities, while others questioned the adequacy of current land management practices to conserve the species. Suggestions, including those made by the OSC, for alternative courses of action included: (1) Development of a *L. papilliferum* conservation strategy by us in collaboration with other agencies and stakeholders in lieu of listing; (2) development of best management practices for *L. papilliferum*; and (3) delaying listing until additional research, inventories, and conservation efforts can be implemented. The OSC also questioned why we discontinued our participation in the development of a conservation agreement with IDARNG and BLM for *L. papilliferum* in 1997. During the third comment period, some commenters stated that a conservation agreement would allow agencies to gain further knowledge about *L. papilliferum,* while other commenters stated that a conservation agreement would not constitute an effective tool of conservation of the species.

Our Response: We strongly support utilizing a collaborative conservation effort to address the threats to species such that the need to list them is precluded. Prior to the July 18, 2003, 6-month extension, we worked with various agencies and individuals to assess the status of *Lepidium papilliferum*, and also to identify and implement conservation actions. Since February 2000, we have been an active participant in an interagency group of biologists and stakeholders to share data and coordinate conservation actions for *L. papilliferum*.

This species is already afforded some level of protection due to the fact that the majority of known *Lepidium papilliferum* occurrences are either completely or partially on Federal land managed primarily by the BLM and Air Force, and 91 percent of the total area of occupied *L. papilliferum* habitat is located on Federal land. While some Federal land management practices include measures that promote conservation of *L. papilliferum,* other management practices and activities may affect its persistence (*see* Summary of Factors Affecting the Species section).

We began working with IDARNG and BLM in 1996 and 1997 to develop a conservation strategy for *Lepidium papilliferum* on BLM lands, a portion of which is used by IDARNG for military training activities (OTA). We had to suspend our participation with respect to this agreement for the OTA in 1997 due to budget shortfalls and staff restructuring. A conservation agreement was drafted but never finalized. We have been working with BLM and IDARNG actively since 1997 to manage and conserve *L. papilliferum.* IDARNG, BLM, and the Service have been active members of the *L. papilliferum* interagency technical team, which has met 22 times between January 2000 and December 2003.

We believe the development of conservation agreements for *Lepidium papilliferum* that address threats and implement conservation actions for the species can provide significant and immediate benefits to the species, thus precluding the need to list. From July 2003 through December 2003, we provided technical assistance on policy and science issues in an advisory capacity to several partner agencies and affected private individuals in their development of the CCA for *L. papilliferum*. This CCA has research and adaptive management components that will improve our understanding of *L. papilliferum* ecology and conservation needs. We believe the implementation of the CCA and the Air Force and IDARNG INRMPs adequately conserves *L. papilliferum* and precludes the need to list the species.

Issue 5: A few commenters disagreed with our statement in the proposed rule that the designation of critical habitat could delay publication of the final determination listing the species if they were done concurrently. The commenters asserted that much of the analysis needed to draft a critical habitat proposal had already been completed. Several commenters even identified specific areas that should be included in a critical habitat designation. Additionally, commenters provided input on species' conservation criteria for consideration in the recovery planning and critical habitat processes.

Our Response: Critical habitat is no longer an issue, because we are withdrawing the proposed rule to list *Lepidium papilliferum*.

Issue 6: Many commenters, including OSC, thought that wildfire constitutes the greatest threat to *Lepidium papilliferum* and its habitat, and some indicated that the proposed rule did not adequately address the negative effects of fire on the species and its habitat. Some also believed that wildfire impacts are more severe where grazing is not utilized to remove excess fuel loads, thus resulting in more severe fires. One commenter stated that current

research does not support historical and current fire frequencies. Other commenters, including OSC, were concerned that listing *L. papilliferum* would limit flexibility to manage nonnative annuals, fuel loads, and fire-suppression activities. Some commenters stated that research data suggest fire does not decrease, and may in fact enhance, *L. papilliferum* density and cover. Some commenters asserted that the conversion of native shrub-steppe to nonnative annual plants increases fire frequency and intensity, resulting in negative impacts to slickspot habitats and *L. papilliferum*.

Our Response: The proposed rule and this determination of withdrawal state that wildfire is a factor affecting all known *Lepidium papilliferum* occurrences throughout the species' range. However, we have expanded and reorganized the final determination to clarify the significance of threats, including wildfire, to *L. papilliferum*. Current research indicates fire frequency in the sagebrush-steppe ecosystem throughout the range of *L. papilliferum* has increased from a historic average interval of 60 to 110 years to less than 5 years at many sites, due to the invasion of nonnative annuals such as cheatgrass (Whisenant 1990). See Summary of Factors Affecting the Species section for a more complete discussion.

Issue 7: A number of comments, including those from OSC, focused on wildfire rehabilitation activities and their impacts to *Lepidium papilliferum* and its habitat, including mitigation efforts that can be taken to reduce the risk of irreversible alteration of slickspots from reseeding actions such as drill seeding. Some commenters, including OSC, asserted that the potential impacts to *L. papilliferum* associated with the use of nonnative perennials in fire rehabilitation activities should be balanced with potential impacts to *L. papilliferum* associated with invasion of nonnative annuals following wildfire. One commenter questioned the conclusion in the proposed rule that the use of the herbicide Oust (sulfometuron methyl) is a threat to *L. papilliferum* in light of Scholten (2000). Another commenter asserted that the presence of nonnative perennial forage species does not impact *L. papilliferum* because these species do not grow well on slickspots, and the real impact to *L. papilliferum* is associated with disturbance from drill seeding.

Our Response: Use of nonnative forage grass species (such as crested wheatgrass and Russian wildrye (*Elymus junceus*)) can result in successful establishment of perennial plants, ultimately reducing and diminishing the impacts of cheatgrass and its attendant accelerated fire frequency. As clarified in this final determination, we agree that use of nonnative species that closely mimic the biology and ecological function of species native to the area may be a necessary first step in restoration of a site following wildfire if native seed cannot be used due to limited availability or prohibitive cost.

Fourteen (19 percent) of the known *Lepidium papilliferum* occurrences are located within wildfire rehabilitation projects and crested wheatgrass seedings. As stated in both the proposed and this final determination, although some *L. papilliferum* may temporarily persist in spite of these restoration seedings, most occurrences support lower numbers of plants, and data are not available to determine long-term persistence (Mancuso and Moseley 1998).

Herbicides such as Oust are one of a number of tools available for the control of nonnative invasive plants. Scholten (2000) reports that, while Oust did not impact germination of seeds within the seed bank in the year following application, it reduced input into the seed bank by reducing *Lepidium papilliferum* plant density and seed production in the year of application. In addition, Scholten *et al.* (2002) conclude that the results of their study show evidence that Oust and drill seeding may have some long-term effects on *L. papilliferum* plants, although the cause of the effect is not known, and the extent seems to be minimal and highly tied to climatic conditions. Currently, BLM has a moratorium on the use of Oust on all BLM-managed lands, and it has not been used in *L. papilliferum* habitat since the spring of 2001 (BLM, *in litt.* 2002b). The BLM, Air Force, and IDARNG avoid herbicide spraying for noxious weed control near occupied *L. papilliferum* habitat (BLM, in. litt. 2003; Air Force 2003; IDARNG 2003). Additionally, BLM policy requires that areas affected by wildfire are rested from land use activities to meet rehabilitation management objectives (CCA 2003).

Some occupied slickspots have been permanently impacted following drill-seedings, but it is often not clear whether fire, seeding, or the combination of the two disturbances caused the disappearance of the species or the slickspot. *See* a more complete discussion on the effects of the herbicide Oust and the effects of drill seeding in the Summary of Factors Affecting the Species section.

Issue 8: Some commenters, including OSC, thought the discussion of cattle grazing in the proposed rule was not based on research demonstrating the positive and negative effects of cattle grazing, and suggested there is need for additional research to determine the effects of livestock management practices on *Lepidium papilliferum*. The commenters thought the proposed rule overemphasized the livestock grazing threats to *L. papilliferum* relative to other threats. One commenter indicated that some disturbance of the soil surface by livestock hoof action is actually beneficial in covering seeds with soil and breaking the crust so seedlings can emerge. Another stated that grazing reduction or elimination may actually have an adverse impact on *L. papilliferum* by increasing vegetation biomass, and subsequently increasing the spread and intensity of wildfires. Some commenters stated that livestock management activities encourage the invasion of nonnative annuals that has led to increased fuel loads and fires and further decreases in native bunchgrasses. Other commenters said livestock grazing could be used as a tool to control invasion of nonnative annuals.

Our Response: Grazing currently occurs at 56 (75 percent) of the 75 known *Lepidium papilliferum* occurrences, which include approximately 19,373 ac (7,840 ha) (96 percent) of the total area of extant occurrences (20,500 ac (8,300 ha)). We identified cattle grazing as a threat because it may result in trampling of plants in slickspots, especially when it occurs during wet periods when slickspots are most vulnerable to disturbance, or when it occurs at levels that allow for the spread of invasive nonnative annual plants. We have no information that indicates that disturbance of the soil surface by livestock hoof action is beneficial to *L. papilliferum*. Livestock grazing, at an appropriate level and season, may be compatible with the conservation of *L. papilliferum*. However, such appropriate levels are not known at this time and the effects of direct impacts must be determined by more study. In addition, as part of the CCA, BLM has agreed to change the terms and conditions of all grazing permits to reflect and include the conservation measures for each management unit. See the Summary of Factors Affecting the Species section for more detailed information.

Limited data are currently available regarding threshold management levels from livestock management activities for *Lepidium papilliferum*. We have found

it difficult to establish impact (or effect) thresholds with any degree of certainty given the lack of data. Adaptive management techniques in areas occupied by L. papilliferum could incorporate new information from ongoing and proposed livestock grazing studies and monitoring conservation efforts for the species. We anticipate that additional information regarding *L. papilliferum* and livestock grazing, such as research currently underway by the Idaho Department of Agriculture, Air Force, and Idaho Cattle Association, will be available for use in species conservation.

Issue 9: Some commenters, including the OSC, stated that the status of *Lepidium papilliferum* was a symptom of the current ecological condition of the sagebrush-steppe ecosystem, and others do not think that there is likely a connection. OSC believed that we need to consider the broader implications to other sagebrush-steppe obligate species by listing *L. papilliferum* at this time. Some commenters, including OSC, stated that habitat fragmentation of the sagebrush-steppe ecosystem negatively impacts *L. papilliferum*, while others indicated that there are no data to suggest that habitat fragmentation impacts it.

Our Response: Lepidium papilliferum is one of several species found only in sagebrush-steppe ecosystem that are affected by habitat loss and degradation. The fragmentation and degradation of the sagebrush-steppe habitat has been well documented (Yensen 1980; Billings 1990; Whisenant 1990; Moseley 1994; Miller *et al.* 1999; Noss *et al.* 1995; Mancuso 2002). There is a general lack of information about the effects of habitat fragmentation on *L. papilliferum*. See the Summary of Factors Affecting the Species section for more detailed information.

Issue 10: Some commenters indicated that training activities, facilities, and land management practices on military managed lands impact *Lepidium papilliferum*. Other commenters stated that there are no data to indicate that military training significantly impacts *L. papilliferum*. IDARNG suggested that listing of *L. papilliferum* as a threatened species could be detrimental to future military training activities, including ground and aerial training maneuvers. One commenter indicated that military training activities could be conducted in a manner that would not significantly impact recovery of *L. papilliferum*. The ITD indicated that it was unknown if the impacts of listing *L. papilliferum* would be compatible with national defense and/or Homeland Security.

Our Response: Some military training activities have been identified as potential factors affecting *Lepidium papilliferum* and its habitat. Occurrences of *L. papilliferum* are located within the boundaries of lands designated for military training activities by the Air Force and IDARNG. *L. papilliferum* located on the Air Force's Juniper Butte ETR are considered to encompass one large occurrence as defined by ICDC. This occurrence constitutes 44 percent (approximately 8,970 ac (3,630 ha)) of the total known extant occurrence area across the range of the species according to ICDC data, with approximately 109 ac (44.1 ha) of this area slickspot microsite type habitat and only 4 ac (1.6 ha) of occupied habitat. However, the Air Force intends to use only 300 ac (121 ha) or 3.3 percent of the entire Juniper Butte ETR as the actual bombing impact area (Air Force 2000). This 300-ac (121-ha) area contains only 1.5 percent of the 20,500-ac (8,300-ha) total known occupied *L. papilliferum* habitat. It is also anticipated that a small amount of ordnance will be dropped outside the primary ordnance impact area, but the potential impact to *L. papilliferum* would likely be minimal. As a result, the threats to *L. papilliferum* by Air Force training activities are expected to be minimal (see Factor A in ''Summary of Factors Affecting the Species'' section for further discussion on military activities).

On the OTA, IDARNG has implemented a variety of actions to meet the conservation needs of *Lepidium papilliferum* over the past 12 years, while still providing for military training activities. These actions include intensive fire suppression efforts, and restricting ground operated military training to where the plants are not found. We believe it is possible to conduct military training activities in a manner compatible with the conservation of *L. papilliferum,* and we do not anticipate significant impediments to the Air Force and IDARNG in conducting ongoing military training activities in southwest Idaho as a result of implementing conservation measures for this species.

As we believe that the majority of potential military impacts to *Lepidium papilliferum* have been reduced through avoidance or mitigation as described in the Air Force and IDARNG INRMPs, we believe that potential impacts of conserving this species to Homeland Security would also be minimal.

Issue 11: Miscellaneous threats to *Lepidium papilliferum* were discussed by some commenters, such as impacts from off-road vehicle (ORV) use in *L. papilliferum* habitats, and potential impacts of insects and wildlife. One commenter questioned whether the large infestation of Mormon crickets (*Anabrus simplex*) over the last two years might have impacted *L. papilliferum* through vegetative depredation. Another commenter stated there are no data to support the statement that herbivory by beetles is a threat to the species. Several commenters, including OSC, stated that drought should be considered as a threat to *Lepidium papilliferum* within the rule. One commenter stated that the increase of nonnative plants in the sagebrush-steppe ecosystem is likely impacting the abundance of insect pollinators of *L. papilliferum.*

Our Response: We have discussed ORV use and potential impacts of insects and wildlife in the Summary of Factors Affecting the Species section.

Also, we are unaware of any specific studies documenting foraging on *Lepidium papilliferum* by Mormon crickets, although, as indicated in our proposed rule, herbivory by beetles has been observed on *L. papilliferum* plants (M. Mancuso, *in litt.* 1998).

Regarding drought, there was no specific information pertaining to potential drought effects to *L. papilliferum*. We have added a discussion of the insect pollinators of *L. papilliferum* and potential impacts to them from conversion of sagebrush-steppe habitats to nonnative annual grasslands.

Issue 12: Some commenters, including ITD, stated that the taxonomic status for *Lepidium papilliferum* is problematic and warrants further evaluation, while others asserted that *L. papilliferum* is a distinct species.

Our Response: As discussed in our proposed rule, *Lepidium papilliferum* was originally described as *L. montanum* var. *papilliferum* but was included as a distinct species in a recent review of the mustard family (Brassicaceae) by Rollins (1993). An independent review by Lichvar of the taxonomic status of *Lepidium papilliferum* as presented in Rollins (1993) stated that *L. papilliferum* ''has distinct morphological features that warrant species recognition,'' and, ''until a final taxonomic determination is done in the future, Dr. Rollins'' decision to place it at the species level makes sense for now (*in litt.* 2002)''. Please refer to the Background section of this rule for more detailed information and clarification as to the taxonomic status of this species.

Issue 13: One commenter stated that we do not have the authority to protect *Lepidium papilliferum* under the Act

because the species occurs in only one State and is not an article of interstate commerce.

Our Response: Federal courts have repeatedly held that the Federal government has the authority under the Commerce Clause of the U.S. Constitution to protect species that are endemic to one State, and that are not articles of interstate commerce. See *Rancho Viejo, LLC* v. *Norton,* 323 F.3d 1062 (D.C. Cir. 2003); *National Association of Home Builders* v. *Babbitt,* 130 F.3d 1041 (D.C. Cir 1997). The Federal government also has the authority under the Property Clause of the Constitution to protect this species. *Lepidium papilliferum* occurs primarily on Federal lands. If this species were to become extinct, the diversity of plant life on these Federal lands would be diminished. The courts have long recognized Federal authority under the Property Clause to protect Federal Resources in such circumstances. See *Kleppe* v. *New Mexico,* 429 U.S. 873 (1976); *United States* v. *Alford,* 274 U.S. 264 (1927); *Camfield* v. *United States,* 167 U.S. 518 (1897); *United States* v. *Lindsey,* 595 F.2d 5 (9th Cir. 1979). This is no longer an issue as we are withdrawing the proposed rule to list *L. papilliferum.*

Comments on the ''Best Available Information on *Lepidium papilliferum*'' and the Draft Candidate Conservation Agreement for Slickspot Peppergrass (*Lepidium papilliferum*).

On October 30, 2003, we published a notice of document availability for review and public comment, which opened a 14-day public comment period through November 14, 2003 (68 FR 61821). We solicited public comment on our document ''Best Available Information on *Lepidium papilliferum*,'' which contained information we planned to utilize in making a final listing determination for the species. We also accepted public comments on a document entitled ''Draft Candidate Conservation Agreement for the Slickspot Peppergrass (*Lepidium papilliferum*)'' (Idaho Office of Species Conservation, *in litt.* 2003). We received 18 comments, many of them from parties that had previously commented on *L. papilliferum*. Of the 18 comment letters, 4 commented on the ''Best Available Information of *Lepidium papilliferum*,'' 8 commented on the CCA, and 6 commented on both documents. Since our role in development of the CCA was only advisory to the Cooperating Parties of the CCA, we collected the comments for these parties as a courtesy and provided the comments to them at the close of the comment period. The Cooperating Parties of the CCA reviewed, analyzed, and incorporated the public comments into the CCA as they deemed appropriate.

Issue 1: One commenter provided us with additional scientific information regarding the chemical characterization of the upper three soil horizons of representative slickspots.

Our Response: We have incorporated the additional information into the description of slickspots in the Background section of the final determination.

Issue 2: One commenter suggested revision of the data representing element occurrence acreages on the Air Force's Juniper Butte ETR. Specifically, that the Service should revise the element occurrence size for the ETR to 1,098 ac (445 ha) instead of the 8,970 ac (3630 ha).

Our Response: We have incorporated information regarding the question of occurrence area and delineations into the Background section of this final determination. We have requested that the ICDC review and update the ICDC in 2004 including an evaluation and possible revision to the extent of acreage and number of element occurrences on the Juniper Butte ETR.

Issue 3: Some additional miscellaneous threats to *Lepidium papilliferum* were discussed by some commenters, such as the impacts of Mormon crickets and grasshoppers. We also received suggestions for management of insects to provide conservation benefits to *L. papilliferum.* Pursuant to CCA 2003, Conservation Measure 34, ''the BLM in cooperation with the U.S. Department of Agriculture (USDA) Plant Protection and Quarantine (PPQ) will aggressively work to minimize the risk of insect (*i.e.*, Mormon crickets and grasshoppers) herbivory when outbreaks occur that may threaten existing element occurrences.''

Our Response: The issue of the threat from Mormon crickets has been raised in previous comment periods, and is addressed under Issue 11 above. We are unaware of any specific studies documenting foraging on *Lepidium papilliferum* by grasshoppers, although, as indicated in our proposed rule, herbivory by beetles has been observed on *L. papilliferum* plants (M. Mancuso, *in litt.* 1998).

Suggestions of possible measures to eliminate harmful insects, as well as measures to increase potential pollinators for *L. papilliferum*, were shared with cooperators developing the Candidate Conservation Agreement.

Issue 4: Some commenters questioned several aspects of our discussion of impacts to slickspots, including grazing impacts, such as hoofprint penetration of slickspots, and deposition of soils into slickspots.

Our Response: Much of the issues related to grazing activities are addressed in our responses to Issues 7 and 8 above. We have updated our discussion of the chemical and physical characteristics of slickspots (see also Issue 1 under the ''Best Available Information on Lepidium papilliferum'' section) in the Background section. We have included a discussion of soil erosion and deposition resulting from wildfire and livestock grazing in Summary of Factors Affecting the Species Factor A of this final determination.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal list of endangered and threatened species. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. The following analysis examines the listing factors, their application to *Lepidium papilliferum*, and evaluates conservation measures that act to reduce present and future threats to the species. The Service's Policy for Evaluation of Conservation Efforts When Making Listing Determinations (68 FR 15100; March 28, 2003) (PECE) identifies criteria we will use in determining whether formalized conservation efforts that have yet to be implemented contribute to making listing a species as threatened or endangered unnecessary. The PECE policy applies to several of the conservation agreements that we have considered in this analysis.

A Candidate Conservation Agreement was completed in December 2003, by the BLM, the State of Idaho, IDARNG, and holders of BLM livestock permits. In conjunction with the CCA, several private landowners entered into Memorandum of Understandings (MOUs) with the State of Idaho committing to conservation efforts on approximately 17,000 acres of private land. The IDARNG has operated the Orchard Training Range (OTA) under their INRMP for several years and has committed under the conservation agreement to additional conservation actions. The Air Force has recently updated their INRMP to strengthen conservation measures for the species. These conservation plans have

contributed to reducing the overall threats to the species. The five factor analysis below will examine that contribution, and following that analysis is the application of the PECE policy to this listing determination.

A. *The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range.* Several categories of activities have potential to affect the sagebrush-steppe ecosystem and slickspot microsite habitat to which *Lepidium papilliferum* is an obligate species, including increased frequency and intensity of wildfires; wildfire management; wildfire rehabilitation; habitat invasion by nonnative plant species; cattle and sheep grazing activities that are incompatible with *L. papilliferum* conservation; residential and agricultural development; ORV use; gravel mining; and certain military training activities (Moseley 1994; Mancuso and Moseley 1998; Interagency *L. papilliferum* Group (ILPG), *in litt.* 1999).

This section of the rule presents information for each of the factors affecting *L. papilliferum* and its habitat, followed by a summary of how formalized conservation efforts eliminate or reduce adverse effects.

Wildfire

The proposed rule stated that '' * * wildfire is a threat to all known Lepidium papilliferum* occurrences throughout its range'' (67 FR 46441) and may represent one of the principal factors affecting the species and the sagebrush-steppe ecosystem. The effects of wildfire can be both locally severe and long term. Data on the specific direct effects to *L. papilliferum* are often difficult to interpret due to the lack of sufficient long-term monitoring data, although there have been numerous studies and reports related to the effect of wildfire on the sagebrush-steppe ecosystem.

Wildfire effects on *Lepidium papilliferum* encompass several categories below, most of which are interrelated and difficult to isolate from each other. For example, the invasion of nonnative annual grasses increases the amount and continuity of fine fuels across the landscape, which in turn increases the likelihood of frequent and intense fires within the range of *Lepidium papilliferum.*

Wildfire Frequency, Intensity, and Management

Historically, fires in sagebrush-steppe communities occurred infrequently, tended to burn small areas, and required hotter, drier conditions to burn (Whisenant 1990; Billings 1990). Although wildfire may have been an important factor in sagebrush-steppe habitat (Miller *et al.* 1999) where *Lepidium papilliferum* evolved, activities following European settlement have greatly altered the historical native vegetation and associated fire regimes in the sagebrush-steppe ecosystem (Brandt and Rickard 1994; D'Antonio and Vitousek 1992; Miller *et al.* 1999; Moseley 1994; Whisenant 1990; Wright and Bailey 1982; Young *et al.* 1976; Young and Evans 1978). Due to the invasion of nonnative plant species such as cheatgrass and medusahead that increase the amount and continuity of fine fuels across the landscape, the fire frequency has been increased from between 60 to 110 years to less than 5 years in many sites of the sagebrush steppe ecosystem (Whisenant 1990; Wright and Bailey 1982; West and Young 2000; Billings 1990; USGS, *in litt.* 1999). These uncharacteristic fires tend to be larger and burn more uniformly, resulting in fewer patches of remnant unburned vegetation than naturally occurred, which also impacts post-fire recovery of native sagebrush-steppe vegetation (Whisenant 1990). The result of this altered fire regime has been the conversion of vast areas of the former sagebrush-steppe ecosystem into nonnative annual grasslands (USGS, *in litt.* 1999).

Frequent fires can also promote soil erosion (Bunting *et al.* 2003; K. Sanders, University of Idaho, *in litt.* 2000) in arid environments such as the sagebrush-steppe ecosystem. Increased sedimentation due to soil erosion into slickspots from surrounding areas after a fire may allow weedy species to invade slickspots (DeBolt 1999, as cited in Air Force 2000). Approximately 43 percent of the area within the known range of *L. papilliferum* is located within a wildfire mosaic that burned at least once between 1957 and 2002 (BLM 2003). Presently, 58 (77 percent) of the 75 known *L. papilliferum* occurrences are documented as being wholly or partially burned (ICDC 2003).

Wildfire Management

Ground disturbance associated with fire control, such as establishment of fire lines (areas with vegetation removed to bare soil to break fuel continuity), establishment of fire camps and staging areas, and use of fire suppression vehicles can also impact existing *Lepidium papilliferum* occurrences and damage slickspot habitat (ILPG, *in litt.* 1999; BLM, *in litt.* 2001). The practice of ''green-stripping'' or converting native sagebrush-steppe habitat to nonnative plant species that are considered more fire resistant also has occurred (Moseley 1994). ''Green-stripping'' using noninvasive plant species that are fire resistant may limit the overall potential for adverse effects of wildfire on *L. papilliferum* habitat (BLM, *in litt.* 2002b), although implementing ''green-stripping'' in an inappropriate location and/or using an invasive plant species can adversely affect *L. papilliferum.*

Good fire management practices can reduce the threat of fire and result in improved conservation status for the *Lepidium papilliferum.* The military has a number of current, ongoing efforts to address fire suppression. Since the late 1980s, the policies of the Army National Guard included immediate fire suppression during military activities to prevent damage to intact sagebrush steppe and *Lepidium papilliferum* sites within the Orchard Training Area (IDARNG 2003). Seven occurrences of *L. papilliferum* occur within this area. These occurrences include two of the A-ranked occurrences, one of which is the largest (2,500 acres) A-ranked occurrence (ICDC 2003). Since 2002, the Air Force has also instituted a high-level rapid response for fire suppression on the Juniper Butte ETR (Air Force 2004). The Air Force also addresses fire prevention through reducing standing fuels and weeds, planting fire-resistant vegetation in areas with a higher potential for ignition sources, such as areas along roads, and using fire indices to determine when to restrict activities when fire hazard rating is extreme (Air Force 2004). The BLM and IDARNG are continuing their mutual support agreement for wildfire suppression in the Snake River Birds of Prey National Conservation Area (IDARNG 2003).

Wildfire Rehabilitation

In the proposed rule, we stated that post-fire range restoration efforts can also threaten *Lepidium papilliferum* (67 FR 46441). Drill seeding is the process of seeding an area using a rangeland drill that plants and covers seed simultaneously in furrows. It is designed to give the seeds moisture and temperature advantages that will enhance their competitive fitness, and consequently, their success rate (Scholten and Bunting 2001). Drill-seeding may have less severe impacts on slickspot habitat than disking the soil, but the success of fire rehabilitation efforts at maintaining slickspots and *L. papilliferum* varies considerably. Some occupied slickspots have been negatively impacted following drill-seedings, but it is often not clear whether fire, drill-seeding, or the combination of the two disturbances

caused the disappearance of the species or the slickspot. Agency resource specialists have observed that in some cases slickspots can reform following a disturbance such as a drill seeding event (Moseley 1994; A. Martin, Air Force, pers. comm. 2003). It is unknown whether a reformed slickspot would maintain the structural soil characteristics necessary to support *L. papilliferum* (A. Harkness, pers. comm. 2003), or whether the *L. papilliferum* seed bank would remain viable until such time that a slickspot reforms (Air Force 2000). Preliminary results after 5 years of an ongoing 6-year study examining the effects of drill seeding on *Lepidium papilliferum* indicate that the density of above-ground *L. papilliferum* plants was lower on drilled slickspots than on non-drilled sites (Scholten and Bunting 2001; Scholten *et al.* 2002), although effects of drill-seeding on the *L. papilliferum* seed bank were not examined in this study.

The benefits of post-fire revegetation, and subsequent recovery of soil surfaces conducive to germination and establishment of perennial grass and shrub communities, may outweigh the initial short-term disturbance associated with drill seeding (Hilty *et al.* 2003; Young and Allen 1996; Bunting *et al.* 2003). In 2001, the BLM modified its rangeland drills used in fire rehabilitation to reduce the seeding depths so the drills would be less damaging to above-ground *L. papilliferum* plants, the seed bank, and slickspot habitat. Establishment of seeded grasses, forbs, and shrubs following drill seeding conducted in 2001 using depth bands was observed to be at acceptable levels during a BLM field review in September 2002 (B. Heslin, Service, pers. comm. 2002).

Conservation measure 08 of the CCA commits BLM to use seeding techniques that minimize soil disturbance such as no-till drills and rangeland drills equipped with depth bands when rehabilitation and restoration projects have the potential to impact occupied and suitable habitat. Rehabilitation and restoration standard operating procedures for *Lepidium papilliferum* were issued in an Instruction Memorandum in January 2004.

Since 1987, the Army National Guard has had policies in place for fire rehabilitation activities that avoid the use of drill seeding and require the use of native plant species for reseeding fire-impacted areas on the OTA (IDARNG 2003). Both the BLM and Air Force have ''slickspot-friendly'' rehabilitation measures in place, for example, forage kochia are not to be used for revegetation in *L. papilliferum* habitat.

Nonnative Perennial Plants

Activities associated with seeding burned areas with highly competitive nonnative perennial plants, including crested wheatgrass, have resulted in the destruction of at least two *Lepidium papilliferum* sites (Moseley 1994; A. DeBolt, *in litt.* 2002). Crested wheatgrass, a forage species, is a strong competitor and its seedlings are better than some native species at acquiring moisture at low temperatures (Lesica and DeLuca 1998, Pyke and Archer 1991; Marlette and Anderson 1986; Bunting *et al.* 2003).

Although the use of native plant species for fire rehabilitation is preferable, there have been problems with the availability and high cost of native seed (Jirik 1999; Brooks and Pyke 2001). One alternative may be to focus revegetation programs on establishing functional groups of nonnative plant species that maintain ecosystem processes (Jones 1999; Masters and Sheley 2001).

Intermediate wheatgrass (*Agropyron intermedium*) and forage kochia are two additional nonnative perennial species that have been used to rehabilitate sagebrush-steppe habitat after a fire event (Moseley 1994; Mancuso 2002; Popovich 2002). Post-fire monitoring over a 6-year period following aerial seeding with forage kochia in one study area showed eventual loss of *L. papilliferum* along the monitoring transect and a dramatic increase in forage kochia (A. DeBolt, *in litt.* 2002), indicating that forage kochia may be a strong competitor with *L. papilliferum* (Meyer *et al.*, in press). Under current policies, the BLM no longer uses forage kochia as a fire rehabilitation species in *L. papilliferum* habitat (BLM *in litt.* 2002b). Additionally, in the future, the BLM will emphasize the use of native plants, including forbs, in seed mixes and avoid the use of invasive nonnative species (CCA *in litt.* 2003). BLM issued in January 2004, an Instruction Memorandum to its employees to comply with the CCA's requirements for emergency stabilization and fire rehabilitation activities. The Air Force also now uses only non-invasive plant materials and will not use forage kochia, intermediate wheatgrass, and salt-tolerant species such as four-wing saltbush, according to its revised INRMP.

Invasive Annual Plants

The past conversion of vast areas of the sagebrush-steppe ecosystem to annual grasslands has reduced suitable remaining habitat for, and invaded some, *Lepidium papilliferum* occurrences. An estimated 5 to 6 million ac (2 to 2.43 million ha) of sagebrush-steppe in the western Snake River basin has been converted to nonnative annual vegetation dominated by cheatgrass and medusahead (Noss *et al.* 1995), a portion of which includes *L. papilliferum* occurrences. *L. papilliferum* typically declines or is extirpated following the replacement of sagebrush-steppe habitat by nonnative annuals (Moseley 1994). Invasion by nonnative annual plants leads to increasing habitat fragmentation and isolation of extant occurrences (through interspersion of unsuitable annual grasslands habitat (Moseley 1994)). Fifty-seven of the 75 known *L. papilliferum* occurrences are documented as containing some level of nonnative annual (mainly cheatgrass) invasion (ICDC 2003). The subsequent increase in frequency of fire and the associated invasion of weedy annual plants are threats to the long-term integrity of *L. papilliferum* habitat and population viability (M. Mancuso, *in litt.* 1998).

The BLM has agreed in the future to emphasize the use of native plants and avoid the use of invasive nonnative species (CCA *in litt.* 2003). CCA conservation measure number 12 on page 25 of the CCA states that the BLM will use forbs in seed mixes to increase diversity and pollen sources for insect pollinators. Conservation measure 10 on page 25 of the CCA states that the BLM will use native plant materials and seed if available during restoration and rehabilitation activities unless use of non-native, non-invasive species would contribute beneficially to maintenance and protection of occupied and suitable *L. papilliferum* habitat. Recent BLM Instruction Memoranda formalize these measures and approximately 30 others as policy and assigns lead management responsibility for CCA conservation measures.

The Air Force and IDARNG have also developed similar measures (Air Force 2004; IDARNG 2003). Page 6–30 of the Air Force INRMP required use of only non-invasive plan materials and use of native plants to the maximum extent practicable. The IDARNG has implemented a similar policy for the past several years.

Use of Herbicides in Fire Control

Another potential threat to *Lepidium papilliferum* related to wildfire is the use of herbicides in fire rehabilitation. Oust is a nonspecific herbicide toxic to plants in the mustard family that is absorbed by both roots and foliage of the plants when it is applied. Oust has been used over large areas for rehabilation in

the past on BLM lands that contain *L. papilliferum* habitat. Currently, BLM has a moratorium on the use of Oust on all BLM-managed lands, and it has not been used in *L. papilliferum* habitat since the spring of 2001 (BLM, *in litt.* 2002b). The BLM, Air Force, and Idaho Army National Guard avoid herbicide spraying for noxious weed control near occupied *L. papilliferum* habitat (BLM, in. litt. 2003; Air Force 2004; IDARNG 2003). Additionally, BLM policy requires that areas affected by wildfire are rested from land use activities to meet rehabilitation management objectives (CCA, *in litt.* 2003).

Summary

Existing conservation measures designed to reduce the adverse effects of wildfire, including those implemented through the Candidate Conservation Agreement (CCA), Air Force INRMP and IDARNG INRMP, apply to approximately 97 percent of *Lepidium papilliferum*-occupied range. For example, the IDARNG, Air Force, and BLM will continue their rapid response or mutual support agreement for fire control, and will not use forage kochia for revegetation within occupied *L. papilliferum* habitat. The CCA implements aggressive suppression objectives aimed at reducing wildfire risks, particularly for priority occurrences. BLM has targeted suppression of 90 percent of fires to less than 100 ac (40.5 ha), in most CCA management areas they administer. This represents roughly a doubling of past suppression efforts. The BLM has committed to creating and maintaining fuel breaks where frequent fires can threaten occupied and suitable *L. papilliferum* habitat. Implementation of these more restrictive wildfire management goals and prevention measures will benefit *L. papilliferum* and the sagebrush-steppe habitat, and substantially reduce the threats to the species from fire and subsequent habitat conversion.

The INRMPs and CCA implement minimum impact suppression tactics to mitigate the impacts of suppression. Additionally, the BLM and Air Force will distribute maps to fire crews and provide training so they are aware of element occurrences to avoid ground disturbance impacts to *L. papilliferum* habitat.

An additional 17,000 acres (6,880 ha) of private land are covered in MOUs with the State of Idaho, where landowners will implement actions to avoid ground disturbance impacts in the vicinity of slickspots and coordinate fire suppression activities with the BLM to avoid ground disturbance impacts to *L. papilliferum* habitat. The duration of these agreements is for 2 years with the possibility of extending this time. Due to the limited area private land constitutes of the *L. papilliferum's* total range we do not significantly rely on these areas in this withdrawal determination.

As evidenced by the healthy condition of the occurrences on the Orchard Training Area (two A-ranked occurrences), it has been demonstrated that diligent efforts to suppress fire and the use of native species with minimal ground-disturbing fire rehabilitation activities can be effective in reducing the wildfire threat. In addition, the IDARNG already does not drill seed in occupied *L. papilliferum* habitat and uses native plants for reseeding efforts. BLM, the Air Force, and IDARNG avoid spraying herbicides near occupied habitat (CCA, in litt 2003). The BLM, Air Force, and IDARNG all either avoid ground disturbance during rehabilitation or use no-till drills or rangeland drills with depth bands to reduce soil impacts.

We believe that the ongoing and recently implemented conservation measures, while not preventing future wildfire, will reduce both short-term and long-term effects of wildfire in the foreseeable future within the range of the species. Given the inherent difficulties for wildfire prevention, the conservation measures may not be completely effective in preventing the adverse effects of a landscape-level wildfire event. In the event of landscape-level wildfire affecting occurrences, an effective adaptive management strategy to account for changed circumstances as identified in the CCA and INRMPs will be critical to ensure the conservation of *L. papilliferum*.

The CCA on page 117 describes the role of the Slickspot Peppergrass Conservation Team (SPCT) in implementing adaptive management. In addition to the CCA cooperators, the Service is a member of the SPCT. One important component of the adaptive management process is how the SPCT will address the significance of changed conditions in response to developing appropriate adaptive management. Figure 4 (CCA 2003; page 118) outlines the implementation framework and feedback loop. The SPCT will need to address the significance of the changed conditions promptly after the changed condition is discovered (CCA 2003; page 119). The CCA describes in detail the process of adaptive management and assigns the responsibility to the SPCT.

Livestock Grazing Management

The threat of livestock grazing encompasses the effects of trampling, especially during wet periods, and the continued spread of nonnative species that exacerbates wildfire risk. Currently, livestock grazing potentially affects up to 96 percent of the extant occurrences of *Lepidium papilliferum*. While livestock grazing has had direct and long-term indirect impacts to the sage-steppe ecosystem, *Lepidium papilliferum* remains extant in numerous occurrences within its range.

The direct effects of livestock grazing on *L. papilliferum* result primarily from trampling on *L. papilliferum* plants in the spring when soils are moist (Mancuso 2001). Potential indirect effects include trampling damage to occupied slickspots, nonnative plant dispersal, increased organic matter from livestock feces, pollinator impacts, changes in vegetation composition, and increased wildfire. There is a lack of data on the specific direct and indirect effects of grazing to *L. papilliferum*. Available data have limitations due to the lack of sufficient long-term monitoring data.

Grazing currently occurs at 56 of the 75 known *Lepidium papilliferum* occurrences, which includes approximately 19,373 ac (7,840 ha) (96 percent) of the total acreage of extant occurrences (20,500 ac (8,300 ha)).

Beginning in 2000, the BLM initiated conservation efforts to mitigate livestock grazing impacts to *Lepidium papilliferum* on land it manages. The BLM has moved some water troughs to attract livestock outside of areas containing *L. papilliferum*, and also constructed fence enclosures in three areas containing the species to protect it from livestock impacts (BLM, *in litt.* 2002b; ICDC 2003).

In the CCA, BLM has agreed to change the terms and conditions of all grazing permits to reflect and include the conservation measures for each management unit. Each BLM management unit has unit-specific conservation measures for the multiple element occurrences located within it. The conservation measures for the management unit are designed to eliminate, reduce or mitigate the impacts of site specific activities and threats and to maintain or restore the sagebrush-steppe habitat.

Additionally, the BLM has changed the season of grazing use from spring to fall on some allotments to protect flowering annuals from effects of grazing, although this does not protect the biennial form of *L. papilliferum* from impacts such as livestock

trampling in the fall. Under conservation actions proposed in the CCA, one element occurrence (number 50) will receive no livestock grazing in the future. The BLM continues to conduct annual surveys for *L. papilliferum*, and over 52,300 ac (21,165 ha) were surveyed in the Jarbidge Resource Area alone in 2002 (Popovich 2002). Surveys conducted by the BLM in the Inside Desert in 2000 through 2002 resulted in the designation of 12 new occurrences by ICDC (ICDC 2003).

The Air Force established three fenced areas (80 ac (32 ha), 12 ac (4.9), and 20 ac (8.1 ha)) in 2002 with the purposes of promoting *L. papilliferum* research and seed collection (Rose, pers. comm. 2003; Air Force, *in litt.* 2002a). Fencing is not always effective at prohibiting livestock entry into fenced areas depending upon fence maintenance and other circumstances. For example, in 2003, cattle were observed in one of the three fenced areas (The Environmental Company, Inc., *in litt.* 2003). Air Force contract biological survey personnel immediately repaired the fence.

Research to examine the relationship between livestock grazing and *L. papilliferum* was initiated in 2002 by the State of Idaho and the Air Force in cooperation with the Service and is being continued by the University of Idaho (Bunting, pers.comm. 2003) (Air Force, *in litt.* 2002a; K. Crane, Idaho Department of Agriculture, pers. comm. 2003). This is the first study of its kind that will focus specifically on livestock grazing and *L. papilliferum*. Results of this study will provide a basis for either validating existing conservation measures or adjusting conservation measures through the adaptive management approach outlined in the conservation documents (CCA, in litt 2003).

We acknowledge that the short- and long-term effects of livestock grazing on *Lepidium papilliferum* have not been adequately evaluated to date, and it is not possible to make definitive cause and effect determinations with any degree of certainty. Lacking this information, we extrapolated research from similar situations and studies of the sagebrush-steppe habitat in general which we used to make informed judgments about how grazing might affect *L. papilliferum* and its habitat.

Summary

The conservation documents (CCA, USAF–INRMP, IDARNG–INRMP) implement numerous measures to avoid, mitigate, and monitor effects of grazing on the species. Livestock grazing conservation measures implemented in the CCA and the Air Force INRMP apply to all federally managed lands within the occupied range of *Lepidium papilliferum*. Avoidance measures in the conservation documents include closing areas to grazing, maintaining existing enclosure fencing, prohibit trailing cattle through element occurrences when soils are saturated, placing salt or feed supplements so as to avoid slickspot trampling, adjusting seasons use to avoid impacts when slickspot soils are most likely to be saturated and susceptible to heavy trampling effects, and prohibiting the use of off road areas for vehicle travel.

Conservation measures implemented by the CCA include minimum distances for placement of salt and water troughs away from occurrences of the species. The CCA also implements measures to reduce trampling during wet periods, including trailing restrictions and restrictions to prevent penetrating trampling of slickspots. More restrictive conservation measures have been implemented in the CCA for priority occurrences, such as no early spring grazing, fencing to exclude livestock, and delaying turnout when soils are saturated.

Efforts described in many of the CCA conservation measures (CCA, in litt 2003) reduce the extent and depth of trampling slickspots by livestock. Though little data is available regarding this potential impact, we consider breaking of the slickspot restrictive layer as having the most potential for damaging the integrity of the slickspots. One source of information regarding trampling of slickspots is from studies at the IDARNG's OTA. A significant reduction in above-ground *L. papilliferum* plant numbers at a site on the OTA was documented for a 6-year period (1996 to 2002) following an intensive livestock trampling event that occurred in the spring of 1996 (Meyer *et al.*, in press), and population modeling indicated that this reduction could not be explained as a possible consequence of weather patterns.

In addition to the conservation measures implemented by CCA cooperators, several private landowners representing 17,000 ac (6,880 ha) of private land have entered into MOUs with the State of Idaho to conserve the species. These private landowners have agreed to implement measures from the CCA pertaining to minimum distances for placement of salt blocks away from slickspots, minimum distances for water trough placement away from slickspots, and avoiding trailing of livestock when soils are saturated, and restricting their vehicle travel to existing roads and tracks. At least one landowner will include 160 acres (64.7 ha) of private land into an enclosure to protect an occurrence from grazing. The duration of these agreements is for 2 years with the possibility of extending this time. Due to the limited area private land constitutes of the *Lepidium papilliferum's* total range we do not significantly rely on these areas in this withdrawal determination.

Under the revised INRMP, the Air Force will continue to use livestock grazing throughout the majority of the Juniper Butte ETR to reduce the amount of standing grass biomass to in turn reduce wildfire risk (Air Force 2000, 2002b, 2004). The grazing component plan for the INRMP states that livestock grazing will occur annually for up to 60 days and coincides with the shutdown of the range for clean-up and target maintenance. The shutdown period lasts a maximum of 60 days within a 90-day period, from April 1 through June 30. Since grazing is compressed into this 60-day time period, intensive livestock management on Juniper Butte ETR by the Air Force has the potential to impact *Lepidium papilliferum* through increased trampling of slickspot habitats, individual plants, and the seed bank, especially when slickspot soils are wet (Service, *in litt.* 2002) (see also discussion of tramping above).

The Air Force's INRMP focuses on avoiding grazing when slickspots are wet in order to avoid this potential for trampling slickspot habitats. Project 3 of the grazing component plan in the Air Force's INRMP provides guidance for annual monitoring of slickspot soil moisture to determine livestock turnout dates for Juniper Butte ETR. Monitoring of pastures and evaluation of 50 slickspots within each occupied area will be evaluated to determine the level of wetness. A soil penetrometer is used to determine the load rate the slickspot can support before imprintation occurs. The turnout date for livestock will be established when the slickspot surface in 75 percent of slickspots examined is strong enough to support the age and weight class of the cattle to be turned out on the range.

We believe that the conservation measures outlined in the conservation documents (CCA, USAF–INRMP, IDARNG–INRMP) reduce the risk of direct impacts of livestock grazing in the short-term and in the foreseeable future. We also believe that efforts to establish exclosures to protect some L. papilliferum areas from grazing impacts represent further reduction in the threat. Effects associated with increased organic matter from livestock feces and pollinator impacts from grazing are not addressed in the conservation

documents but their significance is difficult to assess given the lack of specific studies on these factors for *L. papilliferum*. Further, measures to reduce grazing in sensitive periods for slickspots and to improve fire management will mitigate these potential threats.

Military Training Activities

Military training activities may result in soil disturbance as a result of vehicle maneuvers, increased fire hazards, and continued invasions of nonnative plants. Currently military training affects less than 2 percent of the known *Lepidium papilliferum*-occupied habitat and does not represent a principal factor in the viability of the species and the sagebrush ecosystem. While the effects of soil disturbance from military training activities can have serious local effects on slickspots, conservation measures that have been in place on the Orchard Training Area appear to have essentially eliminated this threat from *L. papilliferum* occurrences on the Training Area. The Air Force has implemented measures to reduce the adverse effects of military training to achieve its conservation goals for this species. We also believe that conservation measures currently in place on both the OTA and Air Force facilities to rapidly suppress fires and provide wash spots for vehicles to avoid continued invasions of nonnative plants greatly reduce the threat of wildfire and nonnative plant invasion impacts and provide for the long-term protection of the species from the effects of military training activities.

Lepidium papilliferum occurs on BLM lands within the OTA where the IDARNG has been conducting its military training exercises since 1953 under a Memorandum of Understanding between the two agencies (Quinney 2000). Other activities, including livestock grazing, are managed within the OTA directly by BLM. Over the past 12 years, the IDARNG has proactively implemented actions to address the conservation needs of *L. papilliferum* and has conducted extensive monitoring and research on the species, while still providing for military training activities. These actions include intensive fire suppression efforts, and restriction of ground-operated military training and facility construction to areas where *L. papilliferum* is not found. IDARNG has implemented restrictions that require all military training activities to avoid sites with *L. papilliferum* and intact sagebrush steppe habitat (IDARNG 2003) on Orchard Training Area. IDARNG is currently updating the OTA INRMP that proposes to continue numerous conservation measures for *L. papilliferum* associated with IDARNG's military training activities (IDARNG 2003), including restricting training exercises in occupied habitat and active fire suppression. We are not considering these additional conservation measures in this withdrawal determination due to the revised INRMP not being finalized. IDARNG continues to annually monitor *L. papilliferum* both independently and in conjunction with ICDC HII monitoring (IDARNG 2003).

In 2002, the Air Force conducted a complete census of all slickspots and *Lepidium papilliferum* on the Juniper Butte ETR, with the exception of an area approximately 667 ac (270 ha) that included the primary ordnance impact zone (Air Force 2002a). Of the approximately 56,500 slickspots recorded during this census (Air Force, *in litt.* 2003), approximately 2,450 slickspots were documented as containing *L. papilliferum* plants (Bashore, pers. comm. 2003). Approximately 11,300 *L. papilliferum* plants were observed during this census. Only 11 *L. papilliferum* plants were documented as occurring outside of slickspots. ICDC has categorized Juniper Butte ETR as one large *L. papilliferum* occurrence based on administrative boundaries and convenience of record-keeping. This single large occurrence, which constitutes 84 percent of the total acreage of all ''B''-ranked occurrences, is currently categorized as a ''B''-ranking due to the large number of plants observed within fair-to-low quality habitat (ICDC 2003). The Air Force has created permanent monitoring transects at Juniper Butte Range in 2003, which will be monitored to detect changes in *Lepidium papilliferum* over time (Air Force 2003).

In the proposed rule, we noted that the Air Force has implemented conservation measures to reduce the potential threat to *Lepidium papilliferum* from military training activities (67 FR 46441). During the spring, the Air Force (2000, 2002b) suspends training in the 300-ac (121-ha) primary ordnance impact area to remove and clean up inert training ordnance dropped from jets during training exercises. Soil and vegetation disturbance due to this activity would be greatest during spring, due to the higher probability that slickspot soils would be wet during this period from spring rainstorms. To mitigate adverse affects, the Air Force uses lightweight, maneuverable all-terrain vehicles for ordnance cleanup activities outside of the primary ordnance impact zone to minimize impacts to slickspot habitat (Air Force 2000). The proposed rule noted that it is expected that direct impacts due to construction and training activities will result in the loss of *L. papilliferum* within the 300-ac (121-ha) primary ordnance impact zone. At this point there is no major construction remaining in the primary ordnance impact zone and operational impacts are mitigated through the INRMP.

Although not likely to frequently occur, sparks generated from inert ordnance hitting the ground or heat from the use of vehicles and other mechanized equipment may also provide an ignition source for wildfire, which could impact *L. papilliferum.* The Air Force has identified fire management as a high priority at Juniper Butte ETR, and fire fighters are stationed on the range during periods of high fire danger (Air Force 2002b). The Air Force has also worked to conserve *L. papilliferum* on the Juniper Butte ETR by moving the proposed locations of several industrial complex buildings associated with their military training mission prior to construction to avoid slickspots.

The dropping of inert bombs within the 300–ac (121-ha) primary ordnance impact zone at Juniper Butte ETR during military training exercises could also impact *Lepidium papilliferum* by disturbing slickspot soils and crushing individual plants. A 2002 survey of the primary ordnance impact zone and associated buffer areas located 147 *L. papilliferum* plants (CH2MHill 2002). Potential impacts to *L. papilliferum* from dropping of bombs on slickspots are considered to be localized and minimal as the Air Force intends to use only 300 ac (121 ha), or 2.5 percent of the entire 12,000-ac (4,856-ha) Juniper Butte ETR, as the actual bombing impact area (Air Force 2000).

Summary

Currently the threat of military training activities does not represent a principal factor in the viability of the species and the sagebrush ecosystem in the foreseeable future. Both the IDARNG and Air Force are implementing various conservation measures to avoid or reduce adverse effects of military training on the species and its habitat. We believe that these measures will continue to mitigate adverse effects in the foreseeable future associated with military training and consider this threat to be localized and minimal, with little significance across the range of the species.

Residential and Agricultural Development

Residential and agricultural development threatens slickspot habitat through habitat conversion, increased nonnative plant invasions, increased wildfire. Currently the threat affects less than 5 percent of the known occupied *Lepidium papilliferum* habitat and does not represent a principal factor affecting the species. While the effects of the direct loss of slickspot habitat can be locally severe, we believe that this represents a small portion of the total known range of the species. There are currently two conservation agreements for *L. papilliferum* on non-Federal lands in addition to those discussed in this final determination.

In the proposed rule, we noted the long-term viability of some *Lepidium papilliferum* occurrences on private land was threatened due to the continuing expansion of residential developments in and around Boise (67 FR 46441). However, only 3 percent of the total known occupied *L. papilliferum* habitat occurs on private land totaling 626 ac (253 ha) (Moseley 1994; ICDC 2003).

Development of adjacent private land may also threaten at least four *Lepidium papilliferum* occurrences on BLM land (Mancuso 2000). However, the CCA provides for requirements that right-of-way holders contact the BLM before undertaking land disturbing activities in occupied and suitable habitat. BLM is also increasing patrols to improve adherence to access management requirements and to discourage trespass (CCA, *in litt.* 2003). Specific area requirements include avoiding all occupied habitat and disturbance to suitable habitat in ground moving projects, constructing temporary and permanent project fencing, and requiring rehabilitation and restoration to suitable habitat in ground-moving projects (CCA 2003; page 35).

Summary

Residential and agricultural development potentially affects only 3 percent of the known occupied *Lepidium papilliferum* habitat. While the direct impact of residential and agricultural development may be locally significant, they are a minor threat over the species' range. We believe that the conservation measures identified in the CCA (2003) will reduce the effects road development and maintenance on public lands from associated future development of private lands.

Gravel or Cinder Mining

Gravel and cinder mining may encourage increased nonnative plant invasions due to increased access of Off-Highway Vehicles and mining equipment. Currently gravel or cinder mining operations affect approximately 3 percent of the known *Lepidium papilliferum*-occupied habitat and do not represent a principal factor in the status of the species.

Summary

The CCA identifies conservation actions for element occurrences 21 and 51 to address restoration of slickspot habitat if degradation is found to be associated with authorized uses, including the rehabilitation associated with cinder and gravel mining operation (CCA, *in litt.* 2003; page 109). BLM will increase the frequency of compliance inspections associated with land use permits in occupied and suitable habitat areas (CCA, *in litt.* 2003; Conservation Measure 25), and the BLM and law enforcement cooperators will increase law enforcement patrols to discourage trespass (CCA, *in litt.* 2003; Conservation Measure 26). Other conservation measures on Federal and State lands through the CCA will reduce future direct and indirect (*i.e.*, nonnative plant invasion) effects of mining on the species. Overall this factor can be locally significant but it is considered of minor importance across the species' range given the conservation measures in place.

Recreational Use

The threat of recreational activities encompasses nonnative plant invasions, increased wildfires, and direct soil disturbance. Recreational activities occur across most of the range of *Lepidium papilliferum.* An exception is Juniper Butte ETR, which is protected from recreational activities due to existing military installation restrictions. The direct effects of recreational activities are relatively minor due the small percent of habitat affected by these activities. The indirect effects of Off-Highway Vehicle use, such as nonnative plant invasions and wildfire, are more significant (see discussion of wildfire above).

Operation of motorized vehicles off established roads and trails has been identified as a potential threat to *Lepidium papilliferum* and slickspot habitats (ILPG, *in litt.* 1999). Examples of such vehicles include ORVs such as recreational all-terrain vehicles and motorcycles, pickup trucks, vehicles associated with fire suppression activities, water-hauling trucks, and military training vehicles. Vehicles may spread nonnative plant seeds (Gelbard and Belnap 2003) by transporting them in tire treads or vehicle undercarriage from weed-infested areas to slickspots containing *L. papilliferum.* Motorized vehicles may also disturb slickspot soils and damage *L. papilliferum* habitat and seed banks, particularly when these areas are wet (ILPG, *in litt.* 1999). In dry periods, heat generated from vehicle operation may ignite fine fuels such as cheatgrass, causing wildfires that could impact *L. papilliferum* (ILPG, *in litt.* 1999).

Summary

The conservation measures in the CCA (*in litt,* 2003) include BLM actions to provide additional educational resources to recreationists on invasive weeds, provide voluntary OHV wash points to prevent the further spread of invasive weeds, and increase OHV compliance inspections, among other requirements. The conservation measures reduce the threat of future non-native plant invasions and direct soil disturbance to slickspots as a result of recreational activities.

B. *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.* The plant is not a source for human food, nor is it currently of commercial horticulture interest. There is no evidence that commercial, recreational, scientific, or educational harvest or use of *Lepidium papilliferum* represents a significant threat to the species. Overutilization was not identified in the proposed rule as a specific threat to *L. papilliferum* (67 FR 46441), and is not considered to be a threat at this time.

C. *Disease or Predation.* The threat of disease or predation is extremely low for this species. Consumption of *Lepidium papilliferum* by livestock appears to be low, and also appears to be infrequent by other herbivores (Popovich 2001). An Air Force survey documented limited observations of cattle herbivory on a few *L. papilliferum* plants; however, this has not been confirmed (Air Force 2002a). Spring-grazing sheep have been observed to uproot *L. papilliferum* plants on the OTA. Since *L. papilliferum* is apparently unpalatable, sheep rarely consume the plants but simply pull them from the ground incidentally while foraging, killing the plants (D. Quinney and J. Weaver, pers. comm. 1998). Animals kept from grazing for relatively long periods, such as during transport, may consume *L. papilliferum* after they have been turned out (OSC, *in litt.* 2002).

Herbivory by rodents and beetles has been observed on *Lepidium papilliferum* plants. For example, numerous plants did not survive to set seed at one *L. papilliferum* occurrence

due to high levels of rodent damage (BLM, *in litt.* 2002a). At another location, some plants were nearly defoliated and may have been killed by beetle herbivory (M. Mancuso, *in litt.* 1998; Robertson 2003). We are unaware of any specific studies documenting foraging on *Lepidium papilliferum* by Mormon crickets. We do not consider herbivory by rodents or insects to be a major threat to the species at this time. Impacts to *L. papilliferum* from large native ungulates such as elk or antelope have not been documented.

There is insufficient information to indicate that disease or predation represents a threat to *Lepidium papilliferum.* Disease or predation were not identified in the proposed rule as a threat to the species (67 FR 46441), and is not considered a threat at this time.

D. *The Inadequacy of Existing Regulatory Mechanisms.* While inadequate protection by way of existing regulatory mechanisms was a significant factor in our decision to propose this species for listing, developments since our proposal have addressed many of these inadequacies. The section ''Certainty of Implementation further discusses the conservation efforts that are underway or are expected to occur as a result of the conservation agreements and plans that have been entered into by various parties. These efforts contribute significantly to the adequacy of existing regulatory mechanisms.

Lepidium papilliferum is considered to be rare and imperiled at the global and State scale (G2/S2 rating) by the Idaho Natural Heritage Program (ICDC 2002). Idaho has no endangered species legislation that protects threatened or endangered species.

Lepidium papilliferum is considered a sensitive species by the BLM (ICDC 2002). BLM typically surveys proposed project areas for special status species, including *Lepidium papilliferum*, within habitats capable of supporting the species as part of the NEPA process for actions that may impact the species or its habitat. The CCA entered into by BLM puts into place many additional measures to conserve the species on BLM lands. In any area that could support *L. papilliferum* BLM will strive to conserve remaining stands of sagebrush or native vegetation in making land management and project level decisions (CCA, *in litt.* 2003; Conservation Measure 26), train permittees on species and habitat recognition (CCA, *in litt.* 2003; Conservation Measure 30), conduct periodic compliance inspections during soil disturbance projects and increased inspections during use periods to prevent impacts on occupied and suitable habitat (CCA, *in litt.* 2003; Conservation Measure 31), require that all authorizations contain weed control measures (CCA, *in litt.* 2003; Conservation Measure19), complete botanical surveys for the species and its habitat prior to authorizing herbicide use (CCA, *in litt.* 2003; Conservation Measure 24), increase the frequency of compliance inspections associated with land use permits (CCA, *in litt.* 2003; Conservation Measure 20), require that new renewing or amending right of way holders establish 40–60 percent perennial cover after all ground disturbing activities (CCA, *in litt.* 2003; Conservation Measure 27), require new, renewing or amending right of way holders to contact BLM before conducting ground disturbing activities (CCA, *in litt.* 2003; Conservation Measure 28), and authorize organized recreational activities only in areas outside occupied or suitable habitat. These commitments will significantly increase the regulatory protection offered to *Lepidium papilliferum* and its habitat.

The Air Force has recently updated Integrated Resource Management Plans that contain specific conservation measures for *L. papilliferum*, further improving the adequacy of existing regulatory mechanisms. Compliance with conservation measures in the INRMP is mandatory for all Air Force and contractor personnel, including lessees. The INRMP contains such measures as use restrictions for herbicides, protect habitat by restricting OHV use, restrict activities to reduce fire hazards, implement fire management strategies to reduce impacts to slickspots, use only noninvasive plant materials, use native plants to the maximum practical extent, use drill seeders equipped with depth bands to avoid unnecessary disturbance, control noxious weeds, avoid gathering and trailing cattle when soils are wet, delay turn out until soils are firm, delay movement between pastures when soils are wet, avoid livestock use inside enclosures, use existing roads for grazing-associated activities, use adaptive management to adjust the grazing system.

Conservation measures implemented through the CCA and INRMP, together with the measures being implemented by the IDARNG, which currently manages to conserve the species, apply to approximately 97 percent of the *Lepidium papilliferum*-occupied habitat. These conservation measures significantly reduce the threat of inadequate regulatory mechanisms.

E. *Other natural or manmade factors affecting its continued existence.* Because the majority of *Lepidium papilliferum* occurrences are extremely small, local extirpation of isolated and scattered occurrences is a factor affecting this species.

The proposed rule stated that less than 5,550 ac (2,246 ha) of high quality (with ''A''-ranked occurrences) potential habitat existed for this species which may not be adequate to ensure long term persistence of *L. papilliferum*. New data and new conservation measures since the proposed rule have led us to a different conclusion. First, the estimate of A-ranked occurrences is now 6,596 ac (2,669 ha), which represents an increase over the acreage estimate in the proposed rule which is attributed mostly to the upgrading of occurrence 58 from ''B''-ranked to ''A''-ranked in the 2002 field season. Second, implementation of new conservation measures, primarily through the CCA, reduce threats with a special emphasis on those occurrences that are considered priority. These priority occurrences which we believe are most important to the long term viability of the species include many of the ''A''-ranked occurrences that have more aggressive conservation measures to promote long-term persistence, and they are well distributed across the range of the species.

Approximately 67 percent of all ''A''-ranked occurrences are located within two occurrences on the Orchard Training Area, where management is ongoing to conserve the species. Further, the amended Air Force INRMP addresses approximately 3630 ha (8970 ac) on the Juniper Butte Range. This occurrence is ranked as a B quality habitat. The proposed rule erroneously identified this area as having a C ranking (CCA, *in litt.* 2003). Additional conservation measures for this area resulting from the revised INRMP allow us to conclude that this area can effectively contribute to the conservation of *Lepidium papilliferum*, and therefore sufficient habitat likely does exist for the long-term persistence of the species.

Summary

There is a general lack of information about the effects of habitat fragmentation, on *L. papilliferum*. The conservation documents address this in part by requiring all cooperators to use native species in seed mixes during wildfire rehabilitation. Likewise, the adaptive management strategies for the conservation efforts provide means to adjust land uses and/or conservation measures as appropriate to address

other issues that affect the ability of *L. papilliferum* to replenish its seedbank.

Certainty of Implementation of Formalized Conservation Efforts

There are numerous formalized conservation efforts, within 5 different formalized plans, designed to reduce threats and promote the long-term viability of *Lepidium papilliferum* and its habitat. The primary formalized plan discussed below, the CCA, was completed in December of 2003 by the BLM, State of Idaho, IDARNG, and livestock permittees. As part of the CCA, several private landowners entered into MOUs with the State of Idaho committing to conservation efforts on approximately 17,000 acres of private land. The conservation efforts contained within the CCA were considered in our analysis of the status of the *L. papilliferum*. In recent years the BLM has initiated efforts to conserve the species and the recent CCA represents a major commitment on behalf of this federal land manager that accounts for approximately 50 percent of the known range of the species. We are confident in the interest and commitment of all parties to the CCA and the Air Force INRMP.

The IDARNG has operated the OTA under its INRMP for several years and also committed to conservation measures as outlined in the CCA. As IDARNG is party to the CCA, IDARNG's responsibilities in implementation of the CCA are considered in this analysis of certainty of implementation and effectiveness. In addition, the IDARNG is in the process of updating its existing INRMP, to strengthen the conservation measures for the species. The conservation efforts under the existing INRMP are considered in the following analysis of the certainty of implementation or effectiveness as they have already been implemented and shown to be effective. However, the update to the INRMP has not yet been formalized. Therefore, those updates will not be considered as contributing to the improved status of the species.

The Air Force has managed the Juniper Butte Training Range under the Mountain Home Air Force Base INRMP since establishment of the range in 2000. The Air Force recently completed the update to its INRMP to strengthen the conservation efforts for the species. The revised INRMP, in Appendix A, contains component plans including a plan for vegetation and grazing. The vegetation component plan is new in this revised INRMP and describes additional details about long-term monitoring of vegetation, rehabilitation after fire, fuel build-up prevention methodology, noxious weed identification and control, and *Lepidium papilliferum* survey and monitoring for permanent plots. Thus, its INRMP is considered in our analysis of the status of *L. papilliferum*.

Many of the provisions in both the Air Force and IDARNG INRMPs are continuations or upgrades to existing conservation programs. Therefore a funding, regulatory, and implementation framework already exists for implementation of measures on lands covered by INRMPs. Both the Air Force and IARNG have demonstrated commitment to conserving the species as they have been implementing their INRMPs since 2000 and 1987, respectively. The Air Force manages approximately 44 percent of the known species occurrence acreage and the IDARNG manages approximately 19 percent of the known species range.

Considering the formalized conservation efforts as outlined in the CCA and the Air Force INRMP, we used the following criteria from PECE to direct our determination of the certainty that the conservation efforts will be implemented. As there are hundreds of conservation efforts described in these formalized plans, the following is a summary of information contained within the plans.

1. The conservation effort, the parties to the agreement or plan that will implement the effort, and the staffing, funding level, funding source, and other resources necessary to implement the effort are identified. The parties to the CCA are clearly described in chapter 1 of the CCA. The parties include BLM, State of Idaho, IDARNG, and livestock permittees. As part of the CCA, several private landowners entered into MOUs with the State of Idaho committing to conservation efforts on private land. The Implementation Schedule for Conservation Measures, table 2, in chapter 20 of the CCA outlines the cost for each conservation measure and identifies those that are ongoing and part of base funding.

The Air Force INRMP has been implemented since 2000 has a demonstrated successful implementation of conservation measures. Chapter 6 of the INRMP identifies the parties necessary to implement each of the conservation measures and a January 9, 2004, memorandum to the Service states that ''compliance with conservation measures in the INRMP are mandatory for all Air Force and contractor personnel, including lessees (Air Force 2004 in. litt.).'' The memorandum also states ''Air Combat Command has funded conservation measures for fiscal year 2004 and has validated our conservation budget requirements for fiscal years 2005–2011.'' Of the 80 conservation efforts specific to *Lepidium papilliferum* conservation in the INRMP, 78 are on-going and considered already funded and implemented. The remaining two measures were developed explicitly for the 2004 INRMP. The Air Force memorandum of January 9, 2004 (Appendix P to the INRMP) identifies INRMP projects by fiscal year, required funding, and headquarters validation of funding high priority for all conservation measures.

Under their INRMP, the IDARNG has been successfully implementing actions benefiting *Lepidium papilliferum* since 1991 and is a cooperator in the CCA. Staffing needs for the CCA are sufficiently addressed by the INRMP. Appendix 7.6 lists specific projects required to implement the INRMP, and also includes requested funding for these activities. Many of the *L. papilliferum* conservation measures in the INRMP are ongoing and already funded through base funding.

2. The legal authority of the parties to the agreement or plan to implement the formalized conservation effort, and the commitment to proceed with the conservation effort are described. All authorities of all parties to the CCA and Air Force INRMP are spelled out. The CCA under chapter 1 outlines authorities for the Office of Species Conservation, Idaho Department of Fish and Game, Idaho Department of Lands, IDARNG, and the BLM to implement the agreement, including the following. Title 67, section 818 of the Idaho Code provides the Office of Species Conservation the authority to negotiate and enter into conservation agreements between the State and Federal governments and private entities. Title 18, section 3913 of the Idaho Code grants the Idaho Department of Fish and Game the authority to protect plants of conservation concern, such as *Lepidium papilliferum*. The Idaho Constitution provides the Department of Lands the authority to manage State lands. The Federal Land Policy and Management Act (FLPMA, 43 U.S.C. 1737) provides the BLM with the authority to manage and conserve BLM-administered lands and allows the BLM to participate in conservation agreements. The IDARNG currently has the authority to implement the CCA through their existing INRMP as required by the Sikes Act (16 U.S.C. 670). In addition, Army Regulation (AR) 200–3 further provides IDARNG the authority for implementing the CCA and encourages the

development of candidate management plans and to participate in conservation agreements with the Service.

Likewise, the INRMP for the Air Force specify various legal authorities to implement their plans, including the following. The Sikes Act provides for cooperation by the Departments of Interior and Defense with State agencies in planning, development and maintenance of fish and wildlife resources on military reservations throughout the United States. Section 9 of the Sikes Act Improvement Amendments states that the INRMP shall reflect the ''mutual agreement'' of the Service and State fish and wildlife agency.

In addition the legal authorities described above, implementing regulations and policies further describe State and Federal authorities for implementing the conservation efforts described in the CCA (chapters 1 and 9) and Air Force INRMP (Chapter 1).

3. The legal procedural requirements necessary to implement the effort are described, and information is provided indicating that fulfillment of these requirements does not preclude commitment to the effort. The conservation efforts that require additional procedure requirements prior to implementation, such as environmental review and compliance with National Environmental Policy Act (NEPA), are spelled out in the CCA Chapter 20, Table 2. The majority of the 207 conservation actions do not require additional environmental review. However, the CCA in the Implementation Schedule for Conservation Measures describes approximately 50 conservation actions out of 207 that will have environmental review through NEPA prior to implementation.

The rangewide conservation measures provide the most conservation coverage of the conservation measures in the CCA. Only one of the rangewide conservation measures, establish firebreaks, requires NEPA compliance before implementation. The remainder of the conservation measures within the CCA that require NEPA compliance are for changes to allotment plans or grazing management. These changes will be reviewed under NEPA. However, grazing related measures such as conservation measure 5.14, no trailing cattle through element occurrences within the management area when soils are saturated, are implemented within the confines of existing grazing permits and does not require NEPA compliance. The vast majority of the conservation measures in the Air Force INRMP are on-going actions that have been either previously reviewed under NEPA or do not require NEPA compliance or related environmental review.

4. Authorizations necessary to implement the conservation effort are identified, and a high level of certainty is provided that the parties to the agreement or plan that will implement the effort will obtain these authorizations. The Explanation of Conservation Measures (chapter 9) and the Implementation Schedule (chapter 20, table 2) within the CCA describe the procedural requirements and schedule to complete the procedural requirements necessary to implement individual conservation efforts. Most of these procedural requirements have been completed. For instance, the BLM in January 2004, distributed various instruction memoranda as called for in the CCA establishing requirements for activities including general management requirements for activities in *Lepidium papilliferum* habitat and emergency stabilization and fire rehabilitation requirements for activities in *Lepidium papilliferum* habitat. The CCA schedules additional BLM instruction memoranda to be issued by May 2004. Several of these are rangewide conservation measures to be addressed in the upcoming instruction memoranda, such as measures .01, .03., and .05 (chapter 9 of the CCA, *in litt.* 2003), that are already being implemented by the BLM. In addition, Congress has urged BLM to implement the CCA, see H.R. 2673, 108th Cong. (2003). The Air Force does not need to complete any additional procedural requirements for implementation of their INRMP and have commenced implementation of its conservation efforts.

5. The type and level of voluntary participation necessary to implement the conservation effort is identified, and a high level of certainty is provided that the parties to the agreement or plan that will implement the conservation effort will obtain that level of voluntary. Though a specific level of landowner participation is not needed to ensure success of the CCA, currently, several BLM livestock permmitees have already agreed to implement conservation measures as identified in the CCA. As of December 2003, there are six enrolled private land owners have signed MOUs with the State of Idaho implementing conservation efforts on their private property. The MOUs are the vehicle by which the private entities participate in the CCA. Given the dedication of landowners in collaborating in development of the CCA, we expect full implementation of those efforts.

The expected benefits of participating in CCA implementation are described in chapter 11 of the CCA. The BLM has the authority via grazing permits to assure compliance with the associated conservation measures detailed in the CCA, regardless of participation by the permittee in the CCA. In addition, the private entities participate in implementation of the CCA through other actions such as, report survey information to CDC (see chapter 20 of the CCA, *in litt.* 2003). The necessary voluntary participation will take place as described in the CCA given the understood benefits and the commitment expressed by the private landowners.

Implementation of the Air Force INRMP does not require voluntary participation. A memorandum from the Air Force to the Service, dated January 9, 2004, states that compliance with the conservation efforts in their INRMP is mandatory.

6. Regulatory mechanisms necessary to implement the conservation effort are in place. No additional regulatory mechanisms, beyond what is currently in place, are necessary to implement the conservation efforts in the CCA or the Air Force INRMP.

7. A high level of certainty is provided that the parties to the agreement or plan that will implement the conservation effort will obtain the necessary funding. Of the 207 Management Area conservation measures, 132 are funded through state or BLM base funding, will have no additional cost associated with it, or will be funded by a seasonal user/permit holder. Thus, securing additional funding will not be needed to implement those measures. The remaining conservation measures, specifically those concerning BLM, the agency has requested funding through its out-year programming as stated in a December 11, 2003 memorandum from the Office of Species Conservation on behalf of the CCA Steering Committee. Moreover, BLM, OSC, and Idaho Department of Fish and Game, Conservation Data Center, have entered into a challenge cost share proposal for monitoring existing occurrences for the 2004 fiscal year. The BLM's appropriation language for fiscal year 2004 stated that the BLM will implement the measures contained in the CCA [H.R. 2673, 108th Cong. 2003]. The BLM has submitted funding requests for 2005 through the budget planning system and have ranked implementation of the CCA as high. The parties have fully described the resources necessary to implement the conservation measures and that funding is either already in place or has been

requested according to the CCA and the Air Force INRMP such that implementation of the conservation efforts is proceeding.

8. An implementation schedule for the conservation effort is provided. The implementation schedule is provided in chapter 20 of the CCA. The schedule discusses project coordination and funding, and specifically lays out a description of the action, the responsible party, and year-by-year cost projections out to the year 2008. The Air Force INRMP has specific objectives with dates identified in many cases, while keeping the focus on implementation and effectiveness monitoring of those actions than on quantitative incremental objectives. The Air Force memorandum of January 9, 2004 (Appendix P to the INRMP) outlines validated and funded projects by fiscal year through 2011.

9. The conservation agreement or plan, which includes the conservation effort, is approved by all parties to the agreement or plan. As of December 5, 2003, all parties to the CCA have signed the agreement. The Air Force signed their INRMP on January 15, 2004.

Summary

As evidenced by actions underway and expected by the parties to the CCA and Air Force INRMP, we have received sufficient assurance that the long term viability of *Lepidium papilliferum* has improved since the proposed rule. In addition, in an Instruction Memorandum dated January 8, 2004, the BLM District Manager directs compliance with all requirements of the CCA. A memorandum from the Air Force to the Service, dated January 9, 2004, states that compliance with the conservation efforts in their INRMP is mandatory for all Air Force and contractor personnel, including lessees. Thus, we have been provided the assurance that these conservation efforts will be implemented.

Certainty of Effectiveness of Formalized Conservation Efforts

Considering the formalized conservation efforts as outlined in the CCA and the Air Force INRMP, we used the following criteria from PECE to direct our determination of the certainty that the conservation efforts will be effective. Our analysis of the effectiveness of the conservation efforts is reflected above in the ''Summary of Factors Affecting the Species.'' As there are hundreds of conservation efforts described in these formalized plans, the following is a summary of information contained within the plans.

1. The nature and extent of threats being addressed by the conservation effort are described, and how the conservation effort reduces the threats is described. The CCA and Air Force INRMP address the nature and extent of threats including wildfire, livestock grazing, recreational use, mining, military training activities, residential and agricultural development. These conservation plans apply a variety of conservation actions and provide descriptions about how the action reduces the threat. For example, the CCA requires BLM to implement a variety of actions to reduce the risk of wildfire ranging from fuel breaks to increased fire suppression crews and resources. How each threat is specifically addressed by the conservation efforts, is described in detail in the above ''Summary of Factors Affecting the Species.''

We have sufficient assurance that the conservation efforts have reduced threats over most of the range of the species. We believe that the conservation efforts will reduce the risk of fires in the foreseeable future within the range of the species. It will be important to implement the adaptive management strategy to ensure the conservation of *Lepidium papilliferum*, to account for changing circumstances, and improve the conservation measures, as further studies are conducted. We also believe that measures related to the threat of livestock trampling lead to a reduction of this threat. Nonnative plant invasions of the sagebrush steppe ecosystem will be mitigated by the conservation efforts but not eliminated as they will likely continue to be a part of the ecosystem given the inherent difficulties of reversing this trend.

2. Explicit incremental objectives for the conservation effort and dates for achieving them are stated. The conservation efforts take variable approaches in the development and accomplishment of objectives. For example, chapter 20 of the CCA outlines expected benefits of the conservation measures and provides a detailed implementation schedule with dates for when actions will be accomplished. The Air Force INRMP has specific objectives with dates identified in many cases. Given the long-term nature of these plans and the ongoing actions identified in the INRMP, the focus is on implementation of the specific actions and effectiveness monitoring of those actions.

3. The steps necessary to implement the conservation effort are identified in detail. Both the CCA (chapter 9) and the Air Force INRMP detail the steps necessary for the accomplishment of conservation actions. In general, the conservation documents outline objectives to be accomplished, actions necessary to accomplish objectives, monitoring strategies, and adaptive management to ensure that the conservation efforts are responsive to new information and changed circumstances.

4. Quantifiable, scientifically valid parameters that will demonstrate achievement of objectives, and standards for these parameters by which progress will be measured, are identified. Given the limited scientific data available for *Lepidium papilliferum*, the conservation efforts take a reasonable approach to measuring progress towards achievement of objectives. In general, the conservation efforts are designed to incorporate new research findings, which will provide the basis for establishing quantifiable, scientifically valid parameters as more is learned about plant and its habitat. Chapter 21 of the CCA describes its adaptive management commitments, including implementation of measures specifically designed to achieve conservation objectives.

5. Provisions for monitoring and reporting progress on implementation and effectiveness of the conservation effort are provided. In general, the CCA and the Air Force INRMP identify how implementation monitoring will occur and how results of monitoring will be used to evaluate effectiveness of the efforts in conserving *Lepidium papilliferum*. The CCA provides very detailed implementation schedules in chapter 20, table 2. The effectiveness of conservation actions at achieving desired outcomes is determined through monitoring. For example, the effectiveness monitoring table (chapter 21, table 5) in the CCA describes performance metrics for evaluating conservation actions and describes quantitative triggers and an associated management response that will occur if conservation actions are not achieving desired outcomes. For some conservation actions in the CCA, development of quantitative triggers will require additional technical analysis and will be completed by June 2004.

The Air Force INRMP, page A–10, describes Project 5, ''Slickspot Peppergrass Monitoring of Permanent Plots.'' The purpose of monitoring permanent plots is to provide data for adaptive management of the species. Five permanent *Lepidium papilliferum* plots were established on Juniper Butte Training Range in 2003. Transects were sited to help monitor the effect of two large scale land uses on the site:

biomass removal for fire prevention by grazing and delivery of training ordnance. Transects will be monitored annually to assess changes in habitat conditions and *L. papilliferum* count changes as influenced by management techniques, natural processes, and other biotic and non-biotic influences. A weather station has been established on the site to more fully understand the role weather plays in *L. papilliferum* biology. The Air Force INRMP states that more accurate weather data and better interpretation of monitoring results will aid in adaptive management decisions. Project 3 of the Air Force INRMP, ''Noxious Weed Control and Monitoring'', also addresses annual surveys and monitoring to prevent noxious and invasive species spread. Project 2 of the INRMP, ''Rehabilitation after Fire/Fuel Build-up Prevention Methodology'', states that adaptive management and monitoring techniques are used to help determine the optimal blend of fire control and biodiversity management practices necessary to meet overall goals, including *L. papilliferum*. This more general approach is not considered problematic for assuring success in accomplishing conservation of *L. papilliferum*.

6. Principles of adaptive management are incorporated. Principles of adaptive management are incorporated to varying degrees with the CCA describing in the most detail the how new information and changed circumstances will be addressed. The CCA describes the adaptive management pathway: (1) Triggers to determine if there is a significant difference between expectations and results; (2) an evaluation of relevance of the differences; (3) an evaluation of causal linkage; and (4) development and implementation of a management response thus completing the feedback loop. The adaptive management in the Air Force INRMP, as largely contained in Appendix A, describes monitoring and feedback loops necessary to ensure success in accomplishing conservation for *Lepidium papilliferum*.

Summary

We have sufficient assurances that the conservation efforts have reduced threats over most of the range of the species. We believe that the conservation efforts will reduce the risk of fires in the foreseeable future within the range of the species. It will be important to implement the adaptive management strategy to ensure the conservation of *Lepidium papilliferum*, to account for changing circumstances and improve the conservation measures, as further studies are conducted. We also believe that measures related to the threat of livestock trampling lead to a reduction of this threat. Nonnative plant invasions of the sagebrush steppe ecosystem will be mitigated by the conservation efforts given the inherent difficulties of reversing this trend.

Finding and Withdrawal

Based on a through additional analysis of the best available scientific and commercial information available on *Lepidium papilliferum*, and recent advancements in formalized conservation efforts for the species, particularly those implemented through the CCA, we have changed our conclusion about the risk to the species. As a result, we believe that the species no longer is in danger of extinction throughout all or a significant portion of its range, nor is it likely to become endangered within the foreseeable future.

Conservation measures implemented through the CCA and existing INRMPs apply to approximately 97 percent of the *Lepidium papilliferum* occupied habitat. In addition, the Air Force recently updated their INRMP to contain additional conservation measures and monitoring specifics (vegetation, *Lepidium papilliferum*, grazing, noxious weed and invasive species) for *L. papilliferum*, further reducing threats to the species. In addition the CCA and INRMPs have research and adaptive management components that will improve our understanding of *L. papilliferum* ecology and its conservation needs in the future and provide a mechanism for adjusting management to account for changed circumstances. This information will better help in our future conservation efforts for *L. papilliferum*.

Furthermore, since the proposed rule to list *Lepidium papilliferum* as endangered was published, information from the ICDC indicates that the total area of habitat containing slickspots known to be occupied by *L. papilliferum* and interspersed with surrounding unoccupied sagebrush-steppe habitat is approximately 20,500 ac (8,300 ha). This represents an increase of 8,154 ac (3,300 ha) from the area of occupied habitat reported in the proposed rule. Area estimates in the proposed rule were based on ocular (by eyesight) estimates of the area of known occurrences, while area estimates in this final determination are based on high-precision GIS data provided by ICDC. In addition, five new occurrences of *L. papilliferum* have been documented within the range of the species since the proposed rule was published.

This withdrawal of the proposed rule to list *Lepidium papilliferum* as endangered is based on our conclusion that there is a lack of strong evidence of a negative population trend, and the conservation efforts contained in formalized plans have sufficient certainty that they will be implemented and will be effective such that the risk to the species is reduced to a level below the statutory definition of endangered or threatened. Therefore, we are withdrawing the proposed determination to list *L. papilliferum* as endangered.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from our Snake River Fish and Wildlife Office (*see* **ADDRESSES** section).

Author(s)

The primary author of this final determination is U.S. Fish and Wildlife Service, Snake River Fish and Wildlife Office (*see* **ADDRESSES** section).

Authority

The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 15, 2004.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 04–1295 Filed 1–21–04; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 69, No. 14

Thursday, January 22, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Meeting

AGENCY: Agency for International Development.

ACTION: Notice.

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: February 25, 2003 (9 a.m. to 5 p.m.).

Location: National Press Club, 529 14th Street, NW., 13th Floor, Washington, DC.

This meeting will feature discussion on the changing face of U.S. foreign assistance delivery. Participants will have an opportunity to ask questions of the speakers and participate in the discussion.

The meeting is free and open to the public. Persons wishing to attend the meeting can visit *http://www.ACVFA.net* to register online, or fax or e-mail their name to Ashley Mattison, (202) 347–9211, *pvcsupport@datexinc.com.*

Dated: January 12, 2004.

Adele Liskov,

Acting Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA).

[FR Doc. 04–1288 Filed 1–21–04; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–006–1]

Secretary's Advisory Committee on Foreign Animal and Poultry Diseases; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App. II), we are giving notice of a meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

DATES: The meeting will be held on February 4, 2004, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in the Conference Center at the USDA Center at Riverside, 4700 River Road, Riverdale, MD.

Written statements on the meeting topic may be sent to Dr. Joseph Annelli, Director Outreach/Liaison, Emergency Management, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Annelli, Director Outreach/Liaison, Emergency Management, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073.

SUPPLEMENTARY INFORMATION: The Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (the Committee) advises the Secretary of Agriculture on actions necessary to prevent the introduction of foreign diseases of livestock and poultry into the United States. In addition, the Committee advises the Secretary on contingency planning and on maintaining a state of preparedness to deal with these diseases, if introduced.

A subcommittee has been established to address issues related to the detection of bovine spongiform encephalopathy (BSE) in the United States. At this meeting, the subcommittee will make its report to the Committee, and the Committee will discuss the report and consider what recommendations to make to the Secretary. The meeting will be open to the public, and any member of the public may file a written statement. However, due to the time constraints, only Committee members will be allowed to participate in the Committee's discussions.

You may file written statements on meeting topics with the Committee before or after the meeting. You may also file written statements at the time of the meeting. Please refer to Docket No. 04–006–1 when submitting your statements.

General Services Administration regulations in 41 CFR part 102–3, § 102–3.150, provide that notice of Federal advisory committee meetings must be published in the **Federal Register** at least 15 calendar days prior to an advisory committee meeting, except in exceptional circumstances and provided that the reasons for giving less than 15 days notice are included in the **Federal Register** notice. The Secretary has determined that this meeting must be held without providing the full 15 days notice in order for the Committee to hear and consider the subcommittee's report on BSE and provide timely advice to the Secretary regarding the current BSE situation in the United States.

Parking and Security Procedures

Please note that a fee of $2.25 is required to enter the parking lot at the USDA Center. The machine accepts $1 bills and quarters.

Upon entering the building, visitors should inform security personnel that they are attending the Advisory Committee Meeting on Foreign Animal and Poultry Diseases. Identification is required. Visitor badges must be worn at all times while inside the building.

Done in Washington, DC, this 16th day of January, 2004.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–1410 Filed 1–21–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and request for revocation in part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates. In accordance with our regulations, we are initiating those administrative reviews. The Department

also received a request to revoke in part one antidumping duty order.

EFFECTIVE DATE: January 22, 2004.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order for Stainless Steel Wire Rod from India.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than December 31, 2004.

	Period to be reviewed
Antidumping Duty Proceedings	
Argentina: Honey, A–357–812	12/01/02–11/30/03
Asociacion de Cooperativas Argentinas	
Compania Apicola Argentina SA	
Compania Europea Americana S.A.	
HoneyMax S.A.	
Nexco S.A.	
Nutrin S.A.	
Radix S.r.L.	
Seylinco S.A.	
Transhoney S.A.	
Brazil: Silicomanganese A–351–824	12/01/02–11/30/03
Rio Doce Manganes S.A. (formerly SIBRA-Electrosiderurgica Brazileira S.A.)/Compania Paulista De Ferro-Ligas/ Urucum Mineracao S.A.	
India: Certain Hot-Rolled Carbon Steel Flat Products, A–533–820	12/01/02–11/30/03
Essar Steel Ltd.	
India: Stainless Steel Wire Rod, A–533–808	12/01/02–11/30/03
Isibars Steel Limited	
The Viraj Group	
Japan: Polychloroprene Rubber, A–588–046	12/01/02–11/30/03
Showa Denko Elastomers K.K.	
Showa Denko K.K.	
The People's Republic of China: Certain Cased Pencils [1], A–570–827	12/01/02–11/30/03
Anhui Import/Export Group Corporation	
Beijing Light Industrial Products Import/Export Corporation	
China First Pencil Company, Ltd.	
Orient International Holding Shanghai Foreign Trade Co., Ltd.	
Shanghai Three Star Stationary Industry Corp.	
Shandong Rongxin Import & Export Company Ltd.	
Sichuan Light Industrial Products Import/Export Corporation	
Tianjin Customs Wood Processing Co., Ltd.	
The People's Republic of China: Honey [2], A–570–863	12/01/02–11/30/03
Anhui Native Produce Import & Export Corp.	
Anhui Honghui Foodstuff (Group) Co., Ltd.	
Cheng Du Wai Yuan Bee Products Co., Ltd.	
Eurasia Bee's Products Co., Ltd.	
Foodworld International Club, Ltd.	
Inner Mongolia Autonomous Region Native Produce and Animal By-Products Import & Export Corp.	
Inner Mongolia Youth Trade Development Co., Ltd.	
Jiangsu Kanghong Natural Healthfoods co., Ltd.	
Jinfu Trading Co., Ltd.	
Kunshan Foreign Trade Company	
Shanghai Eswell Enterprise Co., Ltd.	
Shanghai Shinomiel International Trade Corporation	
Shanghai Xiuwei International Trading Co., Ltd.	
Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd.	
Wuhan Bee Healthy Company, Ltd.	
Zhejiang Native Produce and Animal By-Products Import & Export Group Corp. (formerly known as Zhejiang Native Produce and Animal By-Products Import & Export Corp.)	
Countervailing Duty Proceedings	
Argentina: Honey [3], C–357–813	1/1/03–12/31/03
Thailand: Certain Hot-Rolled Carbon Steel Flat Products, C–549–818	1/1/02–12/31/02
Sahaviriya Steel Industries Public Company Limited	
Suspension Agreements: None.	

[1] If one of the above named companies does not qualify for a separate rate, all other exporters of certain cased pencils from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of honey from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[3] In the countervailing duty investigation of Honey from Argentina, the Department solicited information from the Government of Argentina (GOA) on an aggregate or industry-wide basis in accordance with section 777A(e)(2)(B) of the Act, rather than from individual producers and exporters, due to the large number of producers and exporters of Honey in Argentina. *See Final Affirmative Countervailing Duty Determination: Honey from Argentina,* 66 FR 50613–01 (October 4, 2001). In accordance with section 351.213(b) of the regulations, the GOA and the petitioners have requested an administrative review of this countervailing duty order. No individual exporters requested the review pursuant to section 351.213(b) of the regulations. Accordingly, the Department will be conducting the review of this order on an aggregate basis.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: January 15, 2004.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 04–1357 Filed 1–21–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Certain Stainless Steel Sheet and Strip in Coils From Taiwan: Extension of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the final results of the review of stainless steel sheet and strip in coils (''SSSS'') from Taiwan. This review covers the period July 1, 2001 through June 30, 2002.

EFFECTIVE DATE: January 22, 2004.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, Enforcement Group III—Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4243.

Background

On August 27, 2002, the Department published a notice of initiation of a review of SSSS from Taiwan covering the period July 1, 2001 through June 30, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 67 FR 55000 (August 27, 2002). On August 6, 2003, the Department published the preliminary results of review. *See Stainless Steel Sheet and Strip in Coils From Taiwan: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 68 FR 46582 (August 6, 2003), (''*Preliminary Results*''). In the *Preliminary Results,* the Department stated that it would make its final determination for the antidumping duty administrative review no later than 120 days after the date of publication of the *Preliminary Results*, or not later than December 4, 2003. On December 8, 2003, the Department published in the **Federal Register**, a notice extending the deadline for the final results of review by 43 days, stating that completing the final results within the 120-day period was not practicable. *See Certain Stainless Steel Sheet and Strip in Coils From Taiwan: Extension of Final Results of Antidumping Duty Administrative Review,* 68 FR 68355, (December 8, 2003).

Extension of Time Limit for the Final Results of Review

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 120-day period, following the date of publication of the preliminary results, to issue its final results by an additional 60 days. Completion of the final results within the 120-day period is not practicable for the following reasons: (1) This review requires the Department to analyze YUSCO's corporate affiliations and relationships; (2) This review involves certain complex issues which were raised by petitioners after the verification and after the preliminary results of review; and (3) The review involves a large number of transactions and complex adjustments.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of review by 17 days until February 2, 2004.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: January 16, 2004.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 04–1358 Filed 1–21–04; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Commercial Availability Request Under the United States-Caribbean Basin Trade Partnership Act (CBTPA)

January 15, 2004.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Denial of the request alleging that certain printed, 100 percent rayon, herringbone fabrics, for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On November 13, 2003 the Chairman of CITA received a petition from Alarmex Holdings Group, Inc. that certain printed, 100 percent rayon, herringbone fabric, of 220 g/m2 fabric weight, of 20's singles spun rayon yarn, of 100 X 64 construction, classified in subheading 5516.14.00 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles, cannot be supplied by

the domestic industry in commercial quantities in a timely manner. It requested that apparel of such fabrics be eligible for preferential treatment under the CBTPA. Based on currently available information, CITA has determined that these subject fabrics can be supplied by the domestic industry in commercial quantities in a timely manner and therefore denies the request.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

Background

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On November 13, 2003, the Chairman of CITA received a petition from Alarmex Holdings Group, Inc. that certain printed, 100 percent rayon, herringbone fabric, of 220 g/m2 fabric weight, of 20's singles spun rayon yarn, of 100 X 64 construction, classified in subheading 5516.14.00 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for apparel articles that are both cut and sewn in one or more CBTPA beneficiary countries from such fabrics.

On November 19, 2003, CITA solicited public comments regarding this request (68 FR 65256), particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. On December 5, 2003, CITA and the Office of the U.S. Trade Representative offered to hold consultations with the relevant Congressional committees. We also requested the advice of the U.S. International Trade Commission and the relevant Industry Sector Advisory Committees.

Based on the information provided, including review of the request, public comments and advice received, and our knowledge of the industry, CITA has determined that certain printed, 100 percent rayon, herringbone fabrics, classified in subheading 5516.14.00 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles, can be supplied by the domestic industry in commercial quantities in a timely manner. Alarmex Holdings Group's petition is denied.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.04–1412 Filed 1–21–04; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Security Service, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Security Service announces the proposed continuation of a public information collection affecting cleared Department of Defense contractors and seeks public comments on the provision thereof. 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 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 22, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to: Defense Industrial Security Clearance Office (DISCO), ATTN: Ms. Virginia Heimrich, Deputy Director, 2780 Airport Dr., Suite 400, Columbus, OH 43219–2268.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instrument, please write to the above address, or call DISCO at (614) 827–1530/1528.

Title, Associated Form, and OMB Number: Personnel Security Clearance Change Notification; DISCO Form 562; 0704–0418.

Type of Request: Reinstatement.

Needs and Uses: DISCO Form 562 is used by contractors participating in the National Industrial Security Program to report various changes in employee personnel clearance status or identification information, *e.g.,* reinstatements, conversions, terminations, changes in name or other previously submitted information.

Affected Public: Business or Other For-Profit; Not-For-Profit Institutions.

Annual Burden Hours: 45,816.

Number of Respondents: 11,454.

Responses Per Respondent: 20.

Average Burden Per Response: 12 minutes.

Frequency: On Occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The execution of the DISCO FORM 562 is a factor in making a determination as to whether a contractor employee is eligible to have a security clearance. These requirements are necessary in order to preserve and maintain the security of the United States through establishing standards to prevent the improper disclosure of classified information.

Dated: January 14, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–1277 Filed 1–21–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 04–03]

36(b)(1) Arm Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 04–03 with attached transmittal and policy justification.

Dated: January 14, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

20 NOV 2003
In reply refer to:
I-03/010424

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 04-03, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Saudi Arabia for defense articles and services estimated to cost $990 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 04-03

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Saudi Arabia

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 0 million
Other	$990 million
TOTAL	$990 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** services for the continuation of the U.S. supported effort to modernize the Saudi Arabian National Guard (SANG) by providing minor defense articles including spare and repair parts for V150 armored vehicles, light armored vehicles, artillery pieces, communications equipment, other military equipment, medical equipment and medicines, automation equipment and software for logistics, training, and management, translated (into Arabic) tactical and technical manuals. Defense services transferred would include training, professional military advice and assistance, management assistance, contract administration, construction oversight, transportation of equipment, upper echelon maintenance, management of repair and return of components. These support services would be for the period 1 January 2004 through 31 December 2008. This proposed sale does not entail the procurement of Major Defense Equipment.

(iv) **Military Department:** Army (ZAC, Amendment 32)

(v) **Prior Related Cases, if any:** numerous cases dating back to 1973.

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** none

(viii) **Date Report Delivered to Congress:** 20 NOV 2003

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Saudi Arabia – Continued Modernization of the Saudi Arabian National Guard

The Government of Saudi Arabia has requested a possible sale of services for the continuation of the U.S. supported effort to modernize the Saudi Arabian National Guard (SANG) by providing minor defense articles including spare and repair parts for V150 armored vehicles, light armored vehicles, artillery pieces, communications equipment, other military equipment, medical equipment and medicines, automation equipment and software for logistics, training, and management, translated (into Arabic) tactical and technical manuals. Defense services transferred would include training, professional military advice and assistance, management assistance, contract administration, construction oversight, transportation of equipment, upper echelon maintenance, management of repair and return of components. These support services would be for the period 1 January 2004 through 31 December 2008. This proposed sale does not entail the procurement of Major Defense Equipment. The estimated cost is $990 million.

This sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.

The continuation of services under the SANG Modernization Program is an evolution of the SANG as an effective defensive force with the advice, assistance and training of the U.S. Army. The Modernization Program ensures necessary training, logistics, support, doctrine development and force integration for the continuing expansion and use of their weapon systems. These services will remain the cornerstone of an effort to upgrade and enhance the infrastructure of the SANG organization.

This proposed sale of continuing support services will not affect the basic military balance in the region.

The prime contractor is the Vinnell Arabia Corporation of Fairfax, Virginia. There are no offset agreements proposed in connection with this potential sale.

At present, there are approximately 273 U.S. Government personnel and 1,171 contractor representatives in country supporting the SANG modernization program.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 04–1279 Filed 1–21–04; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Nuclear Weapons Effects Test, Evaluation and Simulation will meet in closed session on January 28–29, 2004, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. The Task Force will review DoD needs and specific requirements for nuclear weapons effects (NWE) test, evaluation and simulation capabilities.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will: Review Intelligence Community, DoD and National Nuclear

Security Agency estimates of present and future nuclear weapon outputs for all weapons that are used to define the operational threat; review nuclear threat environments as used across DoD Services and Agencies and assess whether they are being defined and applied to develop credible consistent hardness requirements; assess the current NWE predictive capability to confidently predict the response of nuclear and conventional weapon systems and C4 systems to credible nuclear environments that might be encountered over the next 15 years; assess the extent to which alternatives to testing can be used to offset the need for simulation capability; identify both near-term and far-term NWE test and simulation needs responsive to DoD requirements for nuclear systems, strategic and conventional weapon systems belonging to the new Triad as defined in the Nuclear Posture Review, missile defense systems, and C4I systems required to operate in hostile nuclear environments; assess the current NWE simulation and system survivability evaluation capabilities of the DoD, the Department of Energy, and the commercial sector; produce a comprehensive roadmap of NWE test, evaluation and simulation capabilities that will guide future simulator/simulation technology developments, test planning, investment decisions, model development, facility sustainment planning and responsibilities, and realignment/closure alternatives.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: January 14, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–1276 Filed 1–21–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Patriot Systems Performance will meet in closed session on March 3–4, 2004; and May 25–26, 2004, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. The Task Force will assess the recent performance of the Patriot System in OPERATION IRAQI FREEDOM from deployment through use across the threat spectrum. The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meetings, the Defense Science Board Task Force will: Assess logistical, doctrine, training, personnel management, operational and material performance; identify those lessons learned which are applicable to the development of the Medium Extended Air Defense System (MEADS); and assess the current planned spiral development of the Patriot to ensure early incorporation of fixes discovered in the lessons learned process.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

Dated: January 14, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 04–1278 Filed 1–21–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS). The purpose of the Committee meeting is to discuss Deployment, Health Care, OPTEMPO, and Retention. The meeting is open to the public, subject to the availability of space.

DATES: February 4, 2004, 1 p.m.–5 p.m.; February 5, 2004, 8 a.m.–5:30 p.m.; February 6, 2004, 8 a.m.–5 p.m.

ADDRESSES: Doubletree Hotel Crystal City National Airport, 300 Army Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: MSgt Gerald Posey, USAF, DACOWITS, 4000 Defense Pentagon, Room 2C548A, Washington, DC 20301–4000. Telephone (703) 697–2122 or Fax (703) 614–6233.

SUPPLEMENTARY INFORMATION: Interested persons may submit a written statement for consideration by the Committee and make an oral presentation of such. Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than 5 p.m., January 30, 2004. Oral presentations by members of the public will be permitted only on Thursday, February 5, 2004, from 5:15 p.m. to 5:30 p.m. before the full Committee. Presentations will be limited to two minutes. Number of oral presentations to be made will depend on the number of requests received from members of the public. Each person desiring to make an oral presentation must provide the point of contact listed above with one (1) copy of the presentation by 5 p.m., January 30, 2004, and bring 35 copies of any material that is intended for distribution at the meeting. Persons submitting a written statement must submit 35 copies of the statement to the DACOWITS staff by 5 p.m. on January 30, 2004.

Meeting Agenda

Wednesday, February 4, 2004, 1 p.m.–5 p.m.

Welcome & administrative remarks; deployment and OPTEMPO briefings; Welcome new members.

Thursday, February 5, 2004, 8 a.m.–5:30 p.m.

Service retention reports and surveys; Public forum (5:15–5:30).

Friday, February 6, 2004, 8. a.m.–5 p.m.

Wrap up retention and deployment; Health care; annual threat briefing; committee time–Focus group protocols with contractor.

Note: Exact order may vary.

Dated: January 14, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–1275 Filed 1–21–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by February 16, 2004.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: January 15, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: New.

Title: Carl D. Perkins Vocational and Technical Education Act of 1998—State Plan Revisions Guidance.

Abstract: This collection solicits from States revisions to their State plans under the Carl D. Perkins Vocational and Technical Education Act and proposed performance levels for FY 2004.

Additional Information: Section 122(a)(1) of Perkins III requires that States have an approved State plan on file in order to receive their allotments of Federal vocational education funds. State plans govern vocational educational program operations in each State. To receive their allotments, States must also agree upon annual performance targets for indicators specified in the law. The information collection solicits revisions to the State plans and new proposed performance levels.

Frequency: One time.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 54.

Burden Hours: 2,430.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2440. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–1289 Filed 1–21–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice DE–FG01–04ER04–10; Atmospheric Radiation Measurement Program

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (BER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for research grants in experimental and theoretical studies of the effects of clouds on the atmospheric radiation balance in conjunction with the Atmospheric Radiation Measurement (ARM) Program as part of the U.S. Global Climate Change Science Program (USCCSP). This notice requests new applications and renewal applications of grants currently funded by DOE under previous ARM Program notices that are relevant to the terms of reference for this announcement and responsive to the particular needs defined below.

DATES: Applicants are encouraged (but not required) to submit a brief preapplication for programmatic review. The deadline for submission of preapplications is March 15, 2004. Early submission of preapplications is encouraged to allow time for meaningful responses.

Formal applications submitted in response to this notice must be received by 4:30 p.m., E.D.T., April 9, 2004, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2005. Awards are expected to begin on or about November 1, 2004.

ADDRESSES: Preapplications referencing Program Notice DE–FG01–04ER04–10, may be sent to the program contact, Dr. Wanda Ferrell, via electronic mail at: *wanda.ferrell@science.doe.gov* or by U.S. Postal Service Mail at: Dr. Wanda Ferrell, Office of Biological and Environmental Research, Climate Change Research Division, SC–74/ Germantown Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290. Electronic mail is recommended to speed up response to preapplications.

Formal applications referencing Program Notice DE–FG01–04ER04–10, must be sent electronically by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/*. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment

via the Internet. In order to submit applications through IIPS, your business official will need to register at the IIPS website. IIPS offers the option of using multiple files, please limit submissions to one volume and one file if possible, with a maximum of no more than four PDF files. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific grant application as Color image 1, Color image 2, *etc.* Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: *HelpDesk@pr.doe.gov*, or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html*.

If you are unable to submit an application through IIPS, please contact the Grants and Contracts Division, Office of Science at: (301) 903–5212 or (301) 903–3604, in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Dr. Wanda Ferrell, Office of Biological and Environmental Research, Climate Change Research Division, SC–74, Germantown Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290, telephone (301) 903–0043, fax (301) 903–8519, Internet e-mail address: *wanda.ferrell@science.doe.gov*. Program information is available on: *http://www.science.doe.gov/ober/CCRD/arm.html*.

SUPPLEMENTARY INFORMATION:

Background

Atmospheric Radiation Measurement (ARM) Program. Two major scientific objectives of the Climate Change Research Division (CCRD) are: (1) To improve the performance of predictive models of the Earth's climate, and (2) to thereby make more accurate predictions of the response of the climate system to increasing concentrations of greenhouse gases. The purpose of the ARM Program is to improve the treatment of radiation and clouds in the General Circulation Models (GCMs) used to predict future climate. This program is one component of the U.S. Climate Change Science Program that has the goal to improve the capability to accurately simulate and predict climate and climate change. The major component of the ARM Program involves gathering data for the development and testing of models of the atmospheric radiation transfer, properties of clouds, and the full life cycle of clouds with the ultimate goal of developing cloud system resolving models (CSRM) that directly and accurately simulate cloud-scale physical processes and that can be incorporated into the Multi-Scale Modeling Framework (MMF), also referred to as super parameterization. The ARM program has established sites in three climatic regimes where cloud and radiation data are collected. The first site, Southern Great Plains (SGP), began operation in calendar year 1992, with instruments spread over an area of approximately 60,000 sq. km., centered on Lamont, Oklahoma. The SGP was chosen as a field measurement site for several reasons including its relatively homogenous geography, wide variability of climate, cloud type, and surface flux properties, and large seasonal variation in temperature and specific humidity. The Tropical Western Pacific (TWP) site is the area roughly between 10 °N to 10 °S of the equator from Indonesia to near Christmas Island. The TWP site consists of stations at Darwin, Australia, and on the islands of Manus, Papua, New Guinea and the Republic of Nauru, respectively. This region was selected as an ARM site because it plays a large role in the interannual variability observed in the global climate system. The third site, the North Slope of Alaska (NSA), is located at Barrow, Alaska, with a secondary, inland site near Atqasuk. The NSA site was selected as an ARM site because it provides data about cloud and radiative processes at high latitudes, and by extension, about cold and dry regions of the atmosphere in general. Construction of an ARM Mobile Facility (AMF) was begun in late 2003 with the first deployment expected in late 2004. The AMF has been designed to address science questions beyond those investigated at the current fixed sites. The AMF will deploy instrumentation and data systems similar to those at the fixed ARM sites in NSA and TWP. The AMF will be deployed to sites around the world in various climatic regimes and sites of opportunity for durations of 6 to 18 months to study the effects of clouds and other atmospheric conditions and properties on radiation. The ARM sites, both mobile and fixed, have been designated as a user facility, the ARM Climate Research Facility (ACRF). Thus, AMF deployments and campaigns at the fixed ARM sites will be determined by a review by the ACRF Science Review Board.

Request for Grant Applications

This notice requests applications for grants, both new and renewal that address the broad ARM goal of improving the representation of cloud and radiation processes in climate models. The research areas of interest include the development of algorithms for retrieving the required measurements, studies to improve the understanding of cloud and radiation physical processes, the translation of process study results into process models and parameterizations, and the incorporation of the submodels into climate models. ARM data consist of time series of vertical profiles of certain observables while parameterizations are geared to produce statistical cloud and radiation properties on the scale of several hundred kilometers. Since the format is not amenable to modelers, research is also needed to develop tools and methodologies for making ARM data more useful for the development and testing of submodels.

Specific areas of interest to the ARM program include, but are not limited to:

- Developing new techniques to retrieve the properties of ice clouds and mixed-phase clouds from ARM data.
- Conducting analyses for improving our understanding of cloud and radiation processes including of the 3D cloud-radiation process at scales from the local atmospheric column to the GCM grid square and the relationship between atmospheric radiation and the life-cycle of ice clouds and mixed-phase clouds.
- Developing and testing new cloud and radiation submodels for global climate models.
- Incorporating new cloud and radiation submodels into global climate models and demonstrating the improved performance of the models.
- Developing and applying methodologies to use ARM data more effectively in atmospheric models, both at the cloud resolving model scale and the global climate model scale.
- Quantifying the effects of aerosols on cloud properties and the resulting radiation field, using some combination of ARM observations and physical models.

Applications are especially encouraged that utilize ARM generated data in the above activities.

All applications submitted in response to this Notice must explicitly state how the proposed research will

support accomplishment of the BER Climate Change Research Division's (CCRD's) Long Term Measure of Scientific Advancement to deliver improved data and models for policymakers to determine acceptable levels of greenhouse gases in the atmosphere. Submitted proposals that do not contain this information will be returned without review.

Applications for research to develop new techniques to retrieve the properties of ice clouds and mixed-phase clouds using ARM data should target their research on methods for deriving long-term records of cloud microphysical and macrophysical properties at multiple locations. The improved retrieval algorithms provide bulk microphysical estimates for clouds at all ARM fixed sites and are expected to include uncertainty estimates.

Applications for cloud and radiation process analyses should propose studies that elucidate radiative transfer in cloudy atmospheres, including the overlap problem of stratiform cloud layers. These studies may include, but are not limited to, 3-D radiative transfer, representations of cloud overlap, mixed phase clouds, cloud life cycles, feedback processes (especially in the Arctic), and other processes important for clouds, such as convection and turbulence and their effects on radiative transfer. The emphasis on the Arctic feedback is to test the hypothesis that links large climate feedbacks with surface and tropospheric temperatures, surface albedo, cloud cover, deep ocean water production (the global thermohaline ocean circulation pump), and the polar atmospheric heat sink.

Applications for research to develop and test new cloud and radiation process models should focus on investigating the validity of assumptions that are associated with such models and how well the ensemble of cloud and radiation sub models simulate clouds and their effect on radiation fields in the climate models.

Applications requesting funds to study incorporation of cloud and radiation parameterizations into global climate models and demonstrating the improved performance of the models are expected to provide a clear plan describing the method to be used to quantify the model improvement. Applicants are strongly encouraged to utilize the tools that have been developed for this purpose in the *C*limate Change Prediction Program—*A*RM *P*arameterization *T*estbed (CAPT) (*http://www-pcmdi.llnl.gov/capt/*) effort at DOE's Program for Climate Model Diagnosis and Intercomparison (PCMDI).

Applications for research to develop and apply methodologies to use ARM data more effectively in atmospheric models should focus on converting ARM data that usually consist of time series of vertical profiles of certain observables into a form that is of improved utility by climate modelers. This research area also includes techniques for converting model output to a form that is equivalent ARM measurements, thus, enabling the direct comparison of model-produced cloud properties with ARM observations.

Applications for research to quantify the effect of aerosols on the radiation field should focus on both the indirect and direct role of aerosols on radiative transfer and cloud properties. Specifically the research should relate observations of radiative fluxes and radiances to the atmospheric composition and use these relations to develop and test parameterizations and/or process models to accurately predict the atmospheric radiative properties. Note, that the DOE Atmospheric Science Program (ASP) is being reconfigured in Fiscal Year 2004, to focus on aerosol radiative forcing with new research to be funded early in Fiscal Year 2005, and will support aerosol research on aerosol processes and resulting properties that influence radiation fields. A joint ARM–ASP working group will be formed to foster and facilitate collaborations between the two programs.

Applications that require a special field campaign, which has not already been planned and approved by the ARM Program Manager, will not be accepted for consideration.

To ensure that the program meets the broadest needs of the research community and the specific needs of the DOE CCRD, successful applicants are expected to participate as ARM Science Team members in the appropriate working group(s) relevant to their efforts. Costs for participation in ARM Science Team meetings and subcommittee meetings should be based on two trips of 1 week each to Washington, DC, and two trips of 3 days each to Chicago, Illinois.

Program Funding

It is anticipated that approximately $3 million will be available for awards in Fiscal Year 2005, contingent upon the availability of appropriated funds. Multiple-year funding of awards is expected, with out-year funding also contingent upon the availability of appropriated funds, progress of the research, and programmatic needs. The allocation of funds within the research areas will depend upon the number and quality of applications received. Awards are expected to begin on or about November 1, 2004. Equal consideration will be given to renewal and new applications. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

Collaboration

Applicants are strongly encouraged to collaborate with researchers in other institutions, such as: universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to include cost sharing wherever feasible. Additional information on collaboration is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/Colab.html.*

Preapplications

Potential applicants are strongly encouraged to submit a brief preapplication that consists of two to three pages of narrative describing the research objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the ARM Program. Principal Investigator (PI) address, telephone number, fax number and e-mail address are required parts of the preapplication. A response to each preapplication discussing the potential program relevance of research that would be proposed in a formal application generally will be communicated within 15 days of receipt. Use of e-mail for this communication will decrease the possibility of a delay in responses to the preapplication. The deadline for the submission of preapplications is March 15, 2004. Applicants should allow sufficient time so that the formal application deadline is met. SC's preapplication policy can be found on SC's Grants and Contracts Web site at: *http://www.sc.doe.gov/production/grants/preapp.html.* Please contact Dr. Wanda Ferrell (*wanda.ferrell@science.doe.gov*).

Merit Review

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;

2. Appropriateness of the Proposed Method or Approach;

3. Competency of Applicant's Personnel and Adequacy of Proposed Resources;

4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation process will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Both Federal and non-Federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

The Application

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR Part 605. Electronic access to SC's Financial Assistance Application Guide and required forms is made available via the World Wide Web: *http://www.sc.doe.gov/production/grants/grants.html.*

The technical portion of the application should not exceed twenty-five double-spaced pages and should include detailed budgets for each year of support requested. Applicants are asked to use the following ordered format:

- Face Page (DOE F 4650.2 (10–91)) In block 15, also provide the PI's phone number, fax number and e-mail address.
- Project Abstract Page; single page only, should contain title, PI name, and abstract text
- Budget pages for each year and a budget summary of project period (using DOE F 4620.1)
- Budget Explanation
- Project Description:
- Long Term Measure: *All applications submitted in response to this Notice must explicitly state how the proposed research will support accomplishment of the BER Climate Change Research Division's (CCRD's) Long Term Measure of Scientific Advancement to deliver improved data and models for policy makers to determine acceptable levels of greenhouse gases in the atmosphere. Submitted proposals that do not contain this information will be returned without review.*
- Literature Cited
- Collaborative Arrangements (if applicable)
- Facilities and Resources
- Biographical Sketches should be submitted in a form similar to that of NIH or NSF (two to three pages).
- Current and Pending Support
- Letters of Collaboration (if applicable)
- Renewal applications should include a special section entitled ''Accomplishments Under Previous Support.'' (See *http://www.science.doe.gov/production/grants/App.html.*) This section shall address the following:

(a) continued relevance of their work to the goals of the ARM Program; and

(b) the contribution of work conducted under previous support to the goals of the ARM Program, including a listing of publications and presentations.

For researchers who do not have access to the World Wide Web (WWW), please contact Karen Carlson, Office of Biological and Environmental Research, Climate Change Research Division, SC–74/Germantown Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290, phone: (301) 903–3338, fax: (301) 903-8519, e-mail: *karen.carlson@science.doe.gov;* for hard copies of background material mentioned in this solicitation.

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC, January 14, 2004.

John A. Alleva,

Director, Grants and Contracts Division, Office of Science.

[FR Doc. 04–1372 Filed 1–21–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–4–000, et al.]

PSI Energy, Inc., et al.; Electric Rate and Corporate Filings

January 13, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PSI Energy, Inc. and Northern Indiana Public Service Company

[Docket No. EC04–40–000]

Take notice that on January 7, 2004, PSI Energy, Inc. and Northern Indiana Public Service Company (NIPSCO) tendered for filing an application requesting all necessary authorizations under Section 203 of the Federal Power Act, 16 U.S.C. 824b (2000), for PSI Energy, Inc. and NIPSCO to engage in a transfer of limited transmission assets from NIPSCO to PSI Energy, Inc.

NIPSCO states that copies of this filing have been served on the Indiana Utility Regulatory Commission.

Comment Date: January 28, 2004.

2. New York Independent System Operator, Inc.

[Docket Nos. ER03–552–006 and ER03–984–004]

Take notice that on January 7, 2004, the New York Independent System Operator, Inc. (NYISO) tendered for filing a compliance filing in connection with the Commission's December 23, 2003 Order in the above-referenced dockets.

The NYISO states it has served a copy of this filing to all parties listed on the official service list maintained by the Secretary of the Commission in these proceedings. The NYISO further states that it has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: January 28, 2004.

3. New York Independent System Operator Inc.

[Docket No. ER03–836–003]

Take notice that on January 8, 2004, New York Independent System Operator Inc. (NYISO) tendered for filing its second 10-Minute Non-Synchronous Reserve Market Report (Report). NYISO states that the Report is in response to Commission's July 1, 2003 Order Conditionally Accepting Proposed Tariff Revisions that was issued in Docket No. ER03–836–000.

Comment Date: January 29, 2004.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–986–003]

Take notice that on January 8, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), pursuant to section 205 of the Federal Power Act and section 35.13 of the Commission's regulations 18 CFR 35.13 (2002), submitted for filing a second revised Interconnection and Operating Agreement among Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. and Montana-

Dakota Utilities Co., a Division of MDU Resources Group, Inc.

Midwest states that a copy of this filing was served on all parties.

Comment Date: January 29, 2004.

5. Green Power Partners I LLC

[Docket No. ER04–153–000]

Take notice that on January 8, 2004, Green Power Partners I LLC (Green Power) submitted for filing with the Federal Energy Regulatory Commission a Notice of Withdrawal of its application, as amended, requesting approval of a rate schedule, Rate Schedule FERC No. 3, pursuant to Section 205 of the Federal Power Act and Section 35.12 of the regulations of the Commission.

Comment Date: January 29, 2004.

6. System Energy Resources, Inc.

[Docket No. ER04–329–000]

Take notice that on December 24, 2003, System Energy Resources, Inc. (SERI) tendered for filing revisions to the Master Nuclear Decommissioning Trust Fund Agreement between SERI and Irving Trust Company (Decommissioning Agreement). The Decommissioning Agreement is designed as SERI Rate Schedule No. 4. SERI states that the revisions are designed to implement a recent rulemaking by the Nuclear Regulatory Commission that requires these revisions. SERI requests an effective date of December 24, 2003.

Comment Date: January 23, 2004.

7. Pacific Gas and Electric Company

[Docket No. ER04–377–000]

Take notice that on January 7, 2004, Pacific Gas and Electric Company (PG&E) tendered for filing a Generator Special Facilities Agreement and Generator Interconnection Agreement between PG&E and the following generators: GWF Energy LLC—Hanford, Sunrise Cogeneration and Power Company, La Paloma Generating Company, Ltd., NEO Corporation—Chowchilla, and Fresno Cogeneration Partners, LP. PG&E states that the primary purpose of this filing is to obtain Commission authorization to commence payment of credits to the generators for generator-funded network upgrades, in accordance with current Commission policy. PG&E has requested certain waivers.

PG&E states that copies of this filing have been served upon GWF Hanford, Sunrise, La Paloma, NEO Chowchilla, Fresno, the California Independent System Operator Corporation and the CPUC.

Comment Date: January 28, 2004.

8. PJM Interconnection, L.L.C.

[Docket No. ER04–378–000]

Take notice that on January 7, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing an executed Construction Service Agreement (CSA) among PJM and U.S. General Services Administration Federal Research Center, White Oak, and Potomac Electric Power Company. PJM requests a waiver of the Commission's 60-day notice requirement to permit a December 23, 2003 effective date for the CSA.

PJM states that copies of this filing were served upon the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: January 28, 2004.

9. Ameren Services Company

[Docket No. ER04–379–000]

Take notice that on January 8, 2004, Ameren Services Company (ASC) tendered for filing an executed Network Integration Transmission Service Agreement and Network Operating Agreement between ASC and The City of St. James, Missouri. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to The City of St. James, Missouri pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: January 29, 2004.

10. Avista Corporation

[Docket No. ER04–380–000]

Take notice that on January 8, 2004, Avista Corporation (Avista) tendered for filing with the Federal Energy Regulatory Commission, Original Service Agreement No. 305, which is an Agreement for Purchase and Sale of Power between Avista and Public Utility District No. 1 of Douglas County, Washington (Douglas). Avista respectfully requests that the Commission grant all waivers necessary to allow Service Agreement No. 305 to become effective January 1, 2004.

Avista states that copies of the filing were served upon Douglas, the sole party to the Service Agreement.

Comment Date: January 29, 2004.

11. DC Energy, LLC

[Docket No. ER04–381–000]

Take notice that on January 8, 2004, DC Energy, LLC submitted for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's regulations, an application for authorization to make sales, as a power marketer, of capacity, energy, and certain Ancillary Services at market-based rates; to reassign transmission capacity; and to resell firm transmission rights.

Comment Date: January 29, 2004.

12. American Transmission Company LLC

[Docket No. ER04–382–000]

Take notice that on January 8, 2004, American Transmission Company LLC (ATCLLC) tendered for filing a Generation-Transmission Interconnection Agreement between ATCLLC and Wisconsin Public Service Corporation for the Weston 4 generating Facilities. ATCLLC requests an effective date of December 22, 2003.

Comment Date: January 29, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (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. E4–00097 Filed 01–21–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting; Notice

January 15, 2004.

The following Notice of Meeting is Published Pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY: Federal Energy Regulatory Commission.

DATE AND TIME: January 22, 2004, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

***Note:** Items Listed on the Agenda May be Deleted Without Further Notice.

FOR FURTHER INFORMATION CONTACT: Magalie R. Salas, Secretary, Telephone (202) 502–8400, For a Recording Listing Items Stricken from or Added to the Meeting, Call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the Agenda; however, all public documents may be examined in the Reference and Information Center.

848th—Meeting January 22, 2004

Regular Meeting 10 a.m.

Administrative Agenda

A–1.
Docket#, AD02–1, 000, Agency Administrative Matters

A–2.
Docket#, AD02–7, 000, Customer Matters, Reliability, Security and Market Operations

A–3.
Docket#, MO04–2, 000, State of the Markets Report

Markets, Tariffs and Rates—Electric

E-1.
Docket#, EL03–137, 001, American Electric Power Service Corporation
Other#s, EL03–138, 001, Aquila Merchant Services, Inc. (f/k/a Aquila, Inc.)
EL03–139, 001, Arizona Public Service Company
EL03–140, 001, Automated Power Exchange, Inc.
EL03–141, 001, Bonneville Power Administration
EL03–142, 001, California Department of Water Resources
EL03–143, 001, California Power Exchange Corporation
EL03–144, 001, Cargill-Alliant, LLC
EL03–145, 001, City of Anaheim, California
EL03–146, 001, City of Azusa, California
EL03–147, 001, City of Glendale, California
EL03–148, 001, City of Pasadena, California
EL03–149, 001, City of Redding, California
EL03–150, 001, City of Riverside, California
EL03–151, 001, Coral Power, LLC
EL03–152, 001, Duke Energy Trading and Marketing Company
EL03–153, 001, Dynegy Power Marketing, Inc., Dynegy Power Corp., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC
EL03–154, 001, Enron Power Marketing, Inc., and Enron Energy Services Inc.
EL03–155, 001, FPL Energy
EL03–156, 001, Idaho Power Company
EL03–157, 001, Los Angeles Department of Water and Power
EL03–158, 001, Mirant Americas Energy Marketing, LP, Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC
EL03–159, 001, Modesto Irrigation District
EL03–160, 001, Morgan Stanley Capital Group
EL03–161, 001, Northern California Power Agency
EL03–162, 001, Pacific Gas and Electric Company
EL03–163, 001, PacifiCorp
EL03–164, 001, PGE Energy Services
EL03–165, 001, Portland General Electric Company
EL03–166, 001, Powerex Corporation (f/k/a British Columbia Power Exchange Corp.)
EL03–167, 001, Public Service Company of Colorado
EL03–168, 001, Public Service Company of New Mexico
EL03–169, 001, Puget Sound Energy, Inc.
EL03–170, 001, Reliant Resources, Inc., Reliant Energy Power Generation, and Reliant Energy Services, Inc.
EL03–171, 001, Salt River Project Agricultural Improvement and Power District
EL03–172, 001, San Diego Gas & Electric Company
EL03–173, 001, Sempra Energy Trading Corporation
EL03–174, 001, Sierra Pacific Power Company
EL03–175, 001, Southern California Edison Company
EL03–176, 001, TransAlta Energy Marketing (U.S.) Inc., and TransAlta Energy Marketing (California), Inc.
EL03–177, 001, Tucson Electric Power Company
EL03–178, 001, Western Area Power Administration
EL03–179, 001, Williams Energy Services Corporation
EL03–180, 001, Enron Power Marketing, Inc., and Enron Energy Services Inc.
EL03–181, 001, Aquila, Merchant Services, Inc. (f/k/a Aquila, Inc.)
EL03–182, 001, City of Redding, California
EL03–183, 001, City of Glendale, California
EL03–184, 001, Colorado River Commission of Nevada
EL03–185, 001, Constellation Power Source, Inc
EL03–186, 001, Coral Power, LLC
EL03–187, 001, El Paso Merchant Energy, L.P.
EL03–188, 001, Eugene Water and Electric Board
EL03–189, 001, Idaho Power Company
EL03–190, 001, Koch Energy Trading, Inc.
EL03–191, 001, Las Vegas Cogeneration L.P.
EL03–192, 001, MIECO Inc.
EL03–193, 001, Modesto Irrigation District
EL03–194, 001, Montana Power Company (now d/b/a NorthWestern Energy, LLC)
EL03–195, 001, Morgan Stanley Capital Group
EL03–196, 001, Northern California Power Agency
EL03–197, 001, PPM Energy, Inc. (f/k/a PacificCorp Power Marketing, Inc.)
EL03–198, 001, PECO Energy Company
EL03–199, 001, Powerex Corporation (f/k/a British Columbia Power Exchange Corporation)
EL03–200, 001, Public Service Company of New Mexico
EL03–201, 001, Sempra Energy Trading Corporation
EL03–202, 001, TransAlta Energy Marketing (U.S.) Inc., and TransAlta Energy Marketing (California), Inc.
EL03–203, 001, Valley Electric Association, Inc.

E–2.
Docket#, EL03–139 000 Arizona Public Service Company
Other#s, EL03–140 000 Automated Power Exchange, Inc.
EL03–141, 000, Bonneville Power Administration
EL03–142, 000, California Department of Water Resources
EL03–143, 000, California Power Exchange
EL03–144, 000, Cargill-Alliant, LLC
EL03–145, 000, City of Anaheim, California
EL03–146, 000, City of Azusa, California
EL03–148, 000, City of Pasadena, California
EL03–150, 000, City of Riverside, California
EL03–155, 000, FPL Energy
EL03–157, 000, Los Angeles Department of Water and Power
EL03–161, 000, Northern California Power Agency
EL03–162, 000, Pacific Gas and Electric Company
EL03–164, 000, PGE Energy Services
EL03–167, 000, Public Service Company of Colorado
EL03–168, 000, Public Service Company of New Mexico
EL03–171, 000, Salt River Project Agricultural Improvement and Power District
EL03–174, 000, Sierra Pacific Power Company
EL03–175, 000, Southern California Edison Company
EL03–176, 000, TransAlta Energy Marketing (U.S.) Inc., and TransAlta Energy Marketing (California) Inc.
EL03–177, 000, Tucson Electric Power Company
EL03–178, 000, Western Area Power Administration

E–3.
Docket#, EL03–184, 000, Colorado River Commission of Nevada
Other#s, EL03–185, 000, Constellation Power Source, Inc.

EL03–187, 000, El Paso Merchant Energy, L.P.
EL03–188, 000, Eugene Water & Electric Board
EL03–189, 000, Idaho Power Company
EL03–190, 000, Koch Energy Trading, Inc.
EL03–192, 000, MIECO, Inc.
EL03–197, 000, PPM Energy, Inc. (f/k/a PacifiCorp Power Marketing, Inc.)
EL03–201, 000, Sempra Energy Trading Corporation
EL03–202, 000, TransAlta Energy Marketing (U.S.) Inc. and TransAlta Energy Marketing (California) Inc.

E–4.
Docket#, EL03–149, 000, City of Redding, California
Other#s, EL03–182, 000, City of Redding, California

E–5.
Docket#, ER04–207, 000, Entergy Services, Inc.
Other#s, ER04–207, 001, Entergy Services, Inc.

E–6.
Docket#, ER04–227, 000, Mirant Delta LLC and Mirant Potrero, LLC

E–7.
Docket#, ER03–1312, 000, Midwest Independent Transmission System Operator, Inc.
Other#s, ER03–1312, 001, Midwest Independent Transmission System Operator, Inc.

E–8.
Docket#, ER04–110, 000, New England Power Pool

E–9.
Docket#, ER04–158, 000, Midwest Independent Transmission System Operator, Inc.

E–10.
Docket#, ER03–94, 000, Pacific Gas and Electric Company
Other#s, ER03–299, 000, Pacific Gas and Electric Company

E–11.
Docket#, ER02–2330, 018, ISO New England Inc.

E–12.
Docket#, RT04–1, 000, Southwest Power Pool, Inc.
Other#s, ER04–48, 000, Southwest Power Pool, Inc.

E–13.
Docket#, ER02–2330, 019, New England Power Pool and ISO New England, Inc.

E–14.
Omitted

E–15.
Docket#, ER03–1221, 002, California Independent System Operator Corporation

E–16.
Omitted

E–17.
Omitted

E–18.
Omitted

E–19.
Omitted

E–20.
Docket#, ER03–406, 001, PJM Interconnection L.L.C.
Other#s, ER03–406, 002, PJM Interconnection L.L.C.
ER03–406, 003, PJM Interconnection L.L.C.

E–21.
Docket#, ER01–313, 003, California Independent System Operator Corporation
Other#s, ER01–424, 003, Pacific Gas and Electric Company
EL03–131, 000, San Diego Gas & Electric Company v. California Independent System Operator Corporation

E–22.
Docket#, EL03–77, 001, Enron Power Marketing, Inc. and Enron Energy Services, Inc.
Other#s, RP03–311, 001, Bridgeline Gas Marketing L.L.C., Citrus Trading Corporation, ENA Upstream Company, LLC, Enron Canada Corp., Enron Compression Services Company, Enron Energy Services, Inc., Enron MW, L.L.C., and Enron North America Corp.

E–23.
Omitted

E–24.
Docket#, RM01–8, 004, Revised Public Utility Filing Requirements

E–25.
Omitted

E–26.
Docket#, ER03–1328, 001, Sierra Pacific Resources Operating Companies

E–27.
Docket#, ER03–1003, 001, Michigan Electric Transmission Company, LLC

E–28.
Docket#, EL04–19, 000, Pacific Gas and Electric Company

E–29.
Omitted

E–30.
Docket#, EL04–28, 000, California Power Exchange Corporation

E–31.
Docket#, EL04–11, 000, Californians for Renewable Energy, Inc. v. Calpine Energy Services, L.P. and the California Department of Water Resources

E–32.
Docket#, EL03–137, 000, American Electric Power Service Corporation

E–33.
Docket#, EL03–169, 000, Puget Sound Energy, Inc.

E–34.
Docket#, EL03–179, 000, Williams Energy Services Corporation

E–35.
Docket#, EL03–172, 000, San Diego Gas & Electric Company

E–36.
Docket#, SC00–1, 001, Montana Power Company

E–37.
Docket#, EL03–47, 000, Investigation of Certain Enron-Affiliated QF's
Other#s QF89–251, 008, Las Vegas Cogeneration Limited Partnership

E–38.
Docket#, ER00–565, 008, Pacific Gas and Electric Company

E–39.
Docket#, IN03–10, 003, Investigation of Anomalous Bidding Behavior and Practices in the Western Markets

E–40.
Docket#, EL02–126, 000, City of Corona, California v. Southern California Edison Company

E–41.
Omitted

E–42.
Omitted

E–43.
Docket#, ER01–1763, 000, Duke Energy Corporation (Duke Electric Transmission)

E–44.
Docket#, ER04–242, 000, Pacific Gas and Electric Company
Other#s EL04–50, 000, Pacific Gas and Electric Company
ER04–115, 000, California Independent System Operator Corporation
ER04–47, 000, California Independent System Operator Corporation

E–45.
Docket#, ER02–2119, 000, Southern California Edison Company

Markets, Tariffs and Rates—Gas

G–1.
Docket#, RP03–162, 007, Trailblazer Pipeline Company

G–2.
Docket#, RP04–61, 000, El Paso Natural Gas Company

G–3.
Docket#, RP03–489, 000, Vector Pipeline L.P.

G–4.
Docket#, RP03–200, 000, Enbridge Pipelines (Midla) L.L.C.

G–5.
Docket#, RP98–40, 000, Panhandle Eastern Pipe Line Co.
Other#s GP98–6, 000, Anadarko Petroleum Corp.
GP98–7, 000, OXY USA Inc.
GP98–32, 000, Anadarko Production Co.

G–6.
Docket#, PR03–17, 000, Unocal Keystone Gas Storage, LLC

G–7.
Omitted

G–8.
Docket#, RP00–336 014, El Paso Natural Gas Company
Other#s, RP00–336, 019, El Paso Natural Gas Company

G–9.
Omitted

G–10.
Docket#, RP01–223, 001, National Association of Gas Consumers v. All Sellers of Natural Gas in the United States of America in Interstate Commerce

G–11.
Omitted

G–12.
Docket#, RP00–474, 005, Maritimes & Northeast Pipeline, L.L.C.
Other#s, RP00–474, 006, Maritimes & Northeast Pipeline, L.L.C.
RP00–474, 004, Maritimes & Northeast Pipeline, L.L.C.
RP00–474, 003, Maritimes & Northeast Pipeline, L.L.C.
RP01–17, 006, Maritimes & Northeast Pipeline, L.L.C.
RP01–17, 007, Maritimes & Northeast Pipeline, L.L.C.

RP01–17, 008, Maritimes & Northeast Pipeline, L.L.C.
RP03–174, 001, Maritimes & Northeast Pipeline, L.L.C.
RP03–174, 002, Maritimes & Northeast Pipeline, L.L.C.
RP03–174, 003, Maritimes & Northeast Pipeline, L.L.C.
G–13.
Docket#, RM98–10, 012, Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services
G–14.
Docket#, RP99–480, 005, Texas Eastern Transmission, LP
Other#s, RP99–480, 006, Texas Eastern Transmission, LP
G–15.
Docket#, PR02–10, 003, Enogex Inc.
Other#s, PR02–10, 002, Enogex Inc.
G–16.
Omitted
G–17.
Docket#, RP04–33, 000, East of California Shippers v. El Paso Natural Gas Company
G–18.
Docket#, RP04–98, 000, Indicated Shippers v. Columbia Gulf Transmission Company
Other#s, RP04–99, 000, Indicated Shippers v. Tennessee Gas Pipeline Company
G–19.
Docket#, GP92–11, 000, ANR Pipeline Company
G–20.
Docket#, RP98–39, 033, Northern Natural Gas Company
G–21.
Docket#, RP98–52, 049, Southern Star Central Gas Pipeline, Inc.
Other#s, GP98–3, 000, OXY USA, Inc.
GP98–4, 000, Amoco Production Co.
GP98–13, 000, ExxonMobil
GP98–16, 000, Union Pacific Resources Co.
SA98–33, 000, Pioneer Natural Resources USA, Inc.
G–22.
Docket#, RP98–52, 048, Southern Star Central Gas Pipeline, Inc.
Other#s, GP98–3, 002, OXY USA, Inc.
GP98–4, 005, Amoco Production Co.
GP98–13, 005, ExxonMobil
GP98–16, 005, Union Pacific Resources Inc.
SA98–33, 003, Pioneer Natural Resources USA, Inc.
G–23.
Omitted
G–24.
Omitted
G–25.
Docket# RP04–119, 000, Dominion Transmission, Inc.

Energy Projects—Hydro

H–1.
Docket#, RM02–16, 001, Hydroelectric Licensing under the Federal Power Act
H–2.
Docket#, P–77, 110, Pacific Gas and Electric Company
H–3.
Docket#, P–2897, 005, S. D. Warren Company
Other#s, P–2931, 004, S. D. Warren Company
P–2932, 006, S. D. Warren Company
P–2941, 004, S. D. Warren Company
P–2942, 007, S. D. Warren Company
H–4.
Docket#, P–2413, 058, Georgia Power Company
H–5.
Docket#, P–4656, 016, Boise-Kuna Irrigation District, Nampa & Meridian Irrigation District, Wilder Irrigation District, and Big Bend Irrigation District
H–6.
Docket#, P–516, 319, South Carolina Electric & Gas Company
Other#s, P–516, 321, South Carolina Electric & Gas Company
P–516, 326, South Carolina Electric & Gas Company
P–516, 329, South Carolina Electric & Gas Company
P–516, 330, South Carolina Electric & Gas Company
P–516, 331, South Carolina Electric & Gas Company
P–516, 332, South Carolina Electric & Gas Company
P–516, 333, South Carolina Electric & Gas Company
P–516, 354, South Carolina Electric & Gas Company
P–516, 355, South Carolina Electric & Gas Company
P–516, 356, South Carolina Electric & Gas Company
P–516, 357, South Carolina Electric & Gas Company
P–516, 358, South Carolina Electric & Gas Company
P–516, 359, South Carolina Electric & Gas Company
H–7.
Docket#, P–2552, 058, FPL Energy Maine Hydro, LLC
Other#s, P–2552, 063, FPL Energy Maine Hydro, LLC

Energy Projects—Certificates

C–1.
Docket#, CP03–335, 000, Calpine Corporation and Otay Mesa Generating Company, LLC
C–2.
Docket#, CP02–430, 003, Saltville Gas Storage Company, L.L.C.
C–3.
Docket#, CP03–323, 001, Pinnacle Pipeline Company
Other#s, CP03–324, 001, Pinnacle Pipeline Company
CP03–325, 001, Pinnacle Pipeline Company
C–4.
Docket#, CP02–90,000, AES Ocean Express LLC
Other#s, CP02–90,001, AES Ocean Express LLC
CP02–91, 000, AES Ocean Express LLC
CP02–92, 000, AES Ocean Express LLC
CP02–93, 000, AES Ocean Express LLC
CP02–93, 001, AES Ocean Express LLC

Magalie R. Salas,

Secretary.

[FR Doc. 04–1497 Filed 1–20–04; 3:39 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

January 16, 2004.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY: Federal Energy Regulatory Commission.

DATE AND TIME: January 23, 2004, 9:30 a.m.

PLACE: Part I: FERC, Hearing Room 3M 4A/B, 888 First Street, NE., Washington, DC 20426.

Part II: Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-public, investigations and inquiries and enforcement related matters.

FOR FURTHER INFORMATION CONTACT: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Brownell, Kelliher, and Kelly voted to hold a closed meeting on January 23, 2004. The certification of the General Counsel explaining the action closed the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NW., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present. Staff from the Nuclear Regulatory Commission (NRC) will be meeting with FERC Commissioners at an extension of FERC's closed meeting to be held at the NRC headquarters. FERC Commissioners and NRC staff will discuss matters of mutual concern to the two agencies.

Magalie R. Salas,

Secretary.

[FR Doc. 04–1498 Filed 1–20–04; 3:39 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPA–2003–0001; FRL–7611–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; National Oil and Hazardous Substances Pollution Contingency Plan Regulation, Subpart J, EPA ICR Number 1664.05, OMB Control Number 2050–0141

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 23, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OPA–2003–0001, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *superfund.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, SUPERFUND Docket (5202T), 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: William ''Nick'' Nichols, Oil Program, Office of Emergency Prevention, Preparedness, and Response (OEPPR) (5203G), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 603–9918; fax number: (703) 603–9116; e-mail address: nichols.nick@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 7, 2003 (68 FR 40262), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA has addressed the comment received.

EPA has established a public docket for this ICR under Docket ID No. OPA–2003–0001, which is available for public viewing at the Office of Emergency Prevention, Preparedness, and Response Oil Program 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) 566–1744, and the telephone number for the Office of Emergency Prevention, Preparedness, and Response Oil Program Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: National Oil and Hazardous Substances Pollution Contingency Plan Regulation, Subpart J.

Abstract: Subpart J of the NCP allows and regulates the use of chemical and biological oil spill cleanup and control agents. The information collected is supplied by the manufacturer of such products. This information and data are then analyzed by EPA to determine the appropriateness, and under which category, the product may be listed on the NCP Product Schedule. This product data is critical for EPA to obtain in order to assure that effectiveness and toxicity data for these products is available to the oil spill community in order to use them legally and effectively. Responses to the collection of information are mandatory if EPA determines that the products specifications require its listing under subpart J (40 CFR 300.5a Definitions). However, manufacturers volunteer to have their product analyzed. The authority to review and use a product is 40 CFR 300.910. Confidentiality of data, ingredients, and other proprietary information for the products is maintained by EPA. Manufacturers may use any certified lab in the U.S. to test their product's effectiveness and toxicity. The cost of such tests range from $1,200 to $15,000 per test. The process to have a product listed takes at least 30 days, but no longer than 60 days, depending on the accuracy and completeness of the product information package provided to EPA by the manufacturer. Due to the technical and graphical data required to be listed, electronic submissions are not accepted.

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 in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average between 13.4 and 40 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this

action are those which manufacture, sell, distribute and/or use oil spill dispersants, other chemicals, and other spill mitigating devices and substances that may be used in carrying out the NCP, as listed in 40 CFR 300.900 on land or waters of the United States.

Estimated Number of Respondents: 14.

Frequency of Response: Respondents must submit information only when they apply to list a new product on the Schedule, or when the composition, formulation, application, or contact information of a product currently listed on the Schedule is changed.

Estimated Total Annual Hour Burden: 390.

Estimated Total Annual Cost: $95,558, includes $82,800 annualized capital, $0 O&M costs, and $12,758 labor costs.

Changes in the Estimates: There is a decrease of 436 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to the following three adjustments to the estimates: (1) Manufacturers will apply to list 14 new oil spill mitigating agents on the Schedule per year over a three-year period versus an estimated 28 per year during the three-year period of the current ICR; (2) a decrease in the number of sorbent manufacturer certification requests per year (from 20 to 10); and (3) a decrease in the burden estimate per sorbent manufacturer respondent (from 5 to 3 hours).

Dated: January 7, 2004.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 04–1236 Filed 1–21–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7612–3]

National Dialogue on EPA's Draft Report on the Environment, 2004

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Office of Environmental Information, the Office of Research and Development and EPA's Regional Offices are conducting national dialogue sessions with a broad spectrum of stakeholders to solicit feedback on the Draft Report on the Environment issued June 26, 2003. EPA conducted 5 sessions in November and December 2003 and invited representatives from State governments, tribes, academia, non-governmental organizations, local agencies and business and industry. The meetings were announced in the October 15, 2003 **Federal Register** and were held in Chicago, Atlanta, San Francisco, Seattle and Dallas. EPA plans to conduct an additional session in Philadelphia on February 12, 2004. Interested members of the general public may attend the meeting and will have an opportunity to provide comment at an appointed time during the session. Because space is limited, those planning to attend must RSVP to the individual listed in the **FOR FURTHER INFORMATION CONTACT** no later than one week before the meeting. The information contact will also provide the specific meeting location as well as directions.

DATES: The date for the dialogue session is February 12, 2004, from 9 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Dawn Banks-Waller, Office of Environmental Information, Office of Information Analysis and Access, Environmental Analysis Division, (2842T), U.S. EPA, 1200 Pennsylvania Ave NW., Washington DC 20460. Telephone (202) 566–0625, fax (202) 566–1066 or e-mail *banks-waller.dawn@epa.gov.*

SUPPLEMENTARY INFORMATION: On June 26, 2003, EPA released the Draft Report on the Environment (RoE) and its accompanying Technical Document. The report presents its first-ever national picture of the U.S. environment. The report describes what EPA knows—and doesn't know—about the current state of the environment at the national level, and how the environment is changing. The report highlights the progress our nation has made in protecting its air, water, and land resources and describes the measure that can be used to track the status of the environment and human health.

EPA has issued the report as a draft to stimulate dialogue and invite input into developing and improving environmental indicators in the future. The national dialogue sessions are a first step in soliciting feedback on the report and will focus on:

- Assessing the quality, structure, relevance, appropriateness of, and needed improvements to the reports,
- Identifying additional or new questions/indicators, changes in indicators, gaps, indicator improvements, etc., and
- Assessing the use of the report for planning and decision making.

Feedback obtained from these sessions will be used to shape the next and future editions of the Report.

To view, download, or order hardcopies of the RoE and the Technical Document or to provide comments on the documents, please visit the EPA Environmental Indicators Initiative Web site at *http://www.epa.gov/indicators/roe/.*

Dated: January 12, 2004.

Mike Flynn,

Director, Office of Information Analysis and Access.

[FR Doc. 04–1374 Filed 1–21–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0400; FRL–7340–2]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2003–0400, must be received on or before February 23, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2003–0400

FOR FURTHER INFORMATION CONTACT: Adam Heyward, Product Manager 34, or the Product Reviewer, Bonaventure Akinlosotu, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., Washington, DC 20460–0001; telephone number: (703) 308–6422; e-mail address: heyward.adam@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you

manufacture, sell, distribute, or use wood preservatives and other pesticides, and/or treated wood products. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0400. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number –OPP–2003–0400. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0400. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0400.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0400. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

TABLE—PRODUCTS CONTAINING ACTIVE INGREDIENTS NOT INCLUDED IN ANY PREVIOUSLY REGISTERED PRODUCTS

File Symbol	Applicant/Address	Chemical/Product Name	Active Ingredient	Proposed Classification/Uses
43813–GG	Janssen Pharmaceutica, Inc./ 1125 Trenton-Harbourton Rd., Titusville, NJ 08560	Bethoguard Technical	Bethoxazin: 3-(Benzo[b]thiophen-2yl)-5,6-dihydro-1,4,2-oxathiazine, 4-oxide @ 96.6%	Manufacturing use product/ For formulating material preservative end use products.
43813-GU	Janssen Pharmaceutica, Inc./ 1125 Trenton-Harbourton Rd., Titusville, NJ 08560	Bethoguard	Bethoxazin: 3-(Benzo[b]thiophen-2yl)-5,6-dihydro-1,4,2-oxathiazine, 4-oxide @ 96.6%	End use product/For use as materials preservative
43813–GL	Janssen Pharmaceutica, Inc./ 1125 Trenton-Harbourton Rd., Titusville, NJ 08560	Bethoguard 300 SC	Bethoxazin: 3-(Benzo[b]thiophen-2yl)-5,6-dihydro-1,4,2-oxathiazine, 4-oxide @ 31.1%	End use product/For use as materials preservative
75799–R	Akzo Nobel Functional Chemicals, LLC/5555 Spalding Drive, Suite 100, Norcross, Georgia 30092	PXTS	Polyxylenol tetrasulfide @ 80.5%	Manufacturing use product/ For use in the formulation of wood protection end use products (railroad ties, utility poles and marine lumber).
75799–E	Akzo Nobel Functional Chemicals, LLC/5555 Spalding Drive, Suite 100, Norcross, Georgia 30092	PXTS Blend D	Polyxylenol tetrasulfide @ 67.0%	End use product/ For use in the preservation of wood products (railroad ties, utility poles and marine lumber).

List of Subjects

Environmental protection, Pesticides, pest, Bethoxazin, Polyxylenol teterasulfide.

Dated: January 12, 2004.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 04–1243 Filed 1–21–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0409; FRL–7339–3]

Amicarbazone; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0409, must be received on or before February 23, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: *Miller.Joanne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2003–0409. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. 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.

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is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0409. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2003–0409. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0409.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0409. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

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In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

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1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action Is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 12, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represent the views of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

PP 0F6131

Arvesta Corporation

EPA has received a pesticide petition (0F6131) from Arvesta Corporation, 100 First Street, Suite 1700, San Francisco, CA 94105 proposing, pursuant to

section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing a tolerance for residues of amicarbazone (4-amino-4,5-dihydro-*N*-(1,1-dimethylethyl)-3-(1-methylethyl)-5-oxo-1H-1,2,4-triazole-1-carboxamide, DA amicarbazone *(N*-(1,1-dimethylethyl)-4,5-dihydro-3-(1-methylethyl)-5-oxo-1H-1,2,4-triazole-1-carboxamide) and iPr-2-OH DA amicarbazone *(N*-(1,1-dimethylethyl)-4,5-dihydro-3-(1-hydroxy-1-methylethyl)-5-oxo-1H-1,2,4-triazole-1-carboxamide) in or on the raw agricultural commodities corn grain, at 0.05 parts per million (ppm); corn forage at 0.8 ppm; corn stover at 0.5 ppm; alfalfa forage at 0.04 ppm; alfalfa hay at 0.06 ppm; cotton undelinted seed at 0.04 ppm; cotton gin by-product at 0.2 ppm; cottonseed meal at 0.01 ppm; cottonseed refined oil at 0.01 ppm; cottonseed hulls at 0.01 ppm; soybean forage at 2.5 ppm; soybean hay at 7.0 ppm, soybean seed at 0.6 ppm, soybean meal at 0.25 ppm; soybean hulls at 0.2 ppm; soybean oil at 0.01 ppm; wheat forage at 0.6 ppm; wheat hay at 0.9 ppm; wheat grain at 0.09 ppm; wheat straw at 0.4 ppm; wheat bran at 0.08 ppm; wheat shorts at 0.06 ppm; wheat flour at 0.05 ppm; wheat middlings at 0.05 ppm; wheat germs at 0.05 ppm; sugarcane at 0.15 ppm; sugarcane molasses at 0.8 ppm; meat (cattle, sheep, goats, horses, hogs) at 0.01 ppm; meat byproducts (cattle, sheep, goats, horses, hogs) at 0.2 ppm; and milk at 0.01 ppm respectively. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The major metabolic pathway of amicarbazone involved the deamination of the triazole amino group followed by hydroxylation at the tertiary carbon of the isopropyl group to give iPr-2-OH DA amicarbazone. The iPr-2-OH DA amicarbazone was the major metabolite in all three corn matrices. Hydroxylation of the isopropyl methyl gave iPr-1-OH DA amicarbazone, which under went O-glucosidation. Another pathway involved hydroxylation of the t-butyl and isopropyl groups to give tBu-iPr-2-diOH DA amicarbazone. In addition, DA amicarbazone formed an glucoside. The hydroxylated DA amicarbazone formed several minor O-glucosides.

2. *Analytical method*—i. *Plant*. An analytical method was developed to determine the residues of amicarbazone in plant matrices. The method was validated in corn forage, corn fodder, corn grain, and corn processed commodities. The corn matrices were extracted with water containing 0.05% H3PO4 using a Dionex Accelerated Solvent Extractor (ASETM) at 150 °C and 1,500 psi. Following the addition of a mixture of deuterated internal standards, the material was purified by solid phase extraction (spe). The purified analytes were analyzed by high performance liquid chromatography-electrospray ionization/ massspectrometry (LC-ES/MS/MS). The limit of quantitation (LOQ) of the method was 0.010 ppm. The recoveries from the various crop matrices fortified at 0.01 ppm with amicarbazone and related plant metabolites ranged from 70% to 119%. The recoveries from the various crop matrices fortified at 0.05 ppm with amicarbazone and related plant metabolites ranged from 74% to 97%. The limit of detection (LOD) in corn matrices (forage and grain) was 0.001 ppm. The LOD in corn fodder was 0.006 ppm. An alternative method was developed and validated in mustard green leaves, turnip tops, wheat forage, wheat hay, wheat grain, wheat straw, alfalfa, cotton, and soybean. The matrices were extracted in 0.1% acetic acid in acetonitrile/water (4:1), filtered and diluted using additional in acetonitrile/water (4:1). An aliquot of the extract was purified by solid-phase extraction and concentrated to an aqueous remainder. Methanol was added and the extract diluted with aqueous 5 mM ammonium bicarbonate. The samples were analyzed using LC-MS/MS in positive-ion selected reaction monitoring (+SRM) mode and quantified using a known amount of deuterated internal standard which was added to the initial sample extract.

The LOQ of the method was 0.010 ppm. The recoveries from the various crop matrices fortified at 0.01 ppm with amicarbazone and related plant metabolites ranged from 79% to 104%. The recoveries from the various crop matrices fortified at 0.10 ppm with amicarbazone and related plant metabolites ranged from 106% to 119%. The LOD in matrices ranged from 0.0011 to 0.0097 ppm.

ii. *Animal*. An analytical method was developed to measure the residues of amicarbazone in cattle tissue and milk. The amicarbazone residues were extracted from the tissue samples by accelerated solvent extraction (ASE). The extract was treated with potassium permanganate which oxidized the residues of interest to a common moiety, iPr-2-OH DA amicarbazone. The iPr-2-OH DA amicarbazone was removed from the reaction mixture by using C-18 solid-phase extraction (spe). The isolated analyte was detected by liquid chromatography/tandem mass spectroscopy (lc/ms/ms) and quantified against a known amount of a deuterated internal standard. Recoveries of a mixture of amicarbazone, DA amicarbazone, and iPr-2-OH DA amicarbazone from all tissues and milk (0.010 ppm and 0.100 ppm fortifications) were measured. For animal matrices, recoveries of 0.010 ppm of the amicarbazone component mixture ranged from 62% to 93%. The recoveries of 0.100 ppm of the amicarbazone component mixture from animal matrices ranged from 69% to 87%. For milk, the recoveries of 0. 010 ppm and 0.100 ppm of the amicarbazone component mixture ranged from 79% to 103%. The method LOQ is 0.010 ppm. The method LOD is 0.005 ppm.

3. *Magnitude of residues*. A total of 24 field trials were conducted in two different growing seasons to evaluate the quantity of amicarbazone residues in corn forage, fodder, and grain following a single application of amicarbazone. The residues of amicarbazone and two metabolites DA and iPr-2-OH DA, were quantitated by lc/ms/ms. The LOQ was 0.01 ppm for all RACs. The highest average field trial amicarbazone residues in corn were 0.55 ppm in forage, 0.43 ppm in fodder, and 0.02 ppm in grain. In decline trials, amicarbazone residues did not vary appreciably with time. Twelve trials each for alfalfa and cotton and 20 trials each for soybean and wheat were conducted to evaluate the quantity of amicarbazone residues in these rotational crops, following plant back intervals of 0 month (wheat), 1 month (soybean), 4 months (alfalfa, and 12 months (cotton). The LOQ was 0.01 ppm for all RACs. The highest average field trial amicarbazone residues were 0.02 and 0.04 ppm (alfalfa forage and hay), 0.03 and 0.16 ppm (cotton undelinted seed and gin byproduct), and 1.18, 4.35 and 0.57 ppm (soybean forage, hay and seed), 0.47, 0.87, 0.07, and 0.39 (wheat forage, hay, grain and straw).

One field trial was conducted to evaluate the quantity of amicarbazone residues in sugarcane, molasses, bagasse, and refined sugar in support of an import tolerance. Following an application at 5x the maximum expected rate for amicarbazone on sugarcane, the highest average field trial amicarbazone residues in sugarcane

were 0.11 ppm in cane, 0.78 ppm in molasses, 0.44 ppm in bagasse, and <0.01 ppm in refined sugar.

A processing study was conducted to evaluate the quantity of amicarbazone in corn processed products. The residues of amicarbazone and two metabolites DA and iPr-2-OH DA, were quantitated by LC/MS/MS. The LOQ was 0.01 ppm for corn grain and all corn processed commodities. Total amicarbazone residues in corn grain were <0.01 ppm. Except for the residue (0.01 ppm) in meal, which showed a slight concentration (1.1x), amicarbazone residues in all other processed commodities (starch, grits, flour, and refined oil) were less than the residue in corn grain.

Processing studies on the rotational crops cottonseed, soybean, and wheat were also conducted following an application at 5x (cottonseed) or 1x (soybean and wheat) the maximum expected labeled rate on corn. Total amicarbazone residues in all cotton seed fractions (meal refined oil and hulls) were <0.01 ppm. Amicarbazone residues in soybean grain hulls and deodorized oil were less than the residue in soybean grain. The residues in soybean grain meal (0.21 ppm), showed a slight concentration (1.2x). Amicarbazone residues in wheat grain flour, middlings and germs were less than the residue in grain. The residue in wheat bran (0.06 ppm) and shorts (0.05 ppm), showed a slight concentration (1.5x and 1.2x, respectively).

B. Toxicological Profile

1. *Acute toxicity*—i. Amicarbazone is minimally toxic to fasted rats following a single oral administration. The oral LD_{50} is 1,300 and 1,015 milligrams/kilogram body weight (mg/kg/bwt) for males and females, respectively.

ii. Amicarbazone is minimally toxic to rats following a single dermal application. The dermal LD_{50} is >2,000 mg/kg for both males and females.

iii. An acute inhalation study with rats demonstrated minimal toxicity following a 4–hour exposure to the test compound as a respirable dust. The inhalation LC_{50} is >2.242 mg/L for both males and females.

iv. A primary eye irritation study in rabbits showed no positive ocular effects, and only very slight, reversible irritation.

v. A dermal irritation study in rabbits showed that amicarbazone is not irritating to the skin.

vi. Amicarbazone has no skin sensitizing potential under the conditions of the buehler topical closed-patch technique in guinea pigs.

2. *Genotoxicity*. The genotoxic potential of amicarbazone was studied in bacterium and mammalian cells with the aid of various *in vitro* test systems (*salmonella* microsome test, hypoxanthine guanine phophoribosyl transferase (HGPRT) test with Chinese Hamster V79 cells, and a cytogenetic study with Chinese hamster V79 cells) and one *in vivo* test (micronucleus test). None of the tests revealed any evidence of a mutagenic or genotoxic potential of amicarbazone. The compound did not induce point mutation, DNA damage, or chromosome aberration.

3. *Reproductive and developmental toxicity*—i. In a two-generation reproduction toxicity study, Sprague-Dawley rats were administered dietary levels of amicarbazone at levels of 0, 100, 500, and 1,000 ppm. The no observed adverse effect levels (NOAELs) for reproductive parameters was established at 100 ppm (equivalent to 7 mg amicarbazone/kg/ bwt day) based on a decrease in pup weight at 500 and 1,000 ppm. The systemic NOAELs established for both parental males and females was 100 ppm based on decreased food consumption, decreased body weight, and increased liver/body weight observed in the 1,000 ppm group and to a lesser extent in the 500 ppm group.

ii. Two developmental toxicity studies were conducted with amicarbazone in the Sprague-Dawley rat. In the first study, gravid dams were administered 0, 15, 100, or 300 mg/kg bwt/day on days 6 through 19 of gestation. Maternal effects were observed at the 100 and 300 mg/kg dose levels, and included decreased food consumption, decreased body weight, and increased liver weight. No test compound-related maternal effects were noted in the 15 mg/kg dose group. An increase in nonviable fetuses and decreased fetal weight were observed in the 300 mg/kg dose level, and an increase in fetal skeletal variations was noted in the 100 and 300 mg/kg dose groups. A supplemental study was conducted to substantiate the developmental NOAEL of 15 mg/kg from the initial study. In the subsequent study gravid Sprague-Dawley rats were administered amicarbazone at 0, 5, and 15 mg/kg bwt/day on gestation days 6 through 19. No test compound-related maternal or developmental effects were observed at any dose level. Based on the findings from both rodent studies, there is no teratogenic potential for amicarbazone in the rat, and both the maternal and developmental NOAELs were established at 15 mg/kg bwt/day.

iii. Two developmental toxicity studies were conducted with amicarbazone in the himalayan rabbit. In the first study, gravid does were administered 0, 5, 20, or 70 mg/kg bwt/day on gestation days 6 through 28 post-coitum. A maternal NOAEL of 5 mg/kg bwt/day was established based on decreased body weight at dose levels of 20 and 70 mg/kg bwt/day. The NOAEL for developmental parameters was 20 mg/kg bwt/day based on a marginal decrease in fetal weight and a corresponding marginal effect on fetal skeletal ossification. A supplemental developmental toxicity study was conducted in the rabbit to confirm the absence of treatment-related malformations. In this study gravid does were administered amicarbazone at 0 or 70 mg/kg bwt/day on gestation days 6 through 28. Decreased feed consumption, decreased water consumption, and decreased body weight were observed (as in the first study) in the 70 mg/kg bwt/day group. Also as noted in the previous study, fetal weight was decreased and an accompanying effect on fetal skeletal ossification was observed. Based on the findings from both rabbit studies, there is no teratogenic potential for amicarbazone in the rabbit, and thematernal and developmental NOAELs are 5 and 20 mg/kg bwt/day, respectively.

4. *Subchronic toxicity*—i. A subchronic dermal toxicity study was conducted in the Sprague-Dawley rat in which doses of 0, 200, 500, or 1,000 mg/kg bwt/day were applied to males (22 days) and females (21 days). There were no effects at any dose level. The NOAEL was 1,000 mg/kg bwt/day (the limit dose for this study type).

ii. A 90–day feeding study was conducted in which Fischer 344 rats were exposed to 0,100, 250, 500, 1,000, 2,500, or 5,000 ppm amicarbazone in the diet for 13 weeks. Body weight gain was reduced at dietary levels of 1,000 ppm and greater in both males and females. Hematology and clinical chemistry parameters were affected in the males and females of the 1,000, 2,500, and 5,000 ppm groups. No gross pathological alterations were described in any group. Through approximately 13 weeks of continuous and repeated dietary exposure to amicarbazone, the toxicological response of the rat could be broadly characterized as involving structural and/or functional alterations in liver-, thyroid-, pancreatic-, and hematologic-related (spleen and bone marrow) endpoints. There were no adverse compound-related effects in the various parameters associated with these target organs at doses up to and including 500 ppm (equivalent to 33 mg

amicarbazone/kg bwt/day) in both the males and females.

iii. In a dose range-finding toxicity study, CD-1 mice were continuously exposed to 0, 25, 50, 100, 250, 500, 1,000, 2,500, 5,000, or 7,000 ppm amicarbazone in the diet for 6 weeks. Effects observed during the study included decreased body weight (7,000 ppm males only), affected clinical chemistry parameters (500–7,000 ppm, males and/or females, depending on endpoint), and alterations in hematology endpoints (2,500–7,000 ppm, males and/or females, depending on endpoint). Organ weight effects were limited to significantly increased liver weights, noted in both the males and females at 500 ppm and above. Compound-related histopathology included hepatocytomegaly (500–7,000 ppm), thyroid follicular cell hypertrophy (5,000–7,000 ppm), and splenic pigmentation (5,000–7,000 ppm). No effects were noted in either the males or females of the 250 ppm level.

iv. A 90–day feeding study in the dog at levels of 0, 200, 800, and 2,000 ppm amicarbazone established a NOAEL of 200 ppm (equivalent to 6.74 mg/kg bwt/day) in the males and a NOAEL of 200 ppm (equivalent to 6.28 mg/kg bwt/day) in the females. Effects observed at 2,000 ppm and to a lesser extent in the 800 ppm group included elevated liver and thyroid weights, decreased thymus weight, and affected clinical chemistry and hematology parameters. Compound-related histopathology was noted in the liver, gall bladder, and thyroid of males and/or females (depending on endpoint) of the 2,000 ppm level. The NOAEL was established in the females based on a slight induction of hepatic enzymes at the 200 ppm dietary level. In contrast affected hepatic enzymes were only observed in the males of the 800 and 2,000 ppm groups.

5. *Chronic toxicity*—i. A 2–year chronic/oncogenicity study was conducted with male and female Fischer 344 rats at dietary levels of 0, 50, 500, and 1,250/1,000 ppm. Decreased body weight gain was noted in the males and females of the mid and high-dose groups. Also observed in these groups were affected clinical chemistry parameters, including increased serum cholesterol (males and females) and increased thyroxine and triiodothyronine (males only). At the interim sacrifice (1–year), an increase in liver weights was observed in the males (500 and 1,200 ppm) and females (500 and 1,000 ppm). Evaluation of other organ/body weight ratios suggests that other organ weight changes were attributable to the decreases in body weight gain. Histopathological considerations included a decrease in the background incidence of hepatic vacuolation in the 1–year, 1,250 ppm, males. No other remarkable histopathology findings were noted and no evidence of any test compound-induced neoplastic response was noted in any tissue examined. Through approximately 2 years of continuous and repeated dietary exposure to the test substance, the toxicological response of the rat was principally characterized by alterations in body weight gain as well as structural and/or functional alterations in liver-related endpoints. Based on the lack of an adverse compound-related effect in the liver at a dose of 50 ppm in males and females, a systemic chronic toxicity NOAEL of 2.3 mg amicarbazone/kg bwt/day was established for the rat (specifically, 2.3 and 2.7 mg amicarbazone/kg bwt/day for male and female rats, respectively).

ii. In a chronic toxicity study in the mouse, CD-1 mice were continuously exposed to 0, 100, 1,500, or 4,000 ppm amicarbazone in the diet for 18-months. Compound-related effects were limited to organ weight changes, including pronounced increases in liver weights in the 1,500 and 4,000 ppm males and females, and decreased kidney weights in 4,000 ppm males and females. Histopathological considerations included an increased incidence of splenic pigmentation in 1,500 and 4,000 ppm males and 4,000 ppm males and females as well as hepatocellular hypertrophy in all doses tested. The hypertrophy was indicative of an adaptive response by the liver to an increased need to facilitate the metabolism and excretion of an exogenously administered test substance. While the response at 100 ppm (equivalent to 16 and 18 mg/kg bwt/day for the males and females, respectively) could be characterized as a slight physiologically adaptive response, morphological evidence demonstrated an increasingly severe response at 1,500 and 4,000 ppm, suggesting that the animals had been pushed near physiological limit. There was no evidence of a compound-induced neoplastic response in any tissue examined.

iii. A 1–year feeding study in dogs at dietary levels of 0, 75, 100, 300, and 1,200 ppm amicarbazone established a NOAEL of 75 ppm for both males and females (equivalent to 1.6 and 1.8 mg/kg bwt/day for the males and females, respectively). Mild neurological signs (described as secondary neuromuscular in nature) were noted in the 1,200 ppm females: Three at 6 months and one at 12 months. No other females, and no males were affected. Clinical pathology parameters, including triglyceride, cholesterol, albumin, globulin, and several hepatic enzymes,were, in general, affected in both the males and females of the 1,200 ppm group, to a lesser extent in the 300 ppm group, and in some cases in the 100 ppm group. Hematology parameters, including platelets, hemoglobin, hematocrit, and eosinophils, were affected primarily in the 1,200 ppm group, and to a lesser extent in the 300 and 100 ppm groups. Terminal body weight was unaffected by treatment and there were no gross lesions ascribed to the test compound. Compound-related effects on organ weights were limited to the liver and thymus. Relative and absolute liver weights were increased in the 300 and 1,200 ppm males and the 1,200 ppm females, and absolute and relative thymus weights were decreased in the 1,200 ppm males. Compound-related micropathology lesions were limited to minimal to slight diffuse thymic a trophy in all 1,200 ppm males and one 1,200 ppm female. There was no evidence of a compound-induced neoplastic response in any tissue examined.

6. *Animal metabolism*. In a metabolism and disposition study, amicarbazone (MKH 3586); (4-amino-4,5-dihydro-*N*-(1,1-dimethylethyl)-3-(1-methylethyl)-5-oxo-H-1,2,4-triazole-1-carboxamide), was administered as a single oral dose, 5 mg/kg/bwt, to four male Fischer rats. The test compound was radio-labeled at the 3-position of the triazolinone ring. After oral administration to rats, triazolinone-3-14C amicarbazone was rapidly absorbed and metabolized. Recovered radioactivity ranged from 88% to 95% of the theoretical dose. The majority (54% to 68%) of the radioactive residue was excreted in the urine, and the remainder (20% to 38%) of the radioactive residue was excreted in feces. No appreciable portion of the TRR was found in the tissues, residual carcass, or respired gases. A total of 17 metabolites arising from amicarbazone were detected in excreta; 10 metabolites could be identified. Approximately 73% of the dose was identified in the urine and feces. All individual metabolites representing >1% of the dose were identified. All unidentified residues in excreta were characterized. The main pathways for degradation and excretion of amicarbazone were direct conjugation with glucuronic acid to form amicarbazone-GA, an *N*-glucuronide, which was excreted mainly in the feces and deamination to form DA amicarbazone with subsequent

oxidation to form a variety of hydroxylated metabolites which were excreted in the urine.

7. *Metabolite toxicology—i.* Amicarbazone-triazolinone was tested for eye and dermal irritation, skin sensitization, and mutagenicity. In an acute eye irritation study in the rabbit, the test compound demonstrated corneal opacity (grade 1) in all animals at 1 and 24–hours with one animal demonstrating effects up to 4 days following exposure. No effects on the iris or conjunctiva were observed. The results of a dermal irritation study in the rabbit indicate that the test compound is not a dermal irritant. The guinea pig maximization test was utilized to test the skin sensitization potential of the test compound. No dermal effects were noted following the challenge dose indicating that the test compound exhibits no skin-sensitization potential. Mutagenicity was investigated using the *salmonella*/microsome plate incorporation test. Following incubation with five *salmonella* typhimurium LT2 mutants, no evidence of mutagenic activity of the test compound was seen.

ii. In a similar battery of tests, amicarbazone-oxadiazolinone was evaluated as above. In the eye irritation study corneal opacity and irritation to the iris were observed up to 21 days after treatment. The conjunctiva were not affected by instillation of the test compound. Dermal irritation was observed up to 24-hours following exposure to the test compound. Based on the findings of the guinea pig maximization test, the test compound does not exhibit skin sensitizing properties. Similarly, the test compound did not demonstrate any mutagenic potential following evaluation using the *salmonella*/microsome plate incorporation test.

8. *Endocrine disruption*. There is no evidence to suggest that amicarbazone has an effect on the endocrine system. Studies in this database include evaluation of the potential effects on reproduction and neonatal development, and an evaluation of the pathology of the endocrine organs following short-term and long-term exposure. These studies revealed no endocrine effects due to amicarbazone.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. Estimates of chronic dietary exposure to residues of amicarbazone utilized the proposed tolerances in corn forage, corn grain, meat, meat byproducts, fat and milk (of cattle, sheep, goats, horses, hogs) of 0.8, 0.05, 0.01, 0.2, 0.01 and 0.01 ppm respectively. The assumption was made that 7% of the target crop would be treated with amicarbazone. Processing factors were used in estimating the residue levels of amicarbazone in processed commodities. Potential secondary residues in livestock tissues and milk were calculated by multiplying the tissue-to-feed ratios determined in the cattle feeding study by a calculated dietary burden based on actual field residue data. Potential exposures from field rotational crops were considered negligible compared to the above-mentioned exposures. For chronic exposures, an reference dose (RfD) of 0.016 mg/kg/day was assumed based on and NOAEL of 1.6 mg/kg bwt/day from the chronic toxicity feeding study in dogs. A safety factor of 100 was used based on interspecies extrapolation (10x) and intraspecies variability (10x). Using these assumptions, dietary residues of amicarbazone contribute 0.000000 mg/kg/day (0.0% of the RfD for children 1 to 6 years old, and for the U.S. population. For acute dietary exposure, the same assumptions were made. A NOAEL of 5 mg/kg bwt/day from the behavioral and physiological toxicity study in rats with a safety factor of 100 was used in the acute dietary assessment. The safety factor of 100 was based on interspecies extrapolation (10x) and intraspecies variability (10x) and the acute (aRfD) was 0.05 mg/kg bwt/day. At the 95th percentile for the U.S. population, amicarbazone contributes 0.000023 mg/kg bwt/day (0.05% of the aRfD) toward the RfD. For children 1 to 6 years old (the most sensitive subpopulation) amicarbazone contributes 0.000042 mg/kg bwt/day (0.08% of the aRfD) toward the aRfD.

ii. *Drinking water*. The Tier I screening models GENEEC and SCI-GROW were used to determine potential levels of human exposure from drinking water sources. Given the proposed application pattern and course soil use restriction, the risk of human exposure from ground water is predicted to be lower than that for surface water. The Tier I models predict residues of amicarbazone resulting from typical agricultural use would be higher in surface water than ground water. However, even when potential surface water exposure is evaluated using the Tier I screening model GENEEC, the risk via drinking water is very low. GENEEC was used to predict an acute surface water concentration of amicarbazone of 19.8 g/L assuming a 70 kg adult drinks 2 liters of water/day containing 19.8 g/L, the acute exposure would be 5.66E-04 mg/kg/day for adults. Assuming a 10 kg child drinks 1 liter/day containing 19.8 g/L, the exposure would be 1.98E-03 mg/kg/day. Based on the NOAEL of 5 mg/kg/day from the behavioral and physiological toxicity study in rats and assuming an uncertainty factor of 100, the acute population adjusted dose (aPAD) is 0.05 mg/kg/day. Therefore, based on the contribution from drinking water alone, 1.1% of the aPAD is consumed for adults and 4.0% of the aPAD for children. At the levels calculated here, acute exposure from amicarbazone via drinking water inadults or children is far below the level of concern. GENEEC predicted a chronic (average 56–day) surface water concentration of amicarbazone to be 15.4 g/L. Assuming a 70 kg adult consumes 2 L of water per day containing 15.4 g/L amicarbazone residues for a period of 70 years, the chronic exposure would be 4.40E-04. Assuming a chronic NOAEL of 1.6 mg/kg/day from the chronic toxicity feeding study in dogs and a 100-fold safety factor, residues of amicarbazone in surface water account for less than 3.0% of the chronic population adjusted dose (cPAD) (0.016 mg/kg/day). For children (10 kg consuming 1 L/day with 15.5 g/L of amicarbazone) the same calculation translates to only 9.6% of the cPAD. Amicarbazone screening concentrations in ground water SCI-GROW were predicted to be much lower than in surface water generic expected environmental concentration (GENEEC). SCI-GROW predicted an amicarbazone concentration of less than 1 g/L at the maximum seasonal use rate. Therefore the potential contribution to human exposure from drinking water from ground water sources is even less than that from surface water. At the levels predicted by EPA's current Tier I screening models, both acute and chronic exposure from amicarbazone via drinking water in adults and children is predicted to be well below any reasonable level of concern.

2. *Non-dietary exposure*. There are no current non-food uses for amicarbazone registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. No non-food uses are proposed for amicarbazone and no non-dietary exposures are expected for the general population.

D. Cumulative Effects

Amicarbazone falls into the category of triazolinone herbicides. There is no information to suggest that any members of this class of herbicides has a common mechanism of mammalian toxicity or even produce similar effects, so it is not appropriate to combine exposures of amicarbazone with other herbicides. Arvesta Corporation is considering only the potential risk of amicarbazone.

E. Safety Determination

1. *U.S. population.* As presented previously, the exposure of the U.S. general population to amicarbazone is low, and the risks, based on comparisons to the RfD, are minimal. The margins of safety from the use of amicarbazone are well within EPA's acceptable limits. Arvesta Corporation concludes that there is a reasonable certainty that no harm will result to the U.S. population from aggregate exposure to amicarbazone residues.

2. *Infants and children.* The complete toxicological data base, including the developmental toxicity and two-generation reproduction studies were considered in assessing the potential for additional sensitivity of infants and children to residues of amicarbazone. The developmental toxicity studies in rats and rabbits did not indicate any increased sensitivity of rats or rabbits to *in-utero* exposure to amicarbazone. The two-generation reproduction study did not reveal any increased sensitivity of rats to prenatal or postnatal exposure to amicarbazone. Furthermore, none of the other toxicology studies indicated any data demonstrating that young animals were more sensitive to amicarbazone than adult animals. The data taken collectively clearly demonstrate that application of an FQPA uncertainty for increased sensitivity of infants and children is unnecessary for amicarbazone.

F. International Tolerances

Amicarbazone is registered for use on corn and sugarcane in Brazil. The tolerance for these uses in 0.02 ppm.

[FR Doc. 04–1237 Filed 1–21–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7612–1]

Brunswick Wood Preserving Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has entered into an Administrative Agreement (Agreement) at the Brunswick Wood Preserving Superfund Site (Site) located in Glynn County, Brunswick, Georgia, with Kerr-McGee Chemical L.L.C. EPA will consider public comments on the Agreement until February 23, 2004. EPA may withdraw from or modify the Agreement should such comments disclose facts or considerations which indicate the Agreement is inappropriate, improper, or inadequate. Copies of the Agreement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, Superfund Enforcement & Information Management Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comment may be submitted to Greg Armstrong at the above address within 30 days of the date of publication.

Dated: November 19, 2003.

Rosalind H. Brown,

Chief, Superfund Enforcement & Information Management Branch, Waste Management Division.

[FR Doc. 04–1235 Filed 1–21–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7612–4]

Proposed CERCLA Section 122(h) Administrative Agreement for Recovery of Past Costs for the Morgan Materials, Inc. Superfund Site, City of Buffalo, Erie County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region II, of a proposed administrative agreement pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), with the settling parties, Morgan Materials, Inc. (''Morgan''), and Donald Sadkin (collectively, the ''Settling Parties''), for recovery of past response costs concerning the Morgan Materials, Inc. Superfund Site (''Site'') located in the City of Buffalo, Erie County, New York. The settlement requires payments to the EPA Hazardous Substance Superfund which total $425,000: $300,000 from Morgan, and $125,000 from Donald Sadkin. The settlement includes a covenant not to sue the Settling Parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), for EPA's past response costs. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before February 23, 2004.

ADDRESSES: To request a copy of the proposed settlement agreement, please contact the individual identified below. The proposed settlement is also available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007–1866. Comments should reference the Morgan Materials, Inc. Superfund Site, City of Buffalo, Erie County, New York, Index No. CERCLA–02–2004–2002.

FOR FURTHER INFORMATION CONTACT: Brian Carr, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway—17th Floor, New York, New York 10007–1866. Telephone: 212–637–3170.

Dated: January 7, 2004.

Kathleen Callahan,

Deputy Regional Administrator, Region 2.

[FR Doc. 04–1373 Filed 1–21–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

January 15, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the

Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 22, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Nuamber: 3060–0937.

Title: Establishment of a Class A Television Service.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 600.

Estimated Time Per Response: 0.017 hours–52 hours.

Total Annual Burden: 280,420.

Total Annual Costs: $1,327.500.

Needs and Uses: The Report and Order in MM Docket No. 00–10 adopted rules for Class A LPTV broadcasters. Class A LPTV broadcasters are subject to the Commission's operating rules for full-service television stations. The Report and Order modified all pertinent 47 CFR Part 73 rules to indicate their applicability to Class A LPTV licenses. The information collection requirements contained within the Report and Order ensure that the integrity of the TV spectrum is not compromised. These requirements also ensure that unacceptable interference is not caused to existing radio services, and that statutory requirements are met. The Part 73 rules ensure that the stations are operated in the public interest.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–1336 Filed 1–21–04; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 03–4113]

NPCR, Inc. d/b/a Nextel Partners Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau sought comment on the NPCR, Inc. d/b/a Nextel Partners' petition seeking designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered in certain rural and non-rural study areas in the state of Florida.

DATES: Comments are due on or before February 2, 2004. Reply comments are due on or before February 17, 2004.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Karen Franklin, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's public notice, CC Docket No. 96–45, DA 03–4113, released December 30, 2003. On September 16, 2003, NPCR, Inc. d/b/a/ Nextel Partners (Nextel Partners) filed a petition seeking designation as an eligible telecommunications carrier (ETC). Nextel Partners provides commercial mobile radio service and seeks designation as an ETC so that it can receive federal universal service support for its service offered in the State of Florida in rural study areas currently served by GTC, Inc.''FL, Frontier Communications'South, ALLTEL Florida, Inc., and Quincey Telephone Company and in non-rural wire centers served by BellSouth Telecommunications, Inc.

Nextel Partners contends that the Florida Public Service Commission (Florida Commission) does not regulate commercial mobile radio service providers for purposes of ETC designations and provides a declaration from the Florida Commission asserting its lack of jurisdiction. Nextel Partners submits that the Commission has jurisdiction under section 214(e)(6) to consider and grant its petition. Nextel Partners also maintains that it satisfies all the statutory and regulatory prerequisites for ETC designation and that its designation as an ETC will serve the public interest.

The petitioner must provide copies of its petition to the Florida Commission. The Commission will also send a copy of this public notice to the Florida Commission by overnight express mail to ensure that the Florida Commission is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments as follows: comments are due February 2, 2004, and reply comments are due February 17, 2004. 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 appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. 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, Natek, 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. All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

Federal Communications Commission.

Sharon Webber,

Deputy Chief, Wireline Competition Bureau, Telecommunications Access Policy Division.

[FR Doc. 04–1337 Filed 1–21–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Tuesday, January 27, 2004 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

(Note: The starting time for the open meeting on January 29, 2004 has been changed to 2 p.m.)

DATE AND TIME: Thursday, January 29, 2004, 2 p.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2004–01: Bush-Cheney '04, Inc. and Alice Forgy Kerr for Congress by Messrs. Benjamin L. Ginsberg, Thomas J. Josefiak, and William H. Piper, III.

Routine Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Robert W. Biersack, Acting Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 04–1499 Filed 1–20–04; 3:40 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement Nos.: 011510–023.

Title: West African Discussion Agreement.

Parties:

Atlantic Bulk Carriers, Ltd.;

HUAL A/S.

Synopsis: The amendment would delete HUAL A/S as a party to the agreement effective February 9, 2004. At that point, the agreement will be terminated.

Agreement No.: 011648–008.

Title: APL/Crowley/Lykes/MLL Space Charter and Sailing Agreement.

Parties:

American President Lines, Ltd.;

APL Co. PTE Ltd.;

Crowley Liner Service, Inc.;

Lykes Lines Limited, LLC; and

TMM Lines Limited, LLC.

Synopsis: The subject agreement modification revises Article 5.2(a) to adjust the space allocations of Crowley Liner Service, Inc. (''CLS'') and American President Lines, Ltd./APL Co. Pte. Ltd. (''APL'') in the Gulf/Caribbean portion of the agreement through May 31, 2004. It also provides that CLS and APL may charter space on an ''as needed/as available basis'' in that portion of the agreement after June 1, 2004.

Dated: January 16, 2004.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–1334 Filed 1–21–04; 8:45 am]

BILLING CODE 6730–01–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 February 4, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Managing Examiner) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Charles A. Kennedy, Bancroft, Iowa, individually and acting in concert with Teresa R. Kennedy, also of Bancroft, Iowa; to acquire voting shares of Kennedy Bancshares, Inc., Bancroft, Iowa, and thereby indirectly acquire voting shares of Farmers & Traders Savings Bank, Bancroft, Iowa.

Board of Governors of the Federal Reserve System, January 15, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–1291 Filed 1–21–04; 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 February 13, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. CNB Holdings, Inc., Alpharetta, Georgia; to merge with First Capital Bancorp, Inc., Norcross, Georgia, and thereby indirectly acquire voting shares of First Capital Bank, Norcross, Georgia.

2. Hometown Bancshares, Inc., Hamilton, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of PeoplesTrust Bank, Hamilton, Alabama.

Board of Governors of the Federal Reserve System, January 15, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–1290 Filed 1–21–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Vaccine Advisory Committee

AGENCY: Office of the Secretary.

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 National Vaccine Advisory Committee (NVAC) will hold a meeting. The meeting is open to the public.

DATES: The meeting will be held on February 3, 2004, from 9 a.m. to 5 p.m., and on February 4, 2004, from 8:30 a.m. to 3:15 p.m.

ADDRESSES: Department of Health and Human Services; Room 800 Humphrey Building; 200 Independence Avenue, SW.; Washington, DC 20201

FOR FURTHER INFORMATION, CONTACT: Ms. Carolin Commodore, Staff Assistant, National Vaccine Program Office and Executive Secretary, National Vaccine Advisory Committee; U.S. Department of Health and Human Services, Room 725H Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; (202) 260–1253.

SUPPLEMENTARY INFORMATION: Pursuant to Section 2101 of the Public Service Act (42 U.S.C. Section 300aa-1), the Secretary of Health and Human Services was mandated to establish the National Vaccine Program (NVP) to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The Secretary designated the Assistant Secretary for Health to serve as the Director, NVP. The National Vaccine Advisory Committee (NVAC) was established to provide advice and make recommendations to the Director, NVP, on matters related to the program's responsibilities.

Topics to be discussed at the meeting include: Influenza, the smallpox vaccine program, poliovirus laboratory containment, an update on Project BioShield, vaccine supply, and NVPO unmet needs funds.

A tentative agenda will be made available for review on the NVPO Web site: *http://www.hhs.gov/nvpo.*

Public attendance at the meeting is limited to space available. Individuals must provide a photo ID for entry into the Humphrey Building. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person. Members of the public will have the opportunity to provide comments at the meeting. Public comment will be limited to five minutes per speaker. Any members of the public who wish to have printed material distributed to NVAC members should submit materials to the Executive Secretary, NVAC, whose contact information is listed above prior to close of business January 15, 2004. Pre-registration is required for both public attendance and comment. Any individual who wishes to attend the meeting and/or participate in the public comment session should call the telephone number listed in the contact information to register.

The National Vaccine Program Office was organizationally relocated to the Office of Public Health and Science on October 1, 2003.

Dated: January 2, 2004.

Bruce Gellin,

Director, National Vaccine Program Office and Executive Secretary, National Vaccine Advisory Committee.

[FR Doc. 04–1314 Filed 1–21–04; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Neurological Indices of Long Term Solvent Exposure in Workers, Request for Applications OH–04–001

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Neurological Indices of Long Term Solvent Exposure in Workers, Request for Applications OH–04–001.

Times and Dates: 6 p.m.-6:30 p.m., February 11, 2004 (open); 6:30 p.m.-8 p.m., February 11, 2004 (closed); 9 a.m.-5 p.m., February 12, 2004 (closed); 9 a.m.-5 p.m., February 13, 2004 (closed).

Place: Embassy Suites Hotels, 1900 Diagonal Road, Alexandria, VA 22314, telephone 703–684–5900.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Request for Applications: OH–04–001.

Contact Person for More Information: Pervis C. Major, Ph.D., Scientific Review Administrator, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1095 Willowdale Road, Morgantown, WV 26505, telephone 304–285–5979.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: January 14, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–1303 Filed 1–21–04; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products 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: Vaccines and Related Biological Products 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 February 18, 2004, from 8:30 a.m. to 4:30 p.m.; and on February 19, 2004, from 8:30 a.m. to 12:30 p.m.

Location: The meeting will be held at the Sheraton Four-Points Hotel, 8400 Wisconsin Ave., Bethesda, MD.

Contact Person: William Freas or Denise H. Royster, Food and Drug Administration, Center for Biologics Evaluation and Research (CBER) (HFM–71), 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512391. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will review and discuss the selection of strains to be included in the influenza virus vaccine for the 2004–2005 season. The committee and CBER will begin a discussion of the potential suitability for use in vaccine manufacture of influenza isolates that have been passaged through mammalian cells (e.g., Madin-Darby Canine Kidney cells or Vero cells).

Procedure: On February 18 and 19, 2004, the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 4, 2004. Oral presentations from the public will be scheduled between approximately 1 p.m. to 1:30 p.m. on February 18, 2004, and between 8:45 a.m. to 9:15 a.m. on February 19, 2004. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 13, 2004, 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 William Freas or Denise H. Royster 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: January 12, 2004.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 04–1264 Filed 1–21–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Memorandum of Understanding Between the Food and Drug Administration and the Environmental Protection Agency, Office of Research and Development

[FDA 225–04–4000]

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and the U.S. Environmental Protection Agency (EPA), Office of Research and Development. The purpose of the MOU is to expedite research and development of new methods and technologies that can be implemented in support of Homeland Security efforts by Federal, State or local government entities as well as authorized private sector organizations to avert and/or mitigate the effects of terrorist activities in the United States.

DATES: The agreement became effective February 19, 2003.

FOR FURTHER INFORMATION CONTACT: Frederick L. Fricke, Jr., Forensic Chemistry Center (HFR–CE500), Food and Drug Administration, 6751 Steger Dr., Cincinnati, OH 45237, 513–679–2700, ext. 180.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: January 9, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

Memorandum of Understanding
Between
United States Environmental Protection Agency
Office of Research and Development
and
United States Food and Drug Administration
Office of Regulatory Affairs
for
Collaborative Research and Development and Emergency Response Triage Efforts for Homeland Security

I. Purpose, Objectives and Goals:

a. **Purpose.** This Memorandum of Understanding (MOU) establishes the framework for collaborative research and development and emergency triage response efforts between the U.S. Environmental Protection Agency's (EPA's) Office of Research and Development (EPA and its Laboratories and Centers) and the Food and Drug Administration (FDA) Office of Regulatory Affairs (FDA and its Laboratories) on the subject of Homeland Security. Research and development and emergency triage efforts specifically targeted under this MOU are focused on, but not limited to, safe buildings, water security, food safety and rapid risk assessment. The MOU is intended to expedite research and development of new methods and technologies that can be implemented in support of Homeland Security efforts by federal, state or local government entities as well as authorized private sector organizations to avert and/or mitigate the effects of terrorist activities in the United States.

Both EPA and FDA believe that this collaboration will contribute to more efficient resource utilization, avert or minimize duplication, and accelerate method and technology advancement in the Homeland Security arena. The two organizations further believe that successful collaboration will leverage beneficial results via method and technology transfer and emergency triage response in support of human health and environmental protection, while ensuring a safe food and water supply for the United States of America.

b. **Objectives.** FDA and EPA will work collaboratively to expedite development of methods and technologies that are needed to address Homeland Security issues.

c. **Goals.**

i. Identify method and technology needs, formulate research and development projects that address emergency response triage needs, and establish Interagency Agreements (IAGs) or other extramural arrangements that describe how personnel and resources

of FDA and EPA will be effectively utilized to perform research and development projects addressing Homeland Security issues such as early detection of impending terrorist attacks or the aftermath of terrorist attacks.

ii. Perform collaborative research and development projects in an expeditious manner.

iii. Provide products from the research and development projects in a form and format that can be easily used and understood by the targeted public and private sector organizations involved in Homeland Security activities.

II. Background and Program Scope:

a. **Background.** Terrorist attacks against the United States and the consequent war on terrorism being waged by the U.S., its allies and many countries around the world have provided great impetus for the development of methods and technologies that can be utilized to detect and/or neutralize terrorist threats. One of the greatest concerns facing the United States and other nations is the deliberate use of chemical, biological, nuclear or radiological weapons by terrorist organizations. Following the tragic events of September 11, 2001, the U.S. Food and Drug Administration, the U.S. Environmental Protection Agency, and other federal agencies, as well as universities and emergency response organizations in the public and private sector, began addressing the need for new methods and technologies related to Homeland Security.

b. **Program Scope.** Under this MOU the two organizations - EPA and FDA - will meet on an annual basis to identify areas of research and development, and emergency response triage activities related to Homeland Security that can be efficiently addressed through a collaborative approach.

III. Responsibilities:

a. **The Food and Drug Administration agrees to:**

i. Work with EPA to exchange information consistent with agency regulations governing the release of information to other federal agencies and identify research and development needs and emergency response triage activities in the area of Homeland Security. Develop, formulate and establish IAGs [this MOU will be incorporated by reference in each related IAG] between specific EPA Laboratories and Centers and one or more FDA Laboratories. Describe specific research and development projects, and emergency response triage activities that will be jointly pursued by FDA and EPA.

ii. Participate in joint technical activities (e.g., inspections, workgroups, scientific or engineering panels) with representatives from EPA, and other organizations which may be established to provide technical advice and guidance on issues related to Homeland Security.

iii. Enter into IAGs that address research and development needs, under which FDA personnel from one or more FDA Laboratories will work cooperatively on projects of mutual interest and formulated as described above with EPA as time (the Food and Drug Administration has priority) and resources permit.

iv. In special cases and subject to approval by the Director of the appropriate FDA Laboratory, work con-jointly with EPA to address the research and development needs, and emergency response triage activities of a third party (either public or private).

v. Assign a Management Point of Contact and Technical Lead(s) for interactions with the EPA.

vi. Provide, in cooperation with EPA's Management Point of Contact, an annual executive summary report on the progress made under this MOU for each of the IAGs, or other cooperative activities, that are developed as part of this agreement (MOU).

vii. Record, produce and maintain minutes of meetings as described in this MOU.

b. **The Environmental Protection Agency agrees to:**

i. Work with FDA to exchange information consistent with agency regulations governing the release of information to other federal agencies and identify research and development needs, and emergency response triage activities in the area of Homeland Security. Develop, formulate and establish IAGs [this MOU will be incorporated by reference in each related IAG] between one or more FDA Laboratories and EPA Laboratories and Centers. Describe specific research and development projects, and emergency response triage activities that will be jointly pursued by EPA and FDA.

ii. Participate in joint technical activities (e.g., inspections, workgroups, scientific or engineering panels) with representatives from EPA, and other organizations which may be established to provide technical advice and guidance on issues related to Homeland Security.

iii. Enter into IAGs that address research and development needs, under which EPA personnel will work cooperatively on projects of mutual interest and formulated as described above with FDA as time (the EPA mission has priority) and resources permit.

iv. In special cases and subject to approval by the Director of the appropriate EPA Laboratory or Center, work con-jointly with FDA to address the research and development needs, and emergency response triage activities of a third party (either public or private).

v. Cooperate in making facilities available in cases where emergency response activities are required.

vi. Assign a Management Point of Contact and Technical Lead(s) for interactions with the FDA.

vii. Provide, in cooperation with FDA's Management Point of Contact, an annual executive summary report on the progress made under this MOU for each of the IAGs, or other cooperative activities, that are developed to carry out his MOU.

IV. Memorandum of Understanding (MOU) Administration:

a. **Reports.** The status of work performed under this MOU will be reviewed on an annual basis. The FDA Coordinator of Counter Terrorism Laboratory Response Development/ Office of Regulatory Affairs, will take the lead and be responsible for organizing meetings (planning meetings and annual meetings), developing agenda and recording results of the meetings. Minutes of the meetings will be produced by FDA and be distributed to meeting participants as well as to the Director of the appropriate FDA Laboratory and in turn the Commissioner, FDA and to the EPA. A central file (retained by FDA) will be maintained.

b. **Information Releases:** The Associate Commissioner for Regulatory Affairs, FDA, and the Assistant Administrator, EPA (or their designees) will jointly review and approve information regarding MOU activities (meetings, new developments, etc.) prior to public release. IAGs prepared under this agreement will stipulate specific procedures for the coordination, handling and public disclosure of information. All information disclosures concerning activities under this MOU or subsequent IAGs will comply with agency regulations governing the release of information. Where particular information protocols apply to a particular laboratory, or network of laboratories, those protocols will be followed by both parties to this MOU.

c. **Security Classification:** The highest security classification applied by either FDA or EPA will govern the handling of information and reports under this MOU, as appropriate. The security classification and procedures will be stipulated in each IAG.

d. **Facility Security, Health, Safety and Environmental Compliance:** The host facility's security, health, safety and environmental compliance programs will be followed by personnel when engaged in work activities as outlined in this MOU. Workers Compensation Claims shall be covered by the employee's agency.

e. **Reimbursement Policy:** Each party to this agreement will handle and expend its own funds. The responsibilities assumed by each party are contingent upon funds being available from which expenditures legally may be met.

f. **Annual Management Meetings:** EPA and FDA will meet yearly to plan and coordinate research and development activities, and emergency response triage activities under this MOU. Such meetings will be held at a mutually agreed upon location and on a date that is compatible with the planning and budgeting cycle of each organization. At this meeting, recommendations for adjustments to current activities, projects, and budget priorities will be proposed and agreed upon by the Management Points of Contact for submission to the appropriate EPA and FDA administrators for further action.

g. **Semi-Annual Technical Discussions:** EPA and FDA will meet twice a year to discuss technical progress under each IAG or activity. These reviews will require technical information exchange by EPA and FDA Technical Leads. These meetings may include individuals from outside of EPA and FDA as mutually agreed to by the respective Management Points of Contact.

h. **Technical Lead Responsibilities:** Technical Leads for each IAG or activity will strive to engage in:

- Providing technical information exchange consistent with agency regulations governing the exchange or release of information
- Delivering written or verbal technical evaluations of progress
- Conducting visit to sites where research is underway
- Organizing and Participating in technical workshops and scientist-to-scientist meetings
- Reporting on any exceptional accomplishments from, or impediments to, successful program or project execution
- Recommending improvements for the MOU activities

i. **Approvals:** All IAGs and activities conducted to carry out this MOU must be agreed to and approved by the EPA and FDA prior to commencement of any technical work.

j. **Inventions and Licensing:** Activities conducted to carry out this MOU and any IAGs or other extramural arrangements may result in products or processes that are patentable or otherwise proprietary. The organization whose work results in the invention shall disclose the invention to the other organization and then prepare, file, and prosecute patent applications. If protection is granted, the inventing organization will manage the invention in accordance with its rules and regulations. Inventions resulting from joint research and development by both EPA and FDA employees shall be handled as jointly agreed to at the time of the disclosure.

V. Period of Agreement:

a. This MOU shall be effective for seven years from the date of the last signature unless canceled in writing by (either/any) of the participating organizations with 90 days notice.

b. Conflicts that may arise after the MOU is in effect will be resolved by EPA and FDA Management Points of Contact. If conflicts cannot be resolved at this level, then they will be taken to the respective Points of Contacts Directors in the EPA and FDA Laboratories. If conflicts cannot be resolved at this level, then the signatory authorities for this MOU will resolve the conflicts either by coming to informal agreement or by amending the MOU.

c. This MOU will be reviewed annually by the Management Points of Contact to determine if any changes or amendments should be incorporated. Such changes or amendments will be formally incorporated in the MOU within 90 days of the annual review.

VI. Names and Addresses of Parties:

Environmental Protection Agency
26 West Martin Luther King Drive
Cincinnati, Ohio 45268

Food and Drug Administration
5600 Fishers Lane
Rockville, Maryland 20857

VII. General Provisions:

a. Nothing in this MOU supersedes any other memorandum of understanding held by either party.

b. This MOU in no way restricts the parties from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.

c. This MOU describes in general terms, the basis upon which the parties intend to cooperate. It does not create binding, enforceable obligations against any party.

Approved and Accepted for the Food and Drug Administration by

John M. Taylor
Associate Commissioner for Regulatory Affairs
U.S. Food & Drug Administration

2/14/03
Date

Approved and Accepted for the Environmental Protection Agency by:

E. Timothy Oppelt
Director, National Homeland Security Research Center
U. S. Environmental Protection Agency

2/19/03
Date

[FR Doc. 04–1263 Filed 1–21–04; 8:45 am]

BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Inhibitors of Formation of Protease Resistant Prion Protein

Bruce Chesebro, Byron Caughey, Joelle Chabry, Susette Priola (NIAID). U.S. Patent 6,211,149 issued on 03 Apr 2001 (DHHS Reference No. E–189–1998/0–US–02); U.S. Patent 6,355,610 issued on 12 Mar 2002 (DHHS Reference No. E–189–1998/0–US–03); U.S. Patent Application No. 10/096,080 filed 11 Mar 2002 (DHHS Reference No. E–189–1998/0–US–04).

Licensing Contact: Michael Ambrose; 301/594–6565; *ambrosem@mail.nih.gov.*

Protease-resistant prion proteins are actively associated with various transmissible spongiform encephalopathies (TSEs). These include Creutzfeldt-Jakob disease in humans and Bovine spongiform encephalopathy (''mad cow disease'') in cattle.

The present invention discloses proprietary peptides and potential pharmaceutical compositions using such peptides that inhibit the formation of protease-resistant prion protein aggregates. These aggregates develop into amyloid deposits in the brain of affected patients, leading to the development of the spongiform encephalopathy. The peptides, when used in vitro inhibit such aggregation. Furthermore, when used in pharmaceutical compositions and medically relevant dosages, may be used for therapies for TSEs.

Inhibitors of Amyloid Formation

Winslow S. Caughey, Byron Caughey, Lynne D. Raymond, Motohiro Horiuchi (NIAID). U.S. Patent 6,632,808 issued on 14 Oct 2003 (DHHS Reference No. E–205–1998/0–US–03).

Licensing Contact: Michael Ambrose; 301/594–6565; *ambrosem@mail.nih.gov.*

This invention discloses methods, compounds and compositions for therapeutic treatment of amyloidogenic diseases, like Alzheimer's disease, type 2 diabetes and, particularly, transmissible spongiform encephalopathies (prion diseases) such as CJD, Kuru in humans and BSE (''Mad Cow Disease'') in cattle.

The invention is based on the findings that cyclic tetrapyrroles and derivatives inhibit the formation of protease-resistant prion protein (PrP-res) the pathologic, amyloidogenic protein aggregates of the prion diseases. These methods and compounds have the potential for the development of pharmaceutical therapies for the treatment and prevention of progression of such TSEs.

Inhibition of Diseases Associated With Amyloid Formation

Byron Caughey, Richard E. Race (NIAID).

U.S. Patent 5,276,059 issued on 04 Jan 1994 (DHHS Reference No. E–107–1992/0–US–01).

Licensing Contact: Michael Ambrose; 301/594–6565; *ambrosem@mail.nih.gov.*

Amyloid deposition in brain samples is diagnostic for several serious and fatal diseases. These include Alzheimer's disease as well as several transmissible spongiform encephalopathies (prion diseases) such as CJD and BSE (''Mad Cow Disease''). Together, these diseases having amyloid depositions are termed amyloidogenic diseases.

This invention covers and discloses the method and compositions of using Congo Red in the treatment of such amyloidogenic diseases. Congo Red is shown to inhibit the accumulation of PrP-res, the amyloidogenic and pathologic protein or the transmissible spongiform encephalopathies. The potential therapeutics covered by this invention includes Congo Red and its derivatives.

Dated: January 14, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–1258 Filed 1–21–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Codon-Optimization of the HIV–1 Vif Gene

Klaus Strebel, Stephan Bour, Kim-Lien Nguyen (NIAID); DHHS Reference No. E–041–2004/0—Research Tool/Biological Material; Licensing Contact: Michael Ambrose; 301/594–6565; *ambrosem@mail.nih.gov.*

Expression of the HIV–1 Vif protein in the absence of other viral factors such a Tat and Rev is extremely inefficient due to the presence of inhibitory sequences on its mRNA. This invention uses codon optimization to remove such inhibitory sequences without altering the amino acid sequence of the protein. The modified vif gene in the resulting pcDNA -hVIF vector is expressed under the control of the CMV promoter. In this, the protein functions as wild type and is more amendable to high-level expression in mammalian cells.

Currently this vector is used in on-going studies of HIV infection and its

ability to overcome cellular restriction to replication. As such, the reagent will be valuable to other researchers in discovering mechanisms of replication, next generation therapeutics and potentially prevention of infection as well.

Streptococcus Lipoprotein Antigens

James M. Musser and Benfang Lei (NIAID); U.S. Provisional Application filed 10 Nov 2003 (DHHS Reference No. E–324–2003/0-US–01); Licensing Contact: Susan Ano; 301/435–5515; *anos@mail.nih.gov.*

The current technology describes sixteen isolated and purified Spy polypeptides that are conserved across many Group A Streptococcus serotypes and that are expressed during infection. The polypeptides are from the polypeptide portion of a lipoprotein of a Group A Streptococcus. Infection with Group A Streptococcus bacteria can result in mild illness such as strep throat, or more severe illnesses such as necrotizing faciitis and streptococcal toxic shock syndrome. Currently such infections are treated with antibiotics, but trends indicate an increasing resistance to *e.g.,* erythromycin. There is currently no licensed vaccine for Group A Streptococcus. The M protein, a main focus of studies directed toward vaccine development, elicits antibodies that are either serospecific or may induce harmful cross-reacting antibodies. This technology identified individual polypeptides that were promising vaccine candidates and various combinations thereof. Additionally, antibodies to these polypeptides are discussed, which could be used therapeutically or in diagnostic assays.

A Simple Method and Apparatus To Produce a Closed, Transverse Bone Fracture in a Mouse or Other Skeletal Creature

Arabella Leet (NIDCR); DHHS Reference No. E–309–2003/0-US–01 filed 27 Oct 2003; Licensing Contact: Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov*.

A standard pair of pliers was modified to create a device that applies three-point bending forces across the leg of a mouse directly over the tibia bone. With this device, a reproducible transverse fracture can be fashioned quickly and easily, producing an animal model for fracture healing.

Although surgical fixation can be applied to the fracture, short-term splinting allows abundant bridging callus formation. This device does not require a platform for stabilizing the animals; instead the jaws are placed directly onto the limb, allowing production of many fractures within minutes. By using three-point fixation, there is no crush type injury, as when using a guillotine-type device to drop a weight onto a pre-rodded bone.

Scientists studying fracture healing will find this simple device useful because no special surgical skills are required to produce and stabilize a fracture in a mouse model of fracture healing.

Dated: January 14, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–1259 Filed 1–21–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting: Secretary's Advisory Committee on Genetics, Health, and Society

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS), U.S. Public Health Service. The meeting will be held from 8:30 a.m. to 5:30 p.m. on March 1, 2004 and 8 a.m. to 5 p.m. on March 2, 2004, at the Marriott Hotel Bethesda on 5151 Pooks Hill Road in Bethesda, Maryland. The meeting will be open to the public with attendance limited to space available. The meeting also will be webcast.

The first half of the first day will be devoted to a presentation on and discussion of the work of the Committee's Inter-Meeting Task Force and priority setting process. The second half of the first day will consist of presentations on the issue of coverage and reimbursement, a possible priority area for the Committee. The second day will be entirely devoted to discussions around the top priorities and Committee action in these areas. Time will be provided each day for public comment.

Under authority of 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic technologies and, as warranted, to provide advice on these issues.

The draft meeting agenda and other information about SACGHS, including information about access to the webcast, will be available at the following Web site: *http://www4.od.nih.gov/oba/sacghs.htm.* Individuals who wish to provide public comment or who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the SACGHS Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or e-mail at *sc112c@nih.gov.* The SACGHS office is located at 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892.

Dated: January 14, 2004.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1257 Filed 1–21–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer 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 Cancer Institute Special Emphasis Panel, Biology of the Prostate Cancer Prevention Trial (PCPT).

Date: February 18–20, 2004.

Time: 7 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Houston Plaza at Medical Center, 6633 Travis Street, Houston, TX 77030.

Contact Person: Shakeel Ahmad, PhD, Scientific Review Administrator, Research Programs Review Branch, National Cancer Institute, Division of Extramural Activities, 6116 Executive Blvd., Bethesda, MD 20892. (301) 594–0114; *amads@mail.nih.gov.*

(Catalogue of Federal Domestic Assistant Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399,

Cancer Control, National Institutes of Health, HHS)

Dated: January 15, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1351 Filed 1–21–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer 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 Cancer Institute Special Emphasis Panel, ''Natural Inhibitors of Carcinogenesis''.

Date: February 16–18, 2004.

Time: 7 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: University Inn, 3001 Northwestern Ave., West Lafayette, IN 47906.

Contact Person: Peter J. Wirth, Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8131, Bethesda, MD 20892–8328; 301–496–7565; *pw2q@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 15, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1352 Filed 1–21–04; 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 Meetings

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 meetings.

The meetings 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 Review of Cooperative Clinical Research—Cooperative Agreements (U10s)—Asthma.

Date: February 22, 2004.

Time: 7 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Valerie L. Prenger, PhD, Health Scientist Administrator, Review Branch, Room 7194, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892–7924, (301) 435–0288.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Review of Research Project-Cooperative Agreements (U01s)—Improving Resuscitation.

Date: March 1–2, 2004.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Judy S. Hannah, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892, (301) 435–0287.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 15, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1346 Filed 1–21–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 Nursing Research Special Emphasis Panel, Nursing Research Developmental Center Grants (RFA NR–04–001).

Date: January 16, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 6701 Democracy Blvd., Room 710, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: John E. Richters, Ph.D., Scientific Review Administrator, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd. Room 715, Bethesda, MD 20817, (301) 594–5971, *jrichters@nih.gov.*

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. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.876, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 14, 2004.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1253 Filed 1–21–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 Nursing Research Special Emphasis Panel, Nursing Research Core Center Grants (RFA NR–04–002).

Date: January 20, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 6701 Democracy Blvd., Room 710, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: John E. Richters, Ph.D., Scientific Review Administrator, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Room 715 Bethesda, MD 20817, (301) 594–5971, *jrichters@nih.gov.*

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. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 14, 2004.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1254 Filed 1–21–04; 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 Initial Review Group, Pediatrics Subcommittee.

Date: February 11–12, 2004.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rita Anand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov.*

(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: January 14, 2004.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1255 Filed 1–21–04; 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; Pediatric Critical Care Scientist Development Program.

Date: February 12, 2004.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rita Anand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov.*

(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: January 14, 2004.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1256 Filed 1–21–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 contract proposals and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 DD (40)—SBIR 017—Dev. of Methodology for Measuring Compliance for Medications.

Date: January 29, 2004.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, (301) 443–2926, *skandasa@mail.nih.gov*.

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. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: January 15, 2004.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1341 Filed 1–21–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 Environmental Health Sciences Special Emphasis Panel Program Project.

Date: February 11–12, 2004.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27713.

Contact Person: Leroy Worth, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, 919/541–0670, *worth@niehs.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: January 15, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1342 Filed 1–21–04; 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: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Partnerships for Vaccine and Diagnostic Development.

Date: February 12, 2004.

Time: 8 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Mary J. Homer, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 3255, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 496–7042, *mjhomer@niaid.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: January 15, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1343 Filed 1–21–04; 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: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Biodefense & Emerging Infectious Diseases: Drug Therapy of Poxvirous Infections.

Date: February 9, 2004.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Robert C. Goldman, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, DHHS, Room 3124, 6700–B Rockledge Drive, MSC 7616,

Bethesda, MD 20892–7616, (301) 496–8424, *rg159w@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: January 15, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1344 Filed 1–21–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meetings

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 meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)94) 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 Dental and Craniofacial Research Special Emphasis Panel 04–28, Review of R25s.

Date: February 20, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 04–32, Review of RFA DE04–005, State Models Oral Cancer Prevention.

Date: February 24, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., room 4AN32E, Bethesda, MD 20892, (301) 451–5096.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 04–30, Review of RFA DEO4–004, Genetics Craniofacial Disorders.

Date: February 24, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, (301) 594–4861.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 15, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1345 Filed 1–21–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

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 meetings.

The meetings 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 on Alcohol Abuse and Alcoholism Initial Review Group, Health Services Research Review Subcommittee, AA2–Health Services Research Review Subcommittee.

Date: February 12, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Elsie Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, *etaylor@niaaa.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Health Services Research Review Subcommittee, AA2–Health Services Research Review Subcommittee.

Date: June 10, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Elsie Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, *etaylor@niaaa.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: January 15, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1347 Filed 1–21–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

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 meetings.

The meetings 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 on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of U18 Application—HH–08.

Date: January 21, 2004.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Willco Building, 6000 Executive Boulevard, 411, Bethesda, MD 20892. (Telephone conference call.)
Contact Person: Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003. (301) 435–5337.
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.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of U18 Application—HH–07.
Date: January 22, 2004.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Willco Building, 6000 Executive Boulevard, 411, Bethesda, MD 20892. (Telephone conference call.)
Contact Person: Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003. (301) 435–5337.
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. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS.)

Dated: January 15, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1348 Filed 1–21–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Source Documents on Handheld Devices for Clinical Trials in Autism.
Date: February 11, 2004.
Time: 12:30 p.m. to 3:30 p.m.
Agenda: To review and evaluate contract proposals.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone conference call.)
Contact Person: Peter J. Sheridan, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606. 301–443–1513; *psherida@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS.)

Dated: January 15, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1349 Filed 1–21–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Mental Health Initial Review Group, Interventions Research Review Committee.
Date: February 10–11, 2004.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.
Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606. 301–443–6470; *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientists Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS.)

Dated: January 15, 2004

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1350 Filed 1–21–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

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 meetings.

The meetings 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: Center for Scientific Review Special Emphasis Panel, Cancer Drug Discovery and Delivery.
Date: January 21, 2004.
Time: 12 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Eun Ah Cho, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202,

MSC 7804, Bethesda, MD 20892, (301) 451–4467, *choe@csr.nih.gov.*

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.

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group, Surgery, Anesthesiology and Trauma Study Section.

Date: February 4–5, 2004.

Time: 3 p.m. to 12 p.m.

Agenda: To review and evaluate applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Gerald L. Becker, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Protozoan Parasites.

Date: February 9, 2004.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Fouad A. El-Zaatari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20892, (301) 435–1149, *elzaataf@csr.nih.gov.*

Name of Committee: Renal and Urological Studies Integrated Review Group, Cellular and Molecular Biology of the Kidney Study Section.

Date: February 10–11, 2004.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198, *hildens@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Nephrology Small Business.

Date: February 11, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198, *hildens@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Biophysics of Synapses, Channels, and Transporters Study Section.

Date: February 12–13, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Jurys Washington Hotel, 1500 New Hampshire Ave., Washington, DC 20036.

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265, *langm@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Somatosensory and Chemosensory Systems Study Section.

Date: February 17–18, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW, Washington, DC 20037.

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255, *kenshalod@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Somatosensory and Chemosensory Systems Study Section.

Date: February 17, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Anterior Eye Diseases.

Date: February 17–18, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Christine A. Livingston, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, (301) 435–1172, *livingsc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SSS–X (10) Bioelectromagnetics.

Date: February 17, 2004.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Catamaran Hotel, 3999 Mission Boulevard, San Diego, CA 92109.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, *rosenl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 DMG (90)S Diagnostic Imaging.

Date: February 17, 2004.

Time: 4:30 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Catamaran Resort Hotel, 3999 Mission Boulevard, San Diego, CA 92109.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171. *rosenl@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Chemo/Dietary Prevention Study Section.

Date: February 18–19, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Neal B. West, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2114, MSC 7804, Bethesda, MD 20892–7808, (301) 435–2633, *westnea@csr.nih.gov.*

Name of Committee: Renal and Urological Studies Integrated Review Group, Pathobiology of Kidney Disease Study Section.

Date: February 18–19, 2004.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.

Contact Person: M. James Scherbenske, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892 301–435–1173.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowship Review: Sensory and Motor Systems Physiology.

Date: February 18, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurobiology of Motivated Behavior Study Section.

Date: February 18–19, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Gamil C. Debbas, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018, *debbasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 HOP D 50R: PAR–03–009: Improving Diet and Physical Activity Assessment.
Date: February 19, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Marriott, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *hardyan@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioanalytical Engineering and Chemistry Panel.
Date: February 19–20, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate Hotel, 2650 Virginia Ave. NW, Washington, DC 20037.
Contact Person: Noni Byrnes, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7806, Bethesda, MD 20892, (301) 435–1217, *byrnesn@csr.nih.gov.*

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Molecular and Cellular Biophysics Study Section.
Date: February 19–20, 2004.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Churchill Hotel, 1914 Connecticut Avenue, NW, Washington, DC 20009.
Contact Person: Nancy Lamontagne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *lamontan@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Metabolism Study Section.
Date: February 19–20, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Ann A. Jerkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, (301) 435–4514, *jerkinsa@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurotoxicology and Alcohol Study Section.
Date: February 19–20, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, (301) 435–2212, *josephru@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Endocrinology Study Section.
Date: February 19–20, 2004.
Time: 8 a.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Syed M. Amir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1043, *amirs@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurobiology of Learning and Memory Study Section.
Date: February 19–20, 2004.
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: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Biochemical Sciences Integrated Review Group, Biochemistry Study Section.
Date: February 19–20, 2004.
Time: 8 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Michael M. Sveda, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20992, 301–435–3565, *svedam@csr.nih.gov.*

Name of Committee: Hematology Integrated Review Group, Erythrocyte and Leukocyte Biology Study Section.
Date: February 19–20, 2004.
Time: 8 a.m. to 3:30 PM
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Delia Tang, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, 301–435–2506, *tangd@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neurogenesis and Cell Fate Study Section.
Date: February 19–20, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Jurys Doyle, 1500 New Hampshire Avenue, NW., Washington, DC 20036.
Contact Person: Lawrence Baizer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7850, Bethesda, MD 20892, 301–435–1257, *baizerl@mail.nih.gov.*

Name of Committee: Behavioral and Behavioral Processes Initial Review Group, Language and Communication Study Section.
Date: February 19–20, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, Bethesda, MD 20892, 301–435–1507, *niw@csr.nih.gov.*

Name of Committee: Immunological Sciences Integrated Review Group, Immunobiology Study Section, Comparative Immunology and Xenopus.
Date: February 19–20, 2004.
Time: 8:30 a.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Betty Hayden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, 301–435–1223, *haydenb@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Initial Review Group, Cognition and Perception Study Section.
Date: February 19–20, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Washington, Pennsylvania Ave at 15th Street, NW., Washington, DC 2004.
Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 78428 Bethesda, MD 20892, 301–435–1261.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Social Psychology, Personality and Interpersonal Processes Study Section.
Date: February 19–20, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.
Contact Person: Michael Micklin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Behavioral Medicine, Interventions and Outcomes Study Section.
Date: February 19–20, 2004.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate Hotel, 2650 Virginia Avenue, NW, Washington, DC 20037.
Contact Person: Lee S. Mann, MA, JD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677, *Mannl@mail.nih.gov.*

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Biophysical Chemistry Study Section.
Date: February 19–20, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1111 30th Street, NW, Washington, DC 20007.
Contact Person: Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7824, Bethesda, MD 20892, (301) 435–1153.

Name of Committee: Biobehavioral and Behavioral Processes Initial Review Group, Biobehavioral Regulation, Learning and Ethology Study Section.
Date: February 19–20, 2004.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street, NW, Washington, DC 20036.
Contact Person: Luci Roberts, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, *roberlu@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Biostatistical Methods and Research Design Study Section.
Date: February 20, 2004.
Time: 8 a.m to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites, 4300 Military Road, NW, Washington, DC 20015.
Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *hardyan@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 14, 2004.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1249 Filed 1–21–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the SAMHSA Center for Substance Abuse Prevention (CSAP) National Advisory Council in January 2004.

The meeting will be open portion and will include the CSAP's Director's Report and updates on the Center's programs and on the Faith-Based Summit, and discussions of administrative matters and announcements. If anyone needs special accommodations for persons with disabilities, please notify the contact listed below.

A summary of this meeting, a roster of committee members and substantive program information may be obtained from Ms. Carol Watkins, Executive Secretary, Rockwall II Building, Suite 900, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–9542. Public comments are welcome. Please communicate with the individual listed below as contact for guidance.

Committee Name: SAMHSA Center for Substance Abuse Prevention National Advisory Council.

Meeting Date and Time: Wednesday, January 28, 2004, 2 p.m.–4 p.m. (Open Session), 5515 Security Lane, Rockwall II, Conference Room I, Rockville, Maryland, 20852, Telephone (301) 443–0365.

FOR FURTHER INFORMATION CONTACT: Carol D. Watkins, Executive Secretary, 5600 Fishers Lane, Rockwall II Building, Suite 900, Rockville, Maryland 20857, Telephone: (301) 443–9542.

Dated: January 14, 2004.

Toian Vaughn,

Executive Secretary/Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 04–1265 Filed 1–21–04; 8:45 am]

BILLING CODE 4162—20–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2004–16860]

Gulf Landing LLC Liquefied Natural Gas Deepwater Port License Application

AGENCY: Coast Guard, DHS. Maritime Administration, DOT.

ACTION: Notice of application.

SUMMARY: The Coast Guard and the Maritime Administration (MARAD) give notice, as required by the Deepwater Port Act of 1974, as amended, that they have received an application for the licensing of a deepwater port, and that the application appears to contain the required information. This notice summarizes the applicant's plans and the procedures that will be followed in considering the application.

DATES: Any public hearing held in connection with this application must be held no later than September 20, 2004, and it would be announced in the **Federal Register**. A decision on the application must be made within 90 days after the last public hearing held on the application.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2004–16860 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Web site: http://dms.dot.gov.*

(2) *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) *Fax:* 202–493–2251.

(4) *Delivery:* Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) *Federal eRulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Lieutenant Derek Dostie at 202–267–0226, or email at *ddostie@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

You may submit comments concerning this application. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use their Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–2004–16860), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Receipt of application; determination. On November 3, 2003, the Coast Guard and MARAD received an application from Gulf Landing LLC (''Gulf Landing''), 1301 McKinney, Suite 700, Houston, Texas 77010 for all Federal authorizations required for a license to own, construct and operate a deepwater port off the coast of Louisiana. Supplemental information was furnished at our request on December 12, 2003. On January 5, 2004, we determined that the application contains all information required by the Deepwater Port Act. The application and related documentation supplied by the applicant (except for certain protected information specified in 33 U.S.C. 1513) may be viewed in the public docket (*see* **ADDRESSES**).

Background. According to the Deepwater Port Act of 1974, as amended (the Act; 33 U.S.C. 1501 *et seq.*), a deepwater port is a fixed or floating manmade structure other than a vessel, or a group of structures, located beyond State seaward boundaries and used or intended for use as a port or terminal for the transportation, storage, and further handling of oil or natural gas for transportation to any State.

A deepwater port must be licensed, and the Act provides that a license applicant submit detailed plans for its facility to the Secretary of Transportation, along with its application. The Secretary has delegated the processing of deepwater port applications to the Coast Guard and MARAD. The Act allows 21 days following receipt of the application to determine if it contains all required information. If it does, we must publish a notice of application in the **Federal Register** and summarize the plans. This notice is intended to meet those requirements of the Act and to provide general information about the procedure that will be followed in considering the application.

Application procedure. The application is considered on its merits. Under the Act, we must hold at least one public hearing within 240 days from the date this notice is published. A separate **Federal Register** notice will be published to notify interested parties of any public hearings that are held. At least one public hearing must be held in each adjacent coastal state. Pursuant to 33 U.S.C. 1508, we designate Louisiana as an adjacent coastal state for this application. Other states may apply for adjacent coastal state status in accordance with 33 U.S.C. 1508 (a)(2). After the last public hearing, Federal agencies have 45 days in which to comment on the application, and approval or denial of the application must follow within 90 days of the last public hearing. Details of the application process are described in 33 U.S.C. 1504 and in 33 CFR part 148.

Summary of the application. The application plan calls for construction of a deepwater port and associated anchorages in an area situated in the Gulf of Mexico, approximately 38 miles south of Cameron, Louisiana in South Cameron Block 213, in water depth of approximately 55 feet, and adjacent to an existing shipping fairway servicing the Calcasieu River and area ports.

Gulf Landing's terminal would be capable of storing up to 180,000 cubic meters of LNG and vaporizing up to 1.2 billion cubic feet per day. Gulf Landing proposes to construct, own, and operate up to 5 takeaway pipelines that would interconnect with existing natural gas pipelines located in the Gulf of Mexico. Gas would then be delivered to the onshore national pipeline grid for delivery to any consumption market east of the Rockies.

The project would consist of two concrete gravity base structures (GBSs) housing the LNG containment facilities, along with topside unloading and vaporization structures, living quarters, and a ship berthing system.

The terminal would be able to receive LNG carriers between 125,000 and 160,000 cubic meter capacities and unload up to 135 LNG carriers per year. LNG carrier arrival frequency would be planned to match specified terminal gas delivery rates. All marine systems, communication, navigation aids and equipment necessary to conduct safe LNG carrier operations and receiving of product during specified atmospheric and sea states would be provided at the port.

The regasification process would consist of lifting the LNG from storage tanks, pumping the cold liquid to pipeline pressure, subsequent vaporization across heat exchanging equipment and, finally, send-out through custody transfer metering to the gas pipeline network. No gas conditioning is required for the terminal since the incoming LNG would be pipeline quality.

Five offshore interconnector pipelines, ranging from 16 to 36 inches in diameter, would be constructed and would traverse a combined 65.7 nautical miles. Each pipeline would transport gas from the terminal to an existing transmission pipeline where it would deliver the gas to the onshore U.S. gas pipeline network. On average, Gulf Landing expects the terminal would vaporize and deliver 1 billion cubic feet per day (Bcfd) of natural gas to the pipelines, with a peak daily send out rate of 1.2 Bcfd.

Dated: January 12, 2004.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security, and Environmental Protection, Coast Guard.

Raymond R. Barberesi,

Director, Office of Ports and Domestic Shipping, U.S. Maritime Administration.

[FR Doc. 04–1267 Filed 1–21–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4878–N–02]

Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons Extension of Public Comment Period

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: On December 19, 2003, HUD published a proposed ''Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons'' (LEP Guidance) as required by Executive Order 13166, that addresses efforts recipients of federal financial assistance must make to serve persons with limited English proficiency. The proposed LEP Guidance solicited public comments for a period of 30 days, providing for a comment due date of January 20, 2004. Because of the significant public interest that the proposed rule has generated, HUD is extending the public comment period by an additional 14 days.

DATES: *Comment Due Date:* Comments on HUD's December 19, 2003, proposed LEP Guidance are due on or before February 5, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding the proposed guidance to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Pamela D. Walsh, Director, Program Standards Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Room 5226, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–2904 (this is not a toll-free number). Hearing- or speech-impaired individuals may access the telephone number listed in this section through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On December 19, 2003 (68 FR 70968), HUD published proposed ''Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons.'' HUD published this policy guidance to meet its responsibility under Executive Order 13166, which requires that each federal agency publish guidance to assist recipients of federal funds in meeting their responsibilities under Title VI of the Civil Rights Act of 1964. Under Title VI, recipients of federal financial assistance are required to ensure meaningful access to their programs and activities by persons with limited English proficiency. The Department of Justice reviewed and approved HUD's proposed LEP Guidance.

HUD's proposed LEP Guidance solicited public comments for a period of 30-days, providing for a comment due date of January 20, 2004. Due to the significant level of public interest that the proposed notice has generated, HUD has decided to extend the public comment due date by an additional 14 days. The new due date for comments is provided in the **DATES** section of this document, above. HUD hopes that the extended comment period will provide interested persons with the needed additional time to submit their comments, and will help to ensure that HUD's development of the final LEP Guidance is undertaken with a full appreciation of the public's views on this important matter. All public comments postmarked subsequent to January 20, 2004 (the original due date for public comments on the LEP Guidance) but before the new comment due date announced by this document, will be considered in the development of the final LEP Guidance.

Dated: January 20, 2004.

Karen A. Newton,

Deputy Assistant Secretary for Operations and Management.

[FR Doc. 04–1476 Filed 1–21–04; 8:45 am]

BILLING CODE 4210–28–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–010–04–1610–DO–NM03]

Kasha-Katuwe Tent Rocks National Monument, Sandoval County, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of intent.

SUMMARY: The BLM Field Office, Albuquerque, New Mexico, intends to prepare a Resource Management Plan (RMP) with an associated Environmental Impact Statement (EIS) for the Kasha-Katuwe Tent Rocks National Monument. The proposed RMP will replace the existing Rio Puerco RMP and Area of Critical Environmental Concern (ACEC) Protection Plan for the area that has become the Monument. Public-scoping meetings to identify relevant issues will be announced in advance through BLM's Web site, a newsletter, and in local news media.

DATES: Public-scoping meetings will be announced through the local news media, a newsletter, and the BLM Web site (*www.nm.blm.gov*) at least 15 days prior to the event. Formal opportunities for public participation will be provided upon publication of the BLM draft RMP/EIS.

ADDRESSES: To send written comments, and/or to have your name added to the mailing list, contact John Bristol, Project Leader, telephone 505–761–8755, or Kathy Walter, Monument Manager, telephone 505–761–8794, or write to them at the Bureau of Land Management, Albuquerque Field Office, 435 Montano Road NE, Albuquerque, New Mexico 87107–4935 or by fax at 505–761–8911.

FOR FURTHER INFORMATION CONTACT: John Bristol, Project Manager, at (505) 761–8755 (*john_bristol@nm.blm.gov*), or Kathy Walter, Monument Manager, at (505) 761–8794 (*kathy_walter@nm.blm.gov*).

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM Field Office, Albuquerque, New Mexico, intends to prepare an RMP with an associated EIS for the Kasha-Katuwe Tent Rocks National Monument (KKTRNM). Since the area designated as the Monument was formerly the Tent Rocks ACEC designated under the 1986 Rio Puerco RMP, this planning process will also include a review of the existing Rio Puerco RMP decisions in the context of the National Monument status.

The planning area is located in Sandoval County, New Mexico, between

the cities of Albuquerque and Santa Fe near the Pueblo de Cochiti. The planning activity encompasses approximately 4,114 acres of public land. The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), the Presidential Proclamation establishing the Monument, and BLM management policies. In 1997, a management agreement with the Pueblo de Cochiti was initiated for the purpose of managing collaboratively the Tent Rocks ACEC, the National Recreation Trail within the ACEC, and the Tent Rocks Fee Demonstration Program. In 2000, an Inter-Government Cooperative Agreement was signed between the BLM and the Pueblo de Cochiti to provide for more consistent, effective, and collaborative management of the Federal and Pueblo de Cochiti lands, as well as road access to the Monument through the Pueblo. The BLM will work with interested parties to identify management decisions that are best suited to local, regional, and National concerns while protecting the objects specified in the proclamation.

The Presidential Proclamation of January 17, 2001, No. 7394, set apart and reserved for the purpose of protecting the objects specified in the Proclamation, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described as the KKTRNM. The Federal land and interests in land reserved consist of approximately 4,148 acres which is the smallest area compatible with the proper care and management of the objects to be protected. The proclamation directed the Secretary of the Interior to manage the Monument through the BLM, pursuant to applicable legal authorities and in close cooperation with the Pueblo de Cochiti, and to prepare a management plan for the Monument.

The area designated as the Monument was the Tent Rocks ACEC designated under the 1986 Rio Puerco RMP and actually includes approximately 4,114 acres of public lands, after recalculation. Therefore, the planning area includes 4,114 acres of public lands, 520 acres of State land, and 760 acres of private land within the boundary of the Monument, as well as private lands immediately adjacent to the Monument, which would be considered for acquisition from willing landowners.

This will be a stand-alone RMP for the Monument, but will include decisions established in the 1986 Rio Puerco RMP (maintained and reprinted in 1992) that have been or are being implemented for this area, particularly those consistent with the provisions of the proclamation and applicable to the Tent Rocks ACEC. The KKTRNM RMP will replace the existing Rio Puerco RMP and ACEC Protection Plan for the area that has become the Monument.

The purpose of the public-scoping process is to determine relevant issues that will influence the scope of the environmental analysis and EIS alternatives. These issues also guide the planning process. Comments on issues and planning criteria can be submitted in writing to the BLM at any public-scoping meeting or they may be mailed or faxed to the BLM as directed above. To be most helpful, formal scoping comments should be submitted within 15 days after the last public meeting, although scoping comments will be accepted throughout the creation of the Draft RMP/Draft EIS. The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views expressed. Individual respondents may request confidentiality. If you wish to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

Issues presently being considered include: (1) Land tenure adjustment and how land ownership will be incorporated into the management of the Monument; (2) how access and transportation will be managed for the purposes of the Monument; (3) how recreational activities and visitor use will be managed; (4) how ecosystem restoration will benefit the public and the Monument; and (5) how American Indian uses and traditional cultural practices will be incorporated into the management of the Monument. Other issues may be raised through the scoping process. These issues have guided the preliminary work on this plan. They are being submitted to the public for consideration and comment during the scoping process.

The following criteria have been developed to guide the consideration, analysis, and resolution of these issues, as required by FLPMA and BLM's planning regulations (43 CFR 1610). They are open for discussion during the scoping process. Several of them relate to all issues, others relate to individual issues. Planning criteria ensure that plans are tailored to the identified issues, and that unnecessary data collection and analyses are avoided. Planning criteria are based on applicable law, agency guidance, public comment, and coordination with other Federal, State, and local governments and Native American Indian Tribes.

- The plan will be completed in compliance with FLPMA and all other applicable laws. It will meet the requirements of the Proclamation to protect the objects of geological, cultural, and biological interest appertaining to the Monument.
- The Monument planning team will work cooperatively with the Pueblo de Cochiti and other Tribal Governments, State of New Mexico, county and municipal governments, other Federal agencies, and all other interest groups, agencies, and individuals.
- The plan will establish the guidance upon which the BLM will rely in managing the Monument.
- The plan will be accompanied by an EIS based on NEPA standards.
- The plan will provide opportunities to study, observe, and experience the geologic processes as well as other cultural and biological objects of interest within the Monument. It will identify opportunities and priorities for research and education related to resources for which the Monument was created, and it will describe an approach for incorporating research into management actions.
- The plan will set forth a framework for managing recreational activities and experiences consistent with the Proclamation.
- The plan will recognize valid existing rights within the Monument and review how valid existing rights are verified. The plan will also outline the process used to address applications or notices filed after completion of the plan on existing claims or other land-use authorizations.
- The management of grazing is prescribed by laws and regulations; however, the Proclamation excludes grazing from within the Monument unless it can be determined that livestock grazing can advance the purpose of the Proclamation. This determination will be made through the plan.
- The lifestyles of area residents will be recognized in the plan.
- The Monument plan will recognize the State's responsibility and authority to manage wildlife, including hunting within the Monument.

• The acquisition of state and private inholdings within the Monument and private lands contiguous to the Monument will be considered.

• The plan alternatives will address transportation, vehicular, and other types of access.

Preliminary issues and management concerns have been identified by the BLM personnel, other agencies, the Pueblo de Cochiti, and individuals. They represent the BLM's knowledge to date on the existing issues and concerns with current management. After gathering public comments, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the plan.
2. Issues to be resolved independently of the plan.
3. Issues beyond the scope of the plan.

The BLM will address category one above in the land-use planning process and give rationale in the plan for issues placed in the other categories. Concepts for alternatives will be generated from category one.

In addition to the preceding issues, management questions and concerns that may be addressed in the plan include but are not limited to the following: management of culturally sensitive areas; protection and interpretation of cultural resources; use of Monument resources for scientific and educational purposes; fire and fuels management; wildlife habitat; threatened and endangered species habitat; scenic values; facilities and infrastructure needed to administer the area and provide visitor services; and an appropriate level of visitor use, since the Monument is located within a 1-hour drive of the growing major cities of Albuquerque, Rio Rancho, and Santa Fe, New Mexico.

(Authority: 40 CFR 1501.7)

Dated: January 15, 2004.

Leland G. Keesling,

Acting State Director.

[FR Doc. 04–1361 Filed 1–21–04; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–600–1120–PG–241A]

Notice of Meeting, Southwest Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Southwest Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held on February 20, 2004, at the Kendall Mountain Community Center, Silverton, Colorado and will begin at 9 a.m. The public comment period will be at 9:30 a.m. and 3 p.m.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Southwest, Colorado. Planned agenda topics include:

Manager reports,

Public comment,

Discussion of old business,

Discussion of road and rights-of-way issues, and

Discussion of the ongoing environmental review of several major projects and proposals (*e.g.*, Silverton Mountain Ski Area and Northern San Juan Basin Gas Development).

All meetings are open to the public. The public can make oral statements to the Council at 9:30 a.m. and 3 p.m. or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the Western Slope Center Office (BLM), 2465 S. Townsend, Montrose, Colorado 81401, and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

FOR FURTHER INFORMATION CONTACT: San Juan Public Lands Center, 15 Burnett Court, Durango, Colorado 81301. Phone (970) 385–1290.

Dated: January 13, 2004.

Mark W. Stiles,

San Juan Public Lands Center Manager.

[FR Doc. 04–1315 Filed 1–21–04; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–1430–EU;CACA–45567]

Notice of Intent To Amend the 1993 Redding Resource Management Plan, and Notice of Realty Action, Noncompetitive Sale of Public Land in Shasta County, CA

AGENCY: Bureau of Land Management, Interior.

ACTIONS: Notice of Intent and Notice of Realty Action.

SUMMARY: This notice provides for two related proposals, one a proposed plan amendment and the other a proposed direct sale. The proposed plan amendment involves about 260 acres of Federal land. The proposed direct sale involves about 100 acres of the Federal land being considered in the proposed plan amendment.

DATES: The Bureau of Land Management must receive your comments on or before March 8, 2004 at the address listed below.

ADDRESSES: Please send your written comments to the Bureau of Land Management, Redding Field Office, 355 Hemsted Drive, Redding, CA 96002, attention Ilene Emry. All submissions from organizations or businesses will be made available for public inspection in their entirety. Individuals may request confidentiality with respect to their name, address, and phone number. If you wish to have your name or street address withheld from public review, or from disclosure under the Freedom of Information Act, the first line of the comment should start with the words ''CONFIDENTIALITY REQUEST'' in uppercase letters in order for BLM to comply with your request. Such request will be honored to the extent allowed by law. Comment contents will not be kept confidential.

FOR FURTHER INFORMATION CONTACT: Ilene Emry, Redding Field Office; 530–224–2100.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management (BLM) is proposing to amend the Redding Resource Management Plan (RMP) to consider disposal of up to 260 acres of public land. The affected public lands are located in the Interlakes Special Recreation Management Area north of Redding, California and are described as:

Mount Diablo Meridian

T. 33 N., R. 5 W.,
Section 32: E½ of Lot 15, E½ of Lot 22,
Section 33: S½ of Lot 9, S½ of Lot 10, S½ of Lot 11, Lots 16–21;

Total Plan Amendment Acres: approximately 260.0.

If the BLM determines during consideration of the proposed plan amendment that these lands are suitable for disposal, then BLM proposes to offer about 100 acres of the lands for direct sale under section 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713). The proposed sale would be at not less than the estimated fair market value of $69,615 to the Redding Gun Club, a 501(c)(3) nonprofit corporation, consistent with 43 CFR 2711.3–3(a)(1) for development of a regional firing range. The area under consideration for direct sale has the following legal description:

Mount Diablo Meridian

T. 33 N., R. 5 W.,

Section 33: W½ of Lot 17, Lot 18, N½ of Lot 19, SE¼ of Lot 19, Lot 20;

Total Direct Sale Acres: approximately 100 acres.

The BLM may consider disposal of a portion or all of the remaining 160 acres by direct sale to the Redding Gun Club in the future if it is determined to be needed for the regional firing range. An additional environmental analysis and public notification will be completed at that time. In July 2002, the BLM provided an opportunity to comment on an environmental assessment (EA) for a direct sale involving a portion of the area in the proposed plan amendment. The BLM will incorporate applicable issues raised and comments received during the July 2002 comment period in this plan amendment process. Further public comment will also be accepted on the draft plan amendment and environmental assessment developed in connection with this NOI/NORA. Several relevant planning/NEPA documents concerning this action are available on request from the Redding Field Office. Some of the preliminary issues and concerns identified by BLM personnel, other agencies, and individuals, include fair market value, noise, increased traffic, and public safety. Disciplines involved in the planning process will include specialists with expertise in wildlife management, minerals and geology, outdoor recreation, archaeology, lands and realty, and botany. The alternative to the proposed action will be the No Action Alternative.

Since 1986, the Redding BLM Field Office has cooperated with local planning agencies, and groups to provide a location for a regional firing range. The proposed sale parcel is well suited for use as a firing range. Urban encroachment has resulted in the closure of sites traditionally used for shooting in the Redding area. Direct sale would allow for the development of a regional firing range and would serve important public objectives, consistent with 43 CFR 2710.0–3(a)(2).

BLM has determined that the parcel contains no mineral values; therefore, mineral interests may be conveyed simultaneously. The sale would include both the surface and mineral estates. If the RMP amendment proposed in this notice is completed, the conveyance would be in compliance and consistent with the Redding Resource Management Plan, dated July 27, 2003, as amended, and would be in the public interest.

This notice terminates the temporary segregation from exchange of those lands described for the direct sale, effective January 22, 2004. The land described for the direct sale is hereby segregated from appropriation under the public land laws, including the mining laws, pending the direct sale or October 18, 2004, whichever occurs first.

The patent, if issued, would be subject to valid existing rights and contain the following reservations:

1. Excepting and reserving to the United States, a right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 43 U.S.C. 945.

2. A right-of-way reservation (CA 45206), as amended, to the BLM for administrative access across existing roads on the public land in this sale.

Dated: November 17, 2003.

Charles M. Schultz,

Field Manager.

[FR Doc. 04–1359 Filed 1–21–04; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

Sixty-Day Notice of Intention To Request Clearance of Collection of Information—Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: The National Park Service (NPS) Social Science Program is considering submitting to the Office of Management and Budget (OMB) a request for clearance of a renewed program of social science surveys of the public related to the mission of the NPS. The NPS is publishing this notice to inform the public of this program and to request comments on the program.

Since many of the NPS surveys are similar in terms of the populations being surveyed, the types of questions being asked, and research methodologies, the NPS proposed to OMB and received clearance for a program of approval for NPS-sponsored public surveys (OMB# 1024–0224 exp. 8/31/2001; three-year extension granted in September 2001, exp. 9/30/2004). The program presented and alternative approach to complying with the Paperwork Reduction Act (PRA). In the five years since the NPS received clearance for the program of expedited approval, 193 public surveys have been conducted in units of the National Park System. The benefits of this program have been significant to the NPS, Department of the Interior (DOI), OMB, NPS cooperators, and the public. Significant time and cost savings have been incurred. Expedited approval was typically granted in 45 days or less from the date the Principal Investigator first submitted a survey package for review. This is a significant reduction over the approximate 6 months involved in the standard OMB approval process. It is estimated that the expedited approval process saved a total of 870 months in Fiscal Years 1999–2003. In five years, the expedited approval process has accounted for a cost savings to the federal government and PIs estimated at $348,001. The initial program included surveys of park visitors. The program renewed in September 2001 included surveys of park visitors, potential park visitors, and residents and communities near parks. The current extension request proposes to expand the program to include surveys of NPS management partners and recipients of NPS agency technical assistance.

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the NPS, including whether the information will have practical utility; (b) the accuracy of the NPS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) the quality, utility, and clarity of the information to be collected; and (d) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

DATES: Public comments will be accepted on or before 60 days from the date of publication in the **Federal Register**.

SEND COMMENTS TO: Dr. James H. Gramann, Visiting Chief Social Scientist, National Park Service, 1849 C Street, NW., (3127), Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. James H. Gramann. Voice: 202–513–7189, Fax: 202–371–2131, Email: *james_gramann@partner.nps.gov* or Brian E. Forist. Voice: 202–513–7190, Fax: 202–371–2131, Email: *brian_forist@partner.nps.gov.*

Request for Clearance of a Three Year Program of Collections of Information: Programmatic Approval of NPS-Sponsored Public Surveys.

SUPPLEMENTARY INFORMATION:

Title: Programmatic Approval of NPS–Sponsored Public Surveys.

Bureau Form Number: None.

OMB Number: 1024–0224.

Expiration date: 9/30/2004.

Type of request: Extension of a currently approved collection.

Description of need: The National Park Service needs information concerning park visitors and visitor services, potential park visitors, residents of communities near parks, NPS management partners, and recipients of NPS agency technical assistance to provide park and NPS managers with usable knowledge for improving the quality and utility of agency programs, services, and planning efforts.

Automated data collection: At the present time, there is no automated way to gather this information, since the information gathering process involves asking the public to evaluate services and facilities that they used during their park visits, services and facilities they are likely to use on future park visits, perceptions of park services and facilities, opinions regarding park management, and technical assistance provided by the agency. The burden on individuals is minimized by rigorously designing public surveys to maximize the ability of the surveys to use small samples of individuals to represent large populations of the public, and by coordinating the program of surveys to maximize the ability of new surveys to build on the findings of prior surveys.

Description of Respondents: A sample of visitors to parks, potential visitors to parks, residents of communities near parks, NPS management partners, and recipients of NPS agency technical assistance.

Estimated average number of respondents: The program does not identify the number of respondents because that number will differ in each individual survey, depending on the purpose and design of each information collection.

Estimated average number of responses: The program does not identify the average number of responses because that number will differ in each individual survey, depending on the purpose and design of each individual survey. For most surveys, each respondent will be asked to respond only one time, so in those cases the number of responses will be the same as the number of respondents.

Estimated average burden hours per response: The program does not identify the average burden hours per response because that number will differ form individual survey to individual survey, depending on the purpose and design of each individual survey.

Frequency of response: Most individual surveys will request only 1 response per respondent.

Estimated annual reporting burden: The program identifies the requested total number of burden hours annually for all of the surveys to be conducted under its auspices to be 15,000 burden hours per year. The total annual burden per survey for most surveys conducted under the auspices of this program would be within the range of 100 to 300 hours.

Dated: December 15, 2003.

Leonard E. Stowe,

Acting, Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 04–1281 Filed 1–21–04; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

Information Collection; Request for Extension

AGENCY: National Park Service.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Park Service (NPS) is announcing its intention to request an extension of a currently approved collection of information (OMB# 1024–0233) for NPS Leasing Regulations; 36 CFR part 18, concerning the leasing of historic properties as authorized by law.

DATES: Comments on this notice must be received no later than March 22, 2004.

ADDITIONAL INFORMATION OR COMMENTS: Contact Cynthia Orlando, Concession Program Manager, National Park Service, 1849 C Street, NW., (2410), Washington, DC 20240, or 202/513–7144.

SUPPLEMENTARY INFORMATION:

Title: Leasing Regulations—36 CFR part 18.

OMB Control Number: 1024–0233.

Expiration Date of Approval: January 31, 2004.

Type of Request: Extension of a currently approved information collection.

Abstract: The Office of Management and Budget (OMB) regulations as 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collection activities that NPS will submit to OMB for approval. The OMB control number for this collection of information is 1024–0233, and is identified in 36 CFR Section 18. NPS has identified burden estimates based on its experience with concession contracts and on information previously supplied by concessioners or offerors in response to concession prospectuses. NPS will request a 3-year term of approval for this information collection activity.

Bureau Form Number: None.

Frequency of collection: On occasion.

Description of Respondents: Persons or entities seeking a leasing opportunity with the National Park Service.

Estimated Annual Responses: 627.

Estimated Average Burden Hours Per Response: 7.

Estimated Total Annual Burden Hours: 4, 392.

Send comments on (1) the need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. Please refer to OMB control number 1024–0233 in all correspondence. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Copies of the information collection can be obtained from Cynthia L. Orlando, Concession Program Manager, National Park Service, Department of the Interior, 1849 C Street, NW., (2410), Washington, DC 20240.

Dated: December 10, 2003.

Leonard E. Stowe,

Acting, NPS Information Collection Clearance Officer, Washington Administrative Program Center.

[FR Doc. 04–1283 Filed 1–21–04; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement\General Management Plan, Fort Vancouver National Historic Site, Clark County, Washington; Notice of Availability

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and the Council on Environmental Quality's regulations, the National Park Service, Department of the Interior, has prepared a final environmental impact statement (EIS) for the proposed general management plan (GMP) for Fort Vancouver National Historic Site located in the city of Vancouver, Washington. This GMP describes and analyzes ''action'' alternatives responsive to issues and concerns voiced during the public scoping process (as well as NPS conservation planning requirements). These alternatives address visitor use and the preservation of the cultural and natural resources that provide the environment in which the Hudson's Bay Company story is presented to the public. Alternative A constitutes the No Action alternative and assumes that existing programming, facilities, staffing, and funding would generally continue at their current levels. Alternative B, the agency preferred alternative, expands opportunities for the visitor to appreciate the broad sense of history that occurred at Fort Vancouver and its place in Northwest history. Alternative C proposes full reconstruction within the Fort and additional reconstruction or delineation elsewhere within the National Historic Site (NHS). The environmental consequences of all the alternatives, and mitigation strategies, are identified, compared, and analyzed in the EIS—based on this information, Alternative B was deemed to be the ''environmentally preferred'' alternative.

Scoping: Public meetings were initiated by the National Park Service (NPS) in January 1999 to solicit early participation into the conservation planning and environmental impact analysis process, which aided in defining the range of issues to be analyzed. A Notice of Intent announcing preparation of the EIS/GMP was published in the **Federal Register** on January 7, 1999. A newsletter was produced and mailed to approximately 600 people on the park's mailing list to encourage feedback on critical park issues. The park received 29 scoping letters. Two public meetings were hosted in January 2000 from which over 150 oral comments were obtained. Scoping comments continued to be accepted and considered through the end of March 1999. During this period, the park facilitated discussions and briefings with the Vancouver National Historic Reserve Trust Board, congressional staff, elected officials, tribal representatives, public service organizations, educational institutions, and other interested members of the public.

Response to Draft Plan: During November 2002, over 670 copies of the draft EIS\GMP were mailed to agencies, organizations, and interested individuals; the documents were also made publicly available in local libraries in Vancouver, Washington and Oregon City, Oregon. A Notice of Availability was published in the **Federal Register** on December 3, 2002 (and EPA's notice of filing was published on December 27, 2002). In addition, advertisements were placed in the *Oregonian* (Portland, Oregon) and *The Columbian* (Vancouver, Washington) announcing release of the draft plan and locations, times, and dates for four public meetings to be held in Vancouver and Oregon City. Announcements were posted periodically on the park website, and a newsletter was prepared featuring a summary of the draft plan (and which included details for the December 2002 public meetings). A total of 4,500 newsletters were printed. Each newsletter included a mailback postage-paid response form for people to provide comments concerning the plan. Newsletters were made available at the Fort Vancouver National Historic Site visitor center, several venues at the Vancouver National Historic Reserve, and other places through the City of Vancouver including the library, museums, the Chamber of Commerce, City Hall, and the Parks and Recreation Department, and at the McLoughlin House in Oregon City, Oregon.

The public review period ended on February 8, 2003. Resulting from the opportunity for public comment, a total of 118 pieces of written correspondence were received, which included letters from agencies, organizations, and individuals, newsletter mail-back response forms, and electronically mailed responses through the Internet from the park website. In addition, a total of 65 people signed in at the public meetings (and 185 comments were recorded). Written comments were received from the following locations in the Pacific Northwest: 57 from Vancouver, Washington, 21 from Portland, Oregon, 5 from Oregon City, Oregon, 12 from other locations in Washington State, 7 from other locations in Oregon State, and 2 from Idaho. A total of 14 letters arrived from California, Louisiana, Pennsylvania, Missouri, Arizona, Maryland, New York, Massachusetts, and Washington, DC.

Throughout the overall conservation planning and environmental impact analysis process, consultations were held with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, Washington State Historic Preservation Office, and the Advisory Council for Historic Preservation. Except for the Washington State Historic Preservation Office, no written comments were received from these four agencies. Three tribes prepared written comments; the Cowlitz Indian Tribe, the Confederated Tribes of the Grand Ronde Community of Oregon, and the Confederated Tribes of the Warm Springs Reservation of Oregon.

The following elements of the proposed plan received the most comment: Village and Waterfront expansion, reconstruction, Research and Education Center, living history, Reserve visitor center, land bridge connection, adding the McLoughlin House NHS as a unit of Fort Vancouver NHS, East Fifth Street closure, relationship with Pearson Field, parking, food concessions, HBC cemetery, and staffing and funding. All letters are reproduced in the final EIS\GMP.

In addition to corrections and editorial changes, two elements of the proposed plan were modified based on public comment. Neither of these two changes constitutes an impairment of park resources or a significant impact of a singular or cumulative nature. The first relates to the proposed closure of East Fifth Street. East Fifth Street will remain open to public vehicular use. As mentioned in the draft EIS\GMP, NPS staff will work with the city's Public Works Department staff and officials to change the appearance and texture of the street surface to reflect a more historic appearance.

The second change relates to the temporary parking lot at the Fort. The action proposed in the draft EIS/GMP was to remove this parking lot completely and to construct a new

parking area within the south or east barracks. Comments from public meetings stated the importance of keeping this lot for use by persons with disabilities and the elderly, who may have trouble walking a longer distance to the Fort. In response, the NPS planning team recommends removing the existing temporary parking lot, with the provision of several permanent ADA parking spaces with a drop-off and loading area for passengers.

Final Proposed Plan and Alternatives: The final EIS GMP includes two action alternatives and a no-action (existing conditions) alternative—no substantive changes in actions proposed or attendant mitigation strategies have occurred as a result of public review and comment. Under all of the action alternatives, agricultural fields around the fort palisade would be restored as part of Hudson's Bay Company historic landscape (when the City of Vancouver vacates Pearson Airfield T-hangars and the former aviation museum building). In addition, park staff would administer any and all portions of the south and east Vancouver Barracks area as may be determined excess to needs of the U.S. Army by the Secretary of the Army. Use of this area could include restoring the Vancouver Barracks cultural landscape, adapting and reusing existing historic buildings, leasing properties to the City of Vancouver, providing for additional parking, staging public transportation operations, and incorporating administrative functions.

Alternative A is the no-action alternative and assumes that existing conditions, including programming, facilities, staffing, and funding, would generally continue at their current levels. This alternative would include fulfilling the existing commitments and relationships with the Reserve. No new substantial facility or program initiatives would be proposed under this alternative. The NHS would continue to work with the City of Vancouver to extend the City's proposed Discovery Historic Loop Trail through the Village of the NHS and along East Fifth Street. In cooperation with the City of Vancouver and Washington Department of Transportation, a pedestrian overpass would be built over State Route 14 and the railroad to connect the Fort Vancouver Waterfront and the City's Old Apple Tree Park to link the Fort and HBC Village. The current NHS visitor center would be retained in its current configuration and location, as would the current Vancouver National Historic Reserve visitor center situated in the historic General O.O. Howard House at the Vancouver Barracks. In addition, this alternative provided for technical assistance to the McLoughlin House NHS in Oregon City, Oregon (which was an affiliated unit of the National Park System). This no longer applies because on July 29, 2003 President Bush signed P. L. 108–63 (known also as H.R. 733), which authorizes the Secretary of the Interior to acquire the McLoughlin House NHS for inclusion in Fort Vancouver NHS.

Alternative B constitutes the Preferred Alternative, and this proposed course of action has also been determined to be the ''environmentally preferred'' alternative. Implementing this alternative would result in expanded opportunities for the visitor to appreciate the broad sense of history that occurred at Fort Vancouver and its place in Northwest history. Work to reconstruct nine Hudson's Bay Company structures within the fort palisade, and two at the Village, would be undertaken. A research and education center would be developed within the fort. Interpretive components would be added including wayside exhibits and delineation of structures in certain locations. Much of the historic landscape would be restored. The NPS would develop an interpretive area at the Waterfront by partially reconstructing the Salmon Store as an interpretive shed, and delineating several other historic Hudson's Bay Company structures. The original location of the wharf would be simulated and the historic pond delineated with plants. A portion of Columbia Way would be realigned to better accommodate visitor circulation and interpretation.

In cooperation with the City of Vancouver and the Washington Department of Transportation, the pedestrian overpass would be widened as a land bridge to allow for interpretation devices and vegetation. A local transit authority, in cooperation with NPS and other Reserve Partners, would implement a shuttle system to facilitate visitation. Other cooperative sharing would include administrative, maintenance, and visitor facilities with Reserve Partners. The NPS would recommend that one of the four buildings fronting the historic Parade Ground as determined excess by the Secretary of the Army be renovated as the joint administrative headquarters for the park and other Reserve offices. Maximum use would be made of existing structures including renovation of the existing Fort Vancouver visitor center as the Vancouver National Historic Reserve visitor center jointly managed by the Reserve Partners including the NPS.

Implementation of this alternative would result in development of additional educational outreach programs and new research facilities related to the Hudson's Bay Company and early U.S. Army period. This alternative recommends that the McLoughlin House National Historic Site in Oregon City, Oregon become a unit of Fort Vancouver NHS and be managed by Fort Vancouver National Historic Site staff. As noted above, legislation passed on July 29, 2003 authorized the Secretary of the Interior to acquire this site for inclusion in Fort Vancouver NHS.

Alternative C contains many of the same actions as the Preferred Alternative, but key differences include the following: Full reconstruction within the fort palisade, along with the reconstruction of the two historic School Houses and a barn to the north of the Fort. Additional delineation of structures would occur at the Waterfront and the Village. The historic Salmon Store would be reconstructed along the Columbia River shoreline, as would the historic wharf and other waterfront features. An ethno botanical garden would be constructed to interpret the local historic uses of native plants. An opening in the railroad berm would be created to visually link the Fort to the Waterfront. To facilitate visitor use and interpretation, a portion of Columbia Way would be closed to vehicular traffic in cooperation with the City of Vancouver. The current NHS visitor center would be renovated and retained for more detailed interpretation concerning Fort Vancouver, while a new location would be sought for a joint Vancouver National Historic Reserve visitor facility to provide the public with information and orientation to all the Reserve stories and venues. The location for this facility is yet to be determined, but priority would be given to rehabilitation of an historic structure within the Vancouver Barracks Historic District that is listed in the National Register of Historic Places. The research and education center would be located within the Vancouver Barracks portion of the Reserve.

Public Availability: The final EIS/GMP is now available. Interested persons and organizations wishing to express any new concerns may obtain the document from the Superintendent, Fort Vancouver National Historic Site, 612 East Reserve Street, Vancouver, Washington 98661, or via telephone at (360) 696–7655. The document may also be reviewed at area libraries, or obtained electronically via the park Web site at *http://www.nps.gov/fova/news.htm.* Any written responses must be

postmarked not later than 30 days following publication of EPA's notice of filing in the **Federal Register** (immediately upon publication, this date will be posted on the park website). All responses will become part of the public record. If individuals responding request that their name or/and address be withheld from public disclosure, the request will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the letter. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: the NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations; and, anonymous comments may not be considered.

Decision: Not sooner than 30 days after release of the final EIS/GMP a Record of Decision will be prepared. As this is a delegated EIS, the official responsible for the final decision is the Regional Director, Pacific West Region; subsequently the official responsible for implementing the approved plan would be the Superintendent, Fort Vancouver National Historic Site.

Dated: November 24, 2003.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. 04–1286 Filed 1–21–04; 8:45 am]

BILLING CODE 4310–99–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Draft Environmental Impact Statement for the Lackawanna Valley National Heritage Area Management Plan

AGENCY: National Park Service, Interior.

ACTION: Availability of draft environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a Draft Environmental Impact Statement (DEIS) for Lackawanna Valley National Heritage Area Management Plan. The Lackawanna Valley National Heritage Area Act of 2000 (Act) requires the Lackawanna Heritage Valley Authority, with guidance from the NPS, to prepare a Management Plan for the Lackawanna Heritage Valley. The Management Plan is expected to: (A) Take into consideration State, county, and local plans; (B) involve residents, public agencies, and private organizations working in the Heritage Area; (C) include actions to be undertaken by units of government and private organizations to protect the resources of the Heritage Area and specify the existing and potential sources of funding available to protect, manage, and develop the Heritage Area; (D) develop an inventory of the resources contained in the Heritage Area, including a list of any property in the Heritage Area that is related to the purposes of the Heritage Area and that should be preserved, restored, managed, developed, or maintained because of its historical, cultural, natural, recreational, or scenic significance; (E) recommend policies for resource management that considers and details application of appropriate land and water management techniques, including the development of intergovernmental cooperative agreements to protect the historical, cultural, natural, and recreational resources of the Heritage Area in a manner that is consistent with the support of appropriate and compatible economic viability; (F) establish a program for implementation of the management plan by the management entity, that includes: (i) Plans for restoration and construction, and (ii) specific commitments of the partners for the first 5 years of operation; (G) perform an analysis of ways in which local, State, and Federal programs may best be coordinated to protect the heritage resources; and (H) develop an interpretation plan for the Heritage Area.

The study area, designated as the Lackawanna Valley National Heritage Area, includes all or parts of the counties of: Lackawanna, Luzerne, Wayne, and Susquehanna County, in northeastern Pennsylvania as associated with the Lackawanna River corridor.

The NPS maintains one park site within the region: Steamtown National Historic Site in Scranton. Otherwise the majority of land is non-federal and the NPS assumes a management role only within its park units. Instead, conservation, interpretation and other activities are managed by partnerships among Federal, State, and local governments and private nonprofit organizations. The Lackawanna Heritage Valley Authority manages the national heritage area. The NPS has been authorized by Congress to provide technical and financial assistance for a limited period. The Act prohibits the Secretary of the Interior from providing any grant or other assistance pursuant to the Act after September 30, 2012.

DATES: The DEIS will remain on Public Review for sixty days from the publication of the notice in the **Federal Register** by the Environmental Protection Agency.

FOR FURTHER INFORMATION CONTACT: Peter Samuel, Project Leader, Philadelphia Support Office, National Park Service, 200 Chestnut Street, Philadelphia, PA 19106, *peter_samuel@nps.gov,* 215–597–1848.

If you correspond using the internet, please include 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. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous 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 inspection in their entirety.

Dated: January 14, 2004.

Bernard C. Fagan,

Deputy Chief, NPS Office of Policy and Regulations.

[FR Doc. 04–1282 Filed 1–21–04; 8:45 am]

BILLING CODE 4310–25–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Exotic Plant Management Plan and Environmental Impact Statement for Nine Park Units in the Southeast Region

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332) (40 CFR 1503.1) and Council on Environmental Quality regulations (40 CFR 1506.6), the U.S. Department of the Interior, National Park Service will prepare an exotic plant management plan/environmental impact statement (Plan/EIS). The Plan/EIS will be used to guide the management and control of exotic plants and restoration of native plant communities in nine park units in South Florida and the Caribbean. The nine park units are Big Cypress National

Preserve, Biscayne National Park, Canaveral National Seashore, Dry Tortugas National Park, Everglades National Park, Buck Island Reef National Monument, Christiansted National Historic Site, Salt River Bay National Historic Park and Ecological Preserve, and Virgin Islands National Park. The EIS will assess potential environmental impacts associated with various types of exotic plant control measures and native habitat restoration techniques on park resources such as native plants, threatened and endangered species, water quality and hydrology, wetlands, wildlife, cultural resources, and public health and safety.

DATES: To determine the scope of issues to be addressed in the plan and EIS and to identify significant issues related to the management and control of exotic plants in the nine park units, the National Park Service will conduct public scoping meetings in South Florida and the Caribbean. Representatives of the National Park Service will be available to discuss issues, resource concerns, and the planning process at each of the public meetings. When public scoping meetings have been scheduled, their locations, dates, and times will be published in local newspapers.

ADDRESSES: Any comments or requests for information should be addressed to Sandra Hamilton, National Park Service, Environmental Quality Division, Academy Place, P.O. Box 25287, Denver, Colorado 80225. Comments may also be submitted to the following email address: *FLCA@den.nps.gov.*

FOR FURTHER INFORMATION CONTACT: Sandra Hamilton, at (303) 969–2068. Email: *Sandra_Hamilton@nps.gov.*

SUPPLEMENTARY INFORMATION: In the United States, infestations of exotic plants are second only to land use changes as the cause of habitat loss and subsequent species endangerment. The threat of exotic species has grave implications for the preservation of natural and cultural resources throughout the National Park System. It is estimated that exotic plants infest approximately 1.5 million acres in the national park system, with some 400,000 acres of exotic plants within park units in Florida alone.

The presence and spread of exotic plants in park units in South Florida and the Caribbean threaten park natural and cultural resources. Exotic plant species threaten native plant communities, alter native habitat for plants and wildlife including threatened and endangered species, and disrupt natural processes, such as fire regime and hydrology. Cultural landscapes are altered by the presence of exotic plants, and excessive growth can threaten the integrity of historic or cultural structures. The National Park Service recognizes that to manage and control the spread of exotic plants more effectively, it is necessary to use a collaborative approach between park units, as commonalities exist between the units that lend themselves to broad management strategies.

The purpose of the Plan/EIS is to provide a programmatic framework for the nine South Florida and Caribbean parks:

- To manage and control exotic plants;
- To provide for the restoration of native species and habitat conditions in ecosystems that have been invaded;
- To protect park resources and values from adverse impacts resulting from the presence of exotic plants and control activities; and
- To provide consistency in planning for exotic plant management among the participating parks.

Our practice is to make the public comments we receive in response to planning documents, including names and home addresses of respondents, available for public review during regular business hours. 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. However, individual respondents may request that we withhold their names and addresses from the public record, and we will honor such requests to the extent allowed by law. If you wish to withhold your name and/or address, you must state that request prominently at the beginning of your comment. Anonymous comments will not be considered.

The draft and final Plan/EIS will be made available to all known interested parties and appropriate agencies. Full public participation by federal, state, and local agencies as well as other concerned organizations and private citizens is invited throughout the preparation process of this document.

The responsible official for this Plan/EIS is Patricia A. Hooks, Acting Regional Director, Southeast Region, National Park Service, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: December 3, 2003.

John Yancy,

Acting Regional Director, Southeast Region.

[FR Doc. 04–1287 Filed 1–21–04; 8:45 am]

BILLING CODE 4310–L6–P

DEPARTMENT OF THE INTERIOR

National Park Service

Gettysburg National Military Park Advisory Commission; Notice of Meeting

AGENCY: National Park Service.

ACTION: Notice.

SUMMARY: This notice sets forth the date of the February 19, 2004 meeting of the Gettysburg National Military Park Advisory Commission.

DATE: The public meeting will be held on February 19, 2004 from 7 p.m. to 9 p.m.

LOCATION: The meeting will be held at the Cyclorama Auditorium, 125 Taneytown Road, Gettysburg, Pennsylvania 17325.

AGENDA: The February 19, 2004 meeting will consist of the nomination of Chairperson and Vice-Chairperson for the 2004 year, Sub-Committee Reports from the Historical, Executive, and Interpretive Committees; Federal Consistency Reports Within the Gettysburg Battlefield Historic District; Operational Updates on Park Activities which consists of an update on Gettysburg National Battlefield Museum Foundation and National Park Service activities related to the new Visitor Center/Museum Complex, the Gettysburg Borough Interpretive Plan which will consist of updates on the Wills House and the Train Station; Transportation which consists of the National Park Service and the Gettysburg Borough working on the shuttle system; Update on land acquisition within the park boundary or in the historic district; and the Citizens Open Forum where the public can make comments and ask questions on any park activity.

FOR FURTHER INFORMATION CONTACT: John A. Latschar, Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Gettysburg National Military Park Advisory Commission, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

Dated: December 9, 2003.

John A. Latschar,

Superintendent, Gettysburg NMP/Eisenhower NHS.

[FR Doc. 04–1284 Filed 1–21–04; 8:45 am]

BILLING CODE 4310–JT–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Meeting

AGENCY: National Park Service, Interior.

ACTION: Announcement of Wrangell-St. Elias National Park Subsistence Resource Commission (SRC) meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Wrangell-St. Elias National Park Subsistence Resource Commissions will be held at Slana, Alaska. The purpose of the meeting will be to continue work on currently authorized and proposed National Park Service subsistence hunting program recommendations including other related subsistence management issues. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed.

The Subsistence Resource Commission is authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operates in accordance with the provisions of the Federal Advisory Committee Act.

DATES: The meeting dates are:

1. February 11, 2004, 10 a.m. to 5 p.m., Slana League Building, Slana, Alaska.
2. February 12, 2004, 10 a.m. to 5 p.m., Slana League Building, Slana, Alaska.

In accordance with 41 CFR 102–3.150, we may provide less than 15 days notice in the **Federal Register** to convene the Commission prior to the February 27, 2004, Eastern Interior Regional Council meeting.

FOR FURTHER INFORMATION CONTACT: Gary Candelaria, Superintendent, or Barbara Cellarius, Subsistence Coordinator, at Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, AK 99573, telephone (907) 822–5234.

SUPPLEMENTARY INFORMATION: Notice of this meeting will be published in local newspapers and announced on local radio stations prior to the meeting dates. Locations and dates may need to be changed based on weather or local circumstances.

The agenda for the meeting is as follows:

1. Call to order (SRC Chair).
2. SRC roll call and confirmation of quorum.
3. SRC Chair and Superintendent's welcome and introductions.
4. Review and adopt agenda.
5. Review and adopt minutes of September 25, 2003 meeting.
6. Review commission purpose.
7. Status of membership.
8. Election of Chair and Vice Chair.
9. Superintendent's report.
10. Wrangell-St. Elias NP&P staff report.
11. Review new proposals to change wildlife regulations.
12. Public and agency comments.
13. Work session (comment on issues, develop new recommendations, prepare letters).
14. Set time and place of next SRC meeting.
15. Adjournment.

Draft minutes of the meeting will be available for public inspection approximately six weeks after the meeting from the Superintendent, Wrangell-St. Elias National Park and Preserve, at the above address.

Dated: December 16, 2003.

Marcia Blaszak,

Acting Regional Director, Alaska.

[FR Doc. 04–1285 Filed 1–21–04; 8:45 am]

BILLING CODE 4312–HC–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–496]

Certain Home Vacuum Packaging Products; Notice of Commission Determination Denying a Motion for Temporary Relief

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to adopt in part the initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on December 16, 2003, thereby denying complainant's motion for temporary relief in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the Commission order, the public version of the Commission opinion in support thereof, the public version of the ID, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 18, 2003, based upon a complaint filed by Tilia, Inc. and Tilia International (collectively, ''Tilia''). 68 FR 49521–522. At the same time, the Commission provisionally accepted a motion for temporary relief filed by Tilia. In its complaint, Tilia alleges that the accused imported products infringe claims 3, 4, 6, 24–25, and 34 of U.S. Patent No. 4,941,310 (''the '310 patent''). The temporary relief motion was limited to claim 34 of the '310 patent. The notice of investigation named Applica, Inc.; Applica Consumer Products, Inc.; ZeroPack Co., Ltd.; The Holmes Group, Inc.; and The Rival Company as respondents.

On August 18, 2003, the temporary relief proceedings were designated ''more complicated'' by the ALJ, thereby extending the statutory deadline for issuance by the Commission of a decision on the motion for temporary relief from 90 to 150 days from the date of institution, *i.e.*, until January 15, 2004. On September 9, 2003, the ALJ held a hearing regarding the interpretation of claim 34 of the '310 patent solely for the purposes of temporary relief. On September 17, 2003, the ALJ issued Order No. 5 setting forth his construction of claim 34 for the purposes of temporary relief.

The evidentiary hearing on temporary relief was conducted on September 30, October 1, and October 7, 2003. On December 16, 2003, the ALJ issued an ID denying complainant's motion for temporary relief. On December 29, 2003, all parties filed written comments concerning the ID. Responses to the comments were filed on December 31, 2003. Complainant Tilia also requested oral argument before the Commission on the temporary relief ID.

Having examined the relevant record in this investigation, including Order No. 5, the ID, the written comments on Order No. 5 and the ID, and the replies thereto, the Commission determined to adopt the ID, except that it determined to set aside the ALJ's finding that the Taunton patent ''inherently'' discloses the trough means of claim 34 of the '310 patent, to set aside the ALJ's finding that there is a reasonable likelihood of

success on the merits that claim 34 of the '310 patent is invalid as obvious, and to vacate the ALJ's finding that the public interest does not favor the issuance of temporary relief to complainant Tilia. The Commission also determined to deny complainant Tilia's request for oral argument on the temporary relief ID.

This action is taken under the authority of section 337(e) of the Tariff Act of 1930, as amended (19 U.S.C. 1337(e)), and section 210.66 of the Commission's Rules of Practice and Procedure, 19 CFR 210.66.

By order of the Commission.

Issued: January 15, 2004.

Marilyn R. Abbott,

Secretary.

[FR Doc. 04–1294 Filed 1–21–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 13, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor. To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *mills. ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration (ETA), 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.

Agency: Employment and Training Administration.

Type of Review: Extension of a currently approved collection.

Title: Preliminary Estimates of Average Employer Contribution Rates.

OMB Number: 1205–0228.

Affected Public: State, local, or tribal government.

Type of Response: Reporting.

Frequency: Annual.

Number of Respondents: 53.

Annual Responses: 1.

Total Burden: 14.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The average tax rates collected from States are used to compute an average rate for the Untied States, and along with the current tax rate schedules, are used to certify that the States are complying with the law.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–1311 Filed 1–21–04; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 13, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor. To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the 'Employment and Training Administration (ETA), 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.

Agency: Employment and Training Administration.

Type of Review: Extension of a currently approved collection.

Title: Worker Profiling and Reemployment Services Activity and Worker Profiling and Reemployment Services Outcomes.

OMB Number: 1205–0353.

Affected Public: State, local, or tribal Government.

Type of Response: Reporting.

Frequency: Quarterly.

Number of Respondents: 53.

Annual Responses: 424.

Total Burden: 106.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services: $0.

Description: The Secretary has interpreted applicable sections of Federal law to require States to identify claimants who are most likely to exhaust their UI benefits and to provide reemployment services to expedite their return to suitable work. The ETA 9048 report provides a count of the claimants who were referred to Worker Profiling and Reemployment Services (WPRS) and a count of those who completed the services. A second report (ETA 9049) provides the subsequent collection of wage records which is a useful management tool for monitoring the

success of the WPRS program in the state.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–1312 Filed 1–21–04; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Senior Executive Service; Appointment of a Member to the Performance Review Board

Title 5 U.S.C. 4314(c)(4) provides that Notice of the Appointment of an individual to serve as a member of the Performance Review Board of the Senior Executive Service shall be published in the **Federal Register**.

The following individuals are hereby appointed to a three-year term on the Department's Performance Review Board:

Steven Law,
Catherine Murphy.

FOR FURTHER INFORMATION CONTACT: Mr. David LeDoux, Director, Office of Executive Resources and Personnel Security, Room C5508, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–7605.

Signed at Washington, DC., this 14th day of January, 2004.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 04–1313 Filed 1–21–04; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Energy Employees Occupational Illness Compensation Program Act Forms (EE–1, EE–2, EE–3, EE–4, EE–7, EE–8, EE–9, EE–20). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before March 22, 2004.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, Email *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* The Act provides for the timely, uniform, and adequate compensation of covered employees and, where applicable, survivors of such employees, suffering from illnesses incurred in the performance of duty for the Department of Energy and certain of its contractors and subcontractors. The Act sets forth eligibility criteria for covered employees for compensation under the program and outlines the elements of compensation payable from the Fund. The information collected is used to obtain demographic, factual and medical information necessary to determine entitlement to benefits under the EEOICPA. The eight forms listed below are reporting requirements under the Act and are required to determine a claimant's eligibility for compensation and to receive benefits under the EEOICPA. The forms reporting requirements are: EE–1, Claim for Benefits Under Energy Employees Occupational Illness Compensation Program Act is used to file notice of claim under the EEOICPA, and is to be completed by the living current or former employer; EE–2, Claim for Survivor Benefits Under Energy Employees Occupational Illness Compensation Program Act is used by the survivor of a covered employee to file notice of claim under the EEOICPA; EE–3, Employment History for Claim Under Energy Employees Occupational Illness Compensation Program Act is used to gather information regarding the employee's work history; EE–4, Employment History Affidavit for Claim Under the Energy Employees Occupational Illness Compensation Program Act is used to support the claimant's employment history by affidavit; EE–7, Medical Requirements Under the Energy Employees Occupational Illness Compensation Program Act informs an employee, survivor or physician of the medical evidence needed to establish a diagnosis of a covered condition; EE–8, Letter to Claimant is sent with enclosure EN–8 to obtain information on the employee's smoking history when lung cancer is claimed; EE–9, Letter to Claimant is sent with enclosure EN–9 to obtain information concerning the race or ethnicity of the employee when skin cancer is claimed; and EE–20, Letter to Claimant is sent with enclosure EN–20 to verify acceptance of payment on approved claims. This information collection is currently approved for use through July 31, 2004.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension in order to carry out its responsibility to determine a claimant's eligibility for compensation under the EEOICPA.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Energy Employee Occupational Illness Compensation Act Forms (various).

OMB Number: 1215–0197.
Agency Number: EE–1, EE–2, EE–3, EE–4, EE–7, EE–8, EE–9, EE–20.
Affected Public: Individuals or households; Business or other for-profit.
Total Respondents: 50,019.
Total Responses: 50,019.
Time per Response: 5 to 60 minutes.
Frequency: As needed.
Estimated Total Burden Hours: 22,495.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $12,742.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 15, 2004.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 04–1310 Filed 1–21–04; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101 of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor (Secretary) may allow the modification of the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons, and a field investigation of the conditions at the mine. MSHA, as designee of the Secretary, has granted or partially granted the requests for modification listed below. In some instances, the decisions are conditioned upon compliance with stipulations stated in the decision. The term FR Notice appears in the list of affirmative decisions below. The term refers to the **Federal Register** volume and page where MSHA published a notice of the filing of the petition for modification.

FOR FURTHER INFORMATION CONTACT: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. For further information contact Barbara Barron at 202–693–9447.

Dated at Arlington, Virginia, this 16th day of January, 2004.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–1999–042–C.
FR Notice: 64 FR 32553.
Petitioner: R S & W Coal Company, Inc.
Regulation Affected: 30 CFR 75.1312(e)(1).
Summary of Findings: Petitioner's proposal is to store explosives and detonators in gangways at least 4 feet above the roadway and offset from the rib 12 feet into solid rock rather than the minimum distance of 25 feet required by the existing standard. This is considered an acceptable alternative method for the R S & W Drift Mine. MSHA grants the petition for modification to store explosives and detonators in an alternative location off the gangway at least 10 feet from roadways and any source of electric current at the R S & W Drift Mine with conditions.

Docket No.: M–1999–045–C.
FR Notice: 64 FR 32554.
Petitioner: B. and B. Coal Company.
Regulation Affected: 30 CFR 75.1312(e)(1).
Summary of Findings: Petitioner's proposal is to store explosives and detonators in a chute off the gangway at least 10 feet from roadways and any source of electric current in lieu of the 25 feet required by the existing standard. This is considered an acceptable alternative method for the Rock Ridge No. 1 Slope Mine. MSHA grants the petition for modification for explosives and detonators to be stored in an alternative location off the gangway at least 10 feet from roadways and any source of electric current at the Rock Ridge No. 1 Slope Mine with conditions.

Docket No.: M–1999–140–C.
FR Notice: 65 FR 1914.
Petitioner: Twentymile Coal Company.
Regulation Affected: 30 CFR 75.1909(a)(1).
Summary of Findings: Petitioner's proposal is to use an alternative method for engine approval for a diesel generator. The petitioner proposes to equip its diesel generator (Engine Serial No. 1WB16204) with a DST Management System™ exhaust conditioner and use a ventilation rate of 29,000 cfm. This is considered an acceptable alternative method for the Foidel Creek Mine. MSHA grants the petition for modification for generator set using a Caterpillar 3406 PITA engine used at the Foidel Creek Mine with conditions.

Docket No.: M–2000–097–C.
FR Notice: 65 FR 58818.
Petitioner: Twentymile Coal Company.
Regulation Affected: 30 CFR 75.1909(a)(1).
Summary of Findings: Petitioner's proposal is to use three pieces of diesel equipment which utilizes Caterpillar 3304 PCT, 4-cylinder diesel engines, rated at 165hp and 2200 RPM at its mine and affiliated mine to haul equipment and supplies and to revel throughout the mines. This is considered an acceptable alternative method for the Foidel Creek Mine. MSHA grants the petition for modification for the use of three Caterpillar 3304 PCT engines at the Foidel Creek Mine with conditions.

Docket No.: M–2001–029–C.
FR Notice: 66 FR 30232.
Petitioner: Bowie Resources Limited.
Regulation Affected: 30 CFR 75.1726(a).
Summary of Findings: Petitioner's proposal is to use modified diesel powered L.H.D's or scoops as elevated mobile work platforms at the Bowie No. 2 Mine. This is considered an acceptable alternative method for the Bowie No. 2 Mine. MSHA grants the petition for modification for the Wagner Scoops and scoop buckets at the Bowie No. 2 Mine with conditions.

Docket No.: M–2002–066–C.
FR Notice: 67 FR 54675.
Petitioner: Energy West Mining Company.
Regulation Affected: 30 CFR 75.500(d).
Summary of Findings: Petitioner's proposal is to use the following non-

permissible equipment inby the last open crosscut: low-voltage or battery-powered electronic testing and diagnostic equipment such as: lap top computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, recording amp meters, thermal image devices, infrared temperature devices and recorders, pressure and flow measurement devices, signal analyzer devices, ultrasonic thickness gauges, electronic component testers, and electronic tachometers; low-voltage electric or battery-powered drills and grinders; and other testing and diagnostic equipment if approved in advance by the District Office. The petitioner also proposes to have a qualified person examine this equipment on a weekly basis, and examine new equipment prior to use. This is considered an acceptable alternative method for the Deer Creek Mine. MSHA grants the petition for modification under controlled conditions for testing and diagnostics on permissible mining equipment at the Deer Creek Mine.

Docket No.: M–2002–070–C.
FR Notice: 67 FR 54676.
Petitioner: Energy West Mining Company.
Regulation Affected: 30 CFR 75.1002–1(a).
Summary of Findings: Petitioner's proposal is to use the following non-permissible equipment inby the last open crosscut: low-voltage or battery powered electronic testing and diagnostic equipment such as: lap top computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, recording amp meters, thermal image devices, infrared temperature devices and recorders, pressure and flow measurement devices, signal analyzer devices, ultrasonic thickness gauges, electronic component testers, and electronic tachometers; low-voltage electric or battery-powered drills and grinders; and other testing and diagnostic equipment if approved in advance by the District Office. The petitioner also proposes to have a qualified person examine this equipment on a weekly basis, and examine new equipment prior to use. This is considered an acceptable alternative method for the Deer Creek Mine. MSHA grants the petition for modification under controlled conditions for testing and diagnostics on permissible mining equipment at the Deer Creek Mine.

Docket No.: M–2002–104–C.
FR Notice: 67 FR 78822.
Petitioner: Mettiki Coal, LLC.
Regulation Affected: 30 CFR 77.214(a).
Summary of Findings: Petitioner's proposal is to extend its Mettiki General's refuse pile over four sealed openings to the abandoned Mettiki Gobbler's Knob Mine. This is considered an acceptable alternative method for the Mettiki's General Mine. MSHA grants the petition for modification for the Mettiki's General Mine with conditions.

Docket No.: M–2003–001–C.
FR Notice: 68 FR 3898.
Petitioner: Orchard Coal Company.
Regulation Affected: 30 CFR 75.1002(a).
Summary of Findings: Petitioner's proposal is to use non-permissible electric equipment within 150 feet of the pillar line. This 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. In addition, equipment operation will be suspended if at any time the methane concentration at the equipment reaches 0.5 percent. This is considered an acceptable alternative method for the Orchard Slope Mine. MSHA grants the petition for modification for the use non-permissible battery-powered locomotives and associated non-permissible electric components located within 150 feet from pillar workings at the Orchard Slope Mine with conditions.

Docket No.: M–2003–003–C.
FR Notice: 68 FR 3898.
Petitioner: Anita Mining Company.
Regulation Affected: 30 CFR 75.1100–2(e)(2).
Summary of Findings: Petitioner's proposal is to use two (2) portable fire extinguishers in lieu of using one portable fire extinguisher and 240 pounds of rock dust at all temporary electrical installations at the Ondo Extension Mine. This is considered an acceptable alternative method for the Ondo Extension Mine. MSHA grants the petition for modification for the Ondo Extension Mine with conditions.

Docket No.: M–2003–011–C.
FR Notice: 68 FR 15244.
Petitioner: Snyder Coal Company.
Regulation Affected: 30 CFR 75.335.
Summary of Findings: Petitioner's proposal is to use wooden materials of moderate size and weight for constructing seals due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; accept a design criteria in the 10 psi range; and permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. This is considered an acceptable alternative method for the N. and L. Slope Mine. MSHA grants the petition for modification for seals installed in the N. and L. Slope Mine with conditions.

Docket No.: M–2003–012–C.
FR Notice: 68 FR 15244.
Petitioner: Snyder Coal Company.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use non-permissible electric equipment within 150 feet of the pillar line in the working section's only intake entry (gangway) that is regularly traveled and examined. This equipment will 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's air quality for methane on an hourly basis during operation. In addition, equipment operation will be suspended if at anytime the methane concentration at the equipment reaches 0.5 percent. This is considered an acceptable alternative method for the N. and L. Slope Mine. MSHA grants the petition for modification for the use of non-permissible battery-powered locomotives and non-permissible electric drags and associated non-permissible electric components located within 150 feet from pillar workings at the N. and L. Slope Mine with conditions.

Docket No.: M–2003–013–C.
FR Notice: 68 FR 15244.
Petitioner: Cannelton Industries, Inc.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use 2,400-volt electricity to power continuous mining equipment at the Shadrick Mine. This is considered an acceptable alternative method for the Shadrick Mine. MSHA grants the petition for modification for the Shadrick Mine with conditions.

Docket No.: M–2003–016–C.
FR Notice: 68 FR 15245.
Petitioner: Canyon Fuel Company, LLC.
Regulation Affected: 30 CFR 75.500(d).
Summary of Findings: Petitioner's proposal is to use low-voltage or battery-powered non-permissible electronic testing and diagnostic equipment in or inby the last open crosscut under controlled conditions. The petitioner proposes to use the following equipment: lap top 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, electronic tachometers, and 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 equipment used in or inby the last open crosscut shall be examined by a qualified person as defined in existing 30 CFR 75.153, prior to being used to ensure the equipment is being maintained in a safe operating condition. The examination results will be recorded in a book and made available to an authorized representative of the Secretary and the miners at the mine. The petitioner has listed specific procedures in this petition, including monitoring, that would be followed when using the non-permissible equipment. This is considered an acceptable alternative method for the Skyline Mine. MSHA grants the petition for modification for use at the Skyline Mine with conditions.

Docket No.: M–2003–017–C.
FR Notice: 68 FR 15245.
Petitioner: L-Coal Company.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use non-permissible electric equipment within 150 feet of the pillar line in the working section's only intake entry (gangway) that is regularly traveled and examined. This equipment will 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's air quality for methane on an hourly basis during operation. In addition, equipment operation will be suspended if at anytime the methane concentration at the equipment reaches 0.5 percent. This is considered an acceptable alternative method for the N. and L. Slope Mine. MSHA grants the petition for modification for the use of non-permissible battery-powered locomotives and non-permissible electric drags and associated non-permissible electric components located within 150 feet from pillar workings at the N. and L. Slope Mine with conditions.

Docket No.: M–2003–018–C.
FR Notice: 68 FR 20030.
Petitioner: Clintwood Elkhorn Mining Company.
Regulation Affected: 30 CFR 77.214(a).
Summary of Findings: Petitioner's proposal is to construct a refuse fill in the Blair seam at the Clintwood Elkhorn Mining Company, Cedar Branch Refuse Area, MSHA Site I.D. # 1211VA50102–82 that contains abandoned mine openings. This is considered an acceptable alternative method for the Clintwood Elkhorn III Mine. MSHA grants the petition for modification for the Clintwood Elkhorn III Mine with conditions.

Docket No.: M–2003–023–C.
FR Notice: 68 FR 16311.
Petitioner: Bowie Resources Limited.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use permissible high-voltage continuous miners inby the last open crosscut and within 150 feet of the pillar workings to develop longwall gateroads and mains at the Bowie No. 2 Mine. This is considered an acceptable alternative method for the Bowie No. 2 Mine. MSHA grants the petition for modification for the Bowie No. 2 Mine with conditions.

Docket No.: M–2003–026–C.
FR Notice: 68 FR 20030.
Petitioner: Dickinson-Russell Coal Company, LLC.
Regulation Affected: 30 77.215–2(b).
Summary of Findings: Petitioner's proposal is to expand the Roaring Fork #3 Scalped Rock Disposal Area to place scalped rock over existing Upper Banner Mine workings. The petitioner proposes to clear all organic and topsoil material from the proposed fill area prior to placement of scalped rock. This is considered an acceptable alternative method for the Roaring Fork #3 Mine Scalped Rock Disposal Area. MSHA grants the petition for modification for the Roaring Fork #3 Mine Scalped Rock Disposal Area with conditions.

Docket No.: M–2003–029–C.
FR Notice: 68 FR 28298.
Petitioner: Consol of Kentucky, Inc.
Regulation Affected: 30 CFR 75.1101–8.
Summary of Findings: Petitioner's proposal is to use a single line of automatic sprinklers for its fire protection system on main and secondary belt conveyors in the Salyers Branch Mine. The sprinklers will be not more than 10 feet apart so that the water discharged from the sprinklers will cover either 50 feet of fire-resistant belt or 150 feet of fire-resistant belt adjacent to the belt drive, and the discharge of water will extend over the belt drive, belt take-up, electrical control, and gear reducing unit with the water pressure no less than 10 psi during operation of the system. This is considered an acceptable alternative method for the Salyers Branch Mine. MSHA grants the petition for modification for a single overhead pipe sprinkler system at the Salyers Branch Mine with conditions.

Docket No.: M–2003–032–C.
FR Notice: 68 FR 33204.
Petitioner: Canyon Fuel Company, LLC.
Regulation Affected: 30 CFR 75.1002(a).
Summary of Findings: Petitioner's proposal is to use low-voltage or battery-powered non-permissible electronic testing and diagnostic equipment within 150 feet of pillar workings under controlled conditions. This equipment will include: 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, and other testing and diagnostic equipment that may be approved by the MSHA District Office. This non-permissible electronic testing and diagnostic equipment will only be used when equivalent permissible equipment does not exist. This is considered an acceptable alternative method for the Skyline Mine No. 3. MSHA grants the petition for modification for the use of low-voltage or battery-powered non-permissible electronic testing and diagnostic equipment within 150 feet of pillar workings or longwall faces, under controlled conditions, for testing and diagnosing mining equipment at the Skyline Mine No. 3 conditions.

Docket No.: M–2003–033–C.
FR Notice: 68 FR 33204.
Petitioner: R & D Coal Company.
Regulation Affected: 30 CFR 75.1002(a).
Summary of Findings: Petitioner's proposal is to use non-permissible electric equipment within 150 feet of the pillar line to include drags and battery locomotives due in part to the method of mining used in anthracite mines and the alternative evaluation of the mine air quality for methane on an hourly basis during operation. In addition, operation of such equipment will be suspended anytime the methane concentration reaches 0.5 percent. This is considered an acceptable alternative method for the Buck Mountain Slope Mine. MSHA grants the petition for

modification for the Buck Mountain Slope Mine with conditions.

Docket No.: M–2003–034–C.
FR Notice: 68 FR 33204.
Petitioner: Consol Pennsylvania Coal Company.
Regulation Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal is 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. This is considered an acceptable alternative method for the Bailey Mine. MSHA grants the petition for modification for the Bailey Mine with conditions.

Docket No.: M–2003–035–C.
FR Notice: 68 FR 33205.
Petitioner: Jim Walter Resources, Inc.
Regulation Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal is to extend the length of the cable for high-voltage continuous mining machines to 1,200 feet during longwall panel development. This is considered an acceptable alternative method for the No. 7 Mine. MSHA grants the petition for modification for the No. 7 Mine with conditions.

Docket No.: M–2003–037–C.
FR Notice: 68 FR 33205.
Petitioner: Consolidation Coal Company.
Regulation Affected: 30 CFR 75.1909(b)(6).
Summary of Findings: Petitioner's proposal is to use a six-wheeled diesel grader without individual service brakes on all of the wheels. The petitioner will equip the grader with service brakes on each of the drive wheels; stationary emergency brakes; restrict the tramming speed of the grader to 10 miles per hour; train the grader operators to check brake function during preoperational checks; and to lower the grader blade to the ground as an additional braking mechanism. The operators will also receive task training and annual refresher training on the provisions of the proposed alternative method. This is considered an acceptable alternative method for the Emery Mine. MSHA grants the petition for modification for the Emery Mine with conditions.

Docket No.: M–2003–039–C.
FR Notice: 68 FR 37177.
Petitioner: Rivers Edge Mining, Inc.
Regulation Affected: 30 CFR 75.1909(b)(6).
Summary of Findings: Petitioner's proposal is to use the Getman Diesel Grader underground with rear wheel brakes only in lieu of using brakes that act on each wheel of the vehicle. The petitioner proposes to limit the speed of the diesel graders to 10 miles per hour (mph). Higher gear ratios on the Getman diesel grader will be physically blocked in order to limit the speed to 10 mph maximum, and grader operators will be trained to drop the grader blade to provide additional stopping capability in emergency situations. These terms and conditions will provide an equivalent level of safety to the standard requirement that each wheel of the grader be equipped with service brakes. This is considered an acceptable alternative method for the Rivers Edge Mine. MSHA grants the petition for modification for the Rivers Edge Mine with conditions.

Docket No.: M–2003–040–C.
FR Notice: 68 FR 37177.
Petitioner: Pine Ridge Coal Company.
Regulation Affected: 30 CFR 75.1909(b)(6).
Summary of Findings: Petitioner's proposal is to use the Getman Diesel Grader underground with rear wheel brakes only in lieu of using brakes that act on each wheel of the vehicle. The petitioner proposes to limit the speed of the diesel graders to 10 miles per hour (mph). Higher gear ratios on the Getman diesel grader will be physically blocked in order to limit the speed to 10 mph maximum, and grader operators will be trained to drop the grader blade to provide additional stopping capability in emergency situations. These terms and conditions will provide an equivalent level of safety to the standard requirement that each wheel of the grader be equipped with service brakes. This is considered an acceptable alternative method for the Big Mountain #16 Mine. MSHA grants the petition for modification for the Big Mountain #16 Mine with conditions.

[FR Doc. 04–1387 Filed 1–21–04; 8:45 am]
BILLING CODE 4510–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons; Correction

AGENCY: National Archives and Records Administration.

ACTION: Notice of guidance; correction.

SUMMARY: This document corrects the preamble to a notice published in the **Federal Register** of January 12, 2004, regarding guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient persons. The date for submitting comments was missing in the DATES section. This document corrects that error.

DATES: Comments must be submitted on or before March 12, 2004. NARA will review all comments and will determine what modifications, if any, to this policy guidance are necessary.

ADDRESSES: Comments must be sent to Regulation Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. They may be faxed to (301) 837–0319. Electronic comments may be submitted through Regulations.gov. You may also comment via email to *comments@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Diane Dimkoff at telephone number (301) 837–1659. Arrangements to receive the policy in an alternative format may be made by contacting the named individual.

Dated: January 14, 2004.

Nancy Allard,
Federal Register Liaison Officer.

[FR Doc. 04–1248 Filed 1–21–04; 8:45 am]
BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Advisory Panel, AccessAbility section, will be held by teleconference from 2:30 p.m.–4 p.m. on Wednesday, February 4, 2004, from Room 724 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for

the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: January 15, 2004.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 04–1335 Filed 1–21–04; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–244]

Rochester Gas and Electric Corporation R.E. Ginna Nuclear Power Plant; Notice of Consideration of Approval of Transfer of Facility Operating License and Conforming Amendment and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating License No. DPR–18 for the R.E Ginna Nuclear Plant (Ginna) currently held by Rochester Gas and Electric Corporation (RG&E), as owner and licensed operator of Ginna. The transfer would be to R.E. Ginna Nuclear Power Plant, LLC (Ginna LLC). The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer.

According to a December 16, 2003, application for approval filed by RG&E and Constellation Generation Group, LLC, Ginna LLC would assume title to the facility following approval of the proposed license transfer, and would be responsible for the operation, maintenance, and eventual decommissioning of Ginna. No physical changes to the Ginna facility or operational changes are being proposed in the application. However, the license transfer is contingent upon NRC approval of the pending application to renew the operating license for Ginna for an additional 20 years beyond the current license expiration date of September 18, 2009.

The proposed amendment would replace references to RG&E in the license with references to Ginna LLC to reflect the new owner and make any other changes necessary to reflect the proposed transfer.

Pursuant to 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 shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By February 11, 2004, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon James M. Petro, Counsel for Constellation Energy Group, 750 East Pratt Street, 5th Floor, Legal Department, Baltimore, MD 21201, (410) 783–3303, e-mail: *James.Petro@constellation.com;* James R. Curtiss, Counsel for Constellation Energy Group at Winston & Strawn, 1400 L St., NW., Washington, DC 20005, (202) 371–5751, e-mail: *jcurtiss@winston.com;* Samuel Behrends, Counsel for Rochester Gas and Electric Corporation, at LeBoeuf, Lamb, Greene and MacRae, 1875 Connecticut Avenue, NW., Washington, DC 20009, (202) 986–8018, e-mail: *sbehrend@llgm.com;* Daniel F. Stenger, Counsel for Rochester Gas and Electric Corporation, at Ballard Spahr Andrews & Ingersoll, LLP, 601 13th Street, NW., Suite 1000 South, Washington, DC 20005–3807, (202) 661–7617, e-mail: *stengerd@ballardspahr.com*; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by February 23, 2004, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated December 16, 2003, available for public inspection at the Commission'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 System's

(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, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland this 15th day of January 2004.

For the Nuclear Regulatory Commission.

Robert Clark,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–1319 Filed 1–21–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8964]

Finding of No Significant Impact and Notice of Availability of the Environmental Assessment Concerning the License Amendment Request for the Operation of the Gas Hills Project Satellite In Situ Leach Uranium Recovery Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability of Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Rick Weller, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington DC 20555–0001, telephone (301) 415–7287 and e-mail *rmw2@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) received, by letter dated June 24, 1998, a request from Power Resources Inc. (PRI) to amend Source Materials License SUA–1511 for the Highland Uranium Project to allow the operation of a satellite in situ leach uranium recovery facility at the Gas Hills Project site located in Fremont and Natrona Counties, Wyoming. PRI subsequently acquired the operating Smith Ranch in situ leach uranium recovery facility located adjacent to the Highland Uranium Project and, in August 2003, the Highland license (SUA–1511) was integrated into the Smith Ranch Source Materials License SUA–1548. As such, PRI's request to amend the Highland license for the Gas Hills Project became a request to amend the Smith Ranch license (SUA–1548) upon the combination of the two licenses for these contiguous facilities.

Pursuant to the requirements of 10 CFR Part 51 (Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions), the NRC has prepared an environmental assessment (EA) to evaluate the environmental impacts associated with the proposed operation of the Gas Hills Project satellite in situ leach uranium recovery facility. Based on this evaluation, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate for the proposed licensing action.

II. Summary of the Environmental Assessment

The EA was prepared to evaluate the environmental impacts associated with the proposed operation of the Gas Hills Project satellite in situ leach uranium recovery facility. In the conduct of its evaluation, the NRC considered the following: (1) PRI's license amendment application, as supplemented and revised, (2) information contained in prior environmental evaluations of uranium recovery activities in the Gas Hills Uranium District of Wyoming, and (3) information derived from NRC site visits to the Gas Hills Project site and from communications with PRI, the Wyoming Department of Environmental Quality, the Wyoming State Historic Preservation Office, the Wyoming Game and Fish Department, the Wyoming State Geological Survey, the U.S. Fish and Wildlife Service, and the U.S. Bureau of Land Management. In preparing the EA, the NRC evaluated the environmental impacts associated with the construction, operation, reclamation, and decommissioning of the Gas Hills Project, including the impacts to air quality, local soils, surface water, groundwater, cultural resources, and threatened and endangered species. Additionally, the NRC evaluated the potential impacts to members of the public from transportation activities and from releases of radioactive materials to the environment and disposal of radioactive wastes. The results of the staff's evaluation are documented in an EA which is available electronically for public inspection or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). The safety aspects of the Gas Hills Project are discussed separately in a Safety Evaluation Report that will accompany the agency's final licensing action on PRI's request to amend Source Materials License SUA–1548.

III. Finding of No Significant Impact

Pursuant to 10 CFR Part 51, the NRC has prepared the EA, summarized above, concerning the proposed operation of the Gas Hills Project satellite in situ leach uranium recovery facility. On the basis of the EA, the NRC has concluded that this licensing action would not have any significant effect on the quality of the environment, and, therefore, an environmental impact statement is not required. The NRC has concluded that the approval of the Gas Hills Project will not cause any significant impacts on the environment and is protective of human health. The basis for this conclusion is supported by the following findings. The NRC has determined that the Gas Hills Project will not result in any adverse impacts to regional surface water or groundwater. A groundwater monitoring program will be established to detect both horizontal and vertical excursions of the circulating groundwater used to leach uranium from the subsurface ore bodies. Any groundwater impacted by these uranium recovery operations will be restored to baseline water quality conditions or, as a minimum, to the pre-mining Wyoming class-of-use water quality standards. All radioactive wastes generated by facility operations will be disposed offsite at a licensed disposal site. Evaporation ponds constructed for the temporary storage of process waste streams will be provided with both primary and secondary liners and leakage detection and collection capability. Standard operating procedures will be established for all operational process activities involving radioactive materials that are handled, processed, or stored. Radiological effluents from the operation of the well-field, ion exchange, and water treatment facilities will be a small fraction of regulatory limits, and an environmental and effluent monitoring program will monitor all releases. A radiation protection program will be established to ensure that exposures will be kept as low as is reasonably achievable.

IV. Further Information

The EA for this proposed action as well as the licensee's request, as supplemented and revised, are available electronically for public inspection in the NRC's Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*.

The ADAMS Accession Numbers for the licensee's request, as supplemented and revised, are: ML030300468, ML030300472, ML030300495, ML030300504, ML030300524, ML030300553, ML030300554, ML030300612, ML030300622, ML030300672, ML030300719, ML030310080, ML030310108, ML030310133, ML030310195, ML030310304, ML030310343, ML030310345, ML030310352, ML030310413, ML030310415, ML030310499, ML030310503, ML030310519, ML030310529, ML030310540, (June 24, 1998); ML023640335, ML023640343, (September 24, 1999); ML993300211 (November 11, 1999); and ML021340187 (May 3, 2002). The ADAMS Accession Numbers for the EA are: ML040070538 and ML040070311. Documents can also be examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. Any questions with respect to this action should be referred to Rick Weller, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington DC 20555–0001, telephone (301) 415–7287.

Dated at Rockville, Maryland, this 14th day of January, 2004.

For the U.S. Nuclear Regulatory Commission.

Rick Weller,

Senior Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–1318 Filed 1–21–04; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; OPIC Annual Public Hearing

January 22, 2004.

OPIC's Sunshine Act notice of its annual public hearing was published in the **Federal Register** (Volume 69, Number 4, Page 948) on January 7, 2004. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's annual public hearing scheduled for 2 pm on January 22, 2004 has been cancelled.

FOR FURTHER INFORMATION CONTACT: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov.*

Dated: January 20, 2004.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 04–1500 Filed 1–20–04; 3:40 pm]

BILLING CODE 3210–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting; Public Hearing

January 22, 2004.

OPIC's Sunshine Act notice of its public hearing was published in the **Federal Register** (Volume 69, Number 4, Page 948) on January 7, 2004. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing in conjunction with OPIC's January 29, 2004 Board of Directors meeting scheduled for 2 p.m. on January 22, 2004 has been canceled.

FOR FURTHER INFORMATION CONTACT: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov.*

Dated: January 20, 2004.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 04–1501 Filed 1–20–04; 3:40 pm]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Saga Communications, Inc. To Withdraw Its Class A Common Stock, $.01 Par Value, From Listing and Registration on the American Stock Exchange LLC File No. 1–11588

January 15, 2004.

Saga Communications, Inc., a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and rule 12d2–2(d) thereunder,[2] to withdraw its Class A Common Stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Board of Directors (''Board'') of the Issuer approved resolutions on December 12, 2003 to withdraw the Issuer's Security from listing on the Amex and to list the Security on the New York Stock Exchange, Inc. (''NYSE''). The Board states that it is taking such action in order to avoid the direct and indirect costs and the division of the market resulting from dual listing on the Amex and NYSE. In addition, the Board determined that it is in the best interest of the Issuer to list its Security on the NYSE. The Issuer states that it currently expects its Security to be approved for listing on the NYSE on or about January 20, 2004.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under section 12(b) of the Act [3] shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before February 9, 2004, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–1325 Filed 1–21–04; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Telefonica del Peru S.A.A. To Withdraw Its American Depositary Shares Evidenced by American Depositary Receipts (Each American Depositary Share Representing Ten Class B Shares, Nominal Value S/1.00 Each) From Listing and Registration on the New York Stock Exchange, Inc. File No. 1–14404

January 15, 2004.

Telefonica del Peru S.A.A., a Republic of Peru corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its American Depositary Shares evidenced by American Depositary Receipts (each American Depositary Share representing ten Class B shares, nominal value S/1.00 each) (''Security''), from listing and registration on the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'').

The Issuer stated in its application that it has complied with all applicable laws in effect in the jurisdiction of the Republic of Peru, in which it is incorporated, and with the NYSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer stated in its application that it has met the requirements of the NYSE rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors (''Board'') of the Issuer approved a resolution on December 17, 2003 to withdraw the Issuer's Security from listing on the NYSE. The Board stated that the following reasons factored into its decision to withdraw the Issuer's Security from the Exchange: (i) The issuer has few record holders (as of December 29, 2003, the Issuer had 128 holders of record; (ii) the Issuer's Security has a low trading volume (a monthly average of 164,117 during the 2-year period ended December 31, 2003 and an average daily trading volume of less than 0.5% of the total outstanding Security during the same period; (iii) the Issuer has a limited United States nexus with no assets, operating or employees in the U.S. and a controlling non-U.S. shareholder that beneficially owns approximately 97% of the Issuer's capital stock and, as a result, no longer seeks access to U.S. equity markets as a stand-alone entity; (iv) an alternative trading market already exists for the class B shares underlying the Issuer's Security, which currently trade on the Issuer's home stock exchange—the Lima Stock Exchange; (v) holders of the Security and the investing public were informed in 2000 that the Issuer's Security could be delisted voluntarily from the NYSE following consummation of the tender offer by the Issuer's controlling shareholder for the remaining Security and underlying class B shares it did not already own; and (vi) the Issuer believes that the ongoing fees and expenses, including the listing fees, investor relations costs, annual report preparation and distribution expenses and related management time, associated with the continued NYSE listing is unduly burdensome in comparison to the benefits of continued listing.

The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before February 9, 2004, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–1324 Filed 1–21–04; 8:45 am]

BILLING CODE 8010–10–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster No. 3562]

State of California

As a result of the President's major disaster declaration on January 13, 2004, I find that San Luis Obispo County in the State of California constitutes a disaster area due to damages caused by an earthquake occurring on December 22, 2003, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 15, 2004 and for economic injury until the close of business on October 13, 2004 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 419004, Sacramento, CA 95841–9004.

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: Kern, Kings, Monterey and Santa Barbara in the State of California.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.250
Homeowners without credit available elsewhere	3.125
Businesses with credit available elsewhere	6.123
Businesses and non-profit organizations without credit available elsewhere	3.061
Others (including non-profit organizations) with credit available elsewhere	4.875
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.061

The number assigned to this disaster for physical damage is 356202 and for economic injury the number is 9Z0900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 14, 2004.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 04–1273 Filed 1–21–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4593]

Culturally Significant Objects Imported for Exhibition Determinations: ''Boccioni's Materia: A Futurist Masterpiece and the Avant-garde in Milan and Paris''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition, ''Boccioni's Materia: A Futurist Masterpiece and the Avant-garde in Milan and Paris,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Guggenheim Museum, New York, New York, from on or about February 5, 2004, to on or about May 9, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: January 14, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Exchanges, Department of State.

[FR Doc. 04–1353 Filed 1–21–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4587]

Notice of Meeting; Shipping Coordinating Committee

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Tuesday, February 3, 2004, in Room 6319 of the United States Coast Guard Headquarters Building, 2100 2nd Street SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the 47th session of the Sub-Committee on Ship Design and Equipment (DE) to be held at the International Maritime Organization (IMO) Headquarters in London, England from February 25th to March 5th, 2004.

The primary matters to be considered include:

—Amendments to resolution A.744(18) regarding longitudinal strength of tankers;

—Large passenger ship safety;

—Measures to prevent accidents with lifeboats;

—Protection of fuel tanks;

—Review of fast rescue boat and means of rescue requirements;

—Anchoring, mooring and towing equipment;

—Performance testing and approval standards for SOLAS personal life-saving appliances;

—Review of the 2000 HSC Code and amendments to the DSC Code and the 1994 HSC Code;

—Fitting of water ingress alarms in new, single hold cargo ships;

—Consideration of IACS unified interpretations;

—Alternate hold loading ban for bulk carriers;

—Double-side-skin construction of bulk carriers;

—Application of structural standards in SOLAS chapter XII;

—Improved loading/stability information for bulk carriers;

—Performance standards for protective coatings;

—Free-fall lifeboats with float-free capability;

—Guidelines on on-board exhaust gas cleaning systems;

—Revision of the Explanatory notes to the Standards for ship maneuverability.

Hard copies of documents associated with the 47th session of DE will be available at this meeting. To request further copies of documents please write to the address provided below.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Wayne Lundy, Commandant (G–MSE–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 1300, Washington, DC 20593–0001 or by calling (202) 267–0024.

Dated: January 13, 2004.

Steve Poulin,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 04–1355 Filed 1–21–04; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 4588]

Notice of Meeting; Shipping Coordinating Committee

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10 a.m. on Tuesday, February 3, 2004, in Room 2415 of the United States Coast Guard Headquarters Building, 2100 2nd Street SW., Washington, DC, 20593–0001. The primary purpose of the meeting is to prepare for the Diplomatic Conference on Ballast Water Management for Ships by the International Maritime Organization (IMO) Marine Environment Protection Committee (MEPC) to be held at IMO Headquarters in London, England from February 9th to 13th, 2004.

The primary matters to be considered include:

—Adoption of the agenda;

—Adoption of the Rules of Procedure;

—Election of the Vice-Presidents and other officers of the Conference;

—Appointment of the Credentials Committee;

—Organization of the work of the Conference, including the establishment of other committees, as necessary;

—Consideration of the draft International Convention for the Control and Management of Ships' Ballast Water and Sediments and any draft Conference resolutions;

—Consideration of the reports of the committees;

—Adoption of the Final Act and any instrument, recommendations and resolutions resulting from the work of the Conference;

—Signature of the Final Act.

Please note that hard copies of documents associated with Diplomatic Conference will not be available at this meeting. Documents will be available in Adobe Acrobat format on CD–ROM. To requests documents please write to the address provided below, or request documents via the following Internet link: *http://www.uscg.mil/hq/g-m/mso/mso4/mepc.html.*

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Ensign Mary Stewart, Commandant (G–MSO–4), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 1600, Washington, DC 20593–0001 or by calling (202) 267–2079.

Dated: January 13, 2004.

Steve Poulin,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 04–1356 Filed 1–21–04; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 4592]

Name Change of Yugoslavia to Serbia and Montenegro

SUMMARY: On February 4, 2003, the Federal Republic of Yugoslavia changed its name to Serbia and Montenegro.

On February 4, 2003, the Parliament of the Federal Republic of Yugoslavia voted to adopt a new constitution establishing the state union of Serbia and Montenegro. On February 7, 2003, the U.S. Board on Geographic Names confirmed the following forms for official usage:

Old entry	New entry
Yugoslavia, Federal Republic of	Serbia and Montenegro.

The Serbian form of the name (Srbija i Crna Gora) is taken from the text of the Constitutional Charter in that language. The generic term used in the Charter, drzavna zajednica (literally ''state union'') is not considered part of the state title. Therefore, both the short form and the long form of this independent state is Serbia and Montenegro.

The FIPS 10 geopolitical code remains as it was under the previous name, YI.

Dated: January 13, 2004.

Charles L. English,

Director, Office of South Central European Affairs, Department of State.

[FR Doc. 04–1354 Filed 1–21–04; 8:45 am]

BILLING CODE 1410–23–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Record of Decision Approving the Release of Grant Obligations Associated With the Proposed Construction of a Freeway Connection Between the Existing Milan Beltway and the Urbanized Area North of Rock River in Moline, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of the Record of Decision (ROD).

SUMMARY: The Federal Highway Administration (FHWA) and Illinois Department of Transportation (IDOT) prepared an Environmental Impact Statement (EIS) for the construction of a new freeway connection between the existing Milan Beltway and the urbanized area north of Rock River in Moline, Illinois for the purpose of providing additional transportation capacity over the Rock River and to avoid the need to reconstruct IL 5 (Blackhawk Road) through Black Hawk State Historic Site. As a cooperating agency to the EIS, the Federal Aviation Administration (FAA) coordinated with FWHA and IDOT the design alternatives for the proposed interchange at the Milan Beltway—Airport Road intersection. The current Milan Beltway is approximately 2,700 feet from the west end of Runway 9–27 at the Quad City International Airport. With this Record of Decision, the FAA is announcing its approval of a release of land grant obligations over 14.380 acres of airport property. FAA's decision for its action considered the environmental impacts of the proposed project and the alternatives discussed in the EIS.

FOR FURTHER INFORMATION CONTACT: Bobb A. Beauchamp, Federal Aviation Administration, Chicago Airports District Office, Environmental Program Manager, 2300 E. Devon Ave., Suite 320, Des Plaines, Illinois 60018, telephone (847) 294–7364, e-mail *bobb.beauchamp@faa.gov*. Copies of EIS and the FHWA ROD are available from Norman R. Stoner, P.E., Division Administrator, Federal Highway Administration, U.S. Department of Transportation, 3250 Executive Park Drive, Springfield, Illinois 62703, telephone (217) 492–4640.

SUPPLEMENTARY INFORMATION: FHWA was the lead agency for the Project EIS (FHWA–IL–EIS–93–04–F). FAA accepted FHWA's May 4, 1988 invitation for cooperating agency status in preparing the EIS. After an independent review of the Final EIS, FAA concluded that its comments and suggestions were addressed in the Final EIS. The purpose of this notice is to inform the public that the Record of Decision (ROD) approving the release of the airport's land grant obligations for the property identified in the Final EIS is available to anyone upon request. Any person may obtain a copy of FAA's ROD by submitting a request to the FAA contact identified above.

FHWA signed its ROD for the project on July 9, 2003, in which it selected as part of its preferred alternative a grade separation and combination cloverleaf/diamond type interchange at the present Milan Beltway—Airport Road intersection. This interchange design requires the sale of 14.380 acres of airport property to IDOT, including a 3.9-acre encroachment into the runway protection zone (RPZ) for Runway 9 at Quad City International Airport. The airport is required to seek a release from Federal obligations prior to the sale of these lands. The Quad City International Airport does not require these lands for airport use. FHWA's ROD included several commitments to FAA and the Metropolitan Airport Authority of Rock Island County, re-stated in FAA's ROD, to ensure that the project will not pose a hazard to air navigation.

FAA's ROD examines the build alternatives for the Milan Beltway—Airport Road grade connection to the proposed Milan Beltway connection, which will be a four-land, fully access controlled expressway bridge over the Rock River. FAA's preferred alternative is the No Action Alternative, which requires no action on behalf of the Quad City International Airport. This Alternative would prevent any development in the southeast quadrant of the Milan Beltway—Airport Road intersection, eliminating the need to transfer any airport proposed to IDOT. However, the proximity of Route 280, roughly 1000 feet north of Airport Road, presents economic and engineering barriers that make the No Action Alternative impracticable.

FAA's ROAD concurs with FHWA's Selected Alternative, requiring the sale of 14.380 acres of airport property to IDOT. The Selected Alternative, constructing a partial cloverleaf/diamond interchange in the southeast quadrant of the Milan Beltway—Airport Road intersection, avoids the economic and engineering constraints posed by the proximity of Route 280, satisfies FHWA's purpose and need, poses the least impacts to the natural and human environment, may be advanced through detailed design and construction, and will pose no hazard to air navigation.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Des Plaines, Illinois, December 29, 2003.

Chad Oliver,

Acting Manager, Chicago Airports District Office, FAA Great Lakes Region.

[FR Doc. 04–1271 Filed 1–21–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–05]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 11, 2004.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–2003–16192] by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer (202) 267–5174, Tim Adams (202) 267–8033, or Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on January 14, 2004.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petition for Exemption

Docket No.: FAA–2003–16192.

Petitioner: Meggitt Avionics.

Section of 14 CFR Affected: 14 CFR 21.621.

Description of Relief Sought: To permit BAE Systems Avionics Ltd to transfer letters of TSO design approval to Meggitt Avionics.

[FR Doc. 04–1269 Filed 1–21–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–06]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, or Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on January 15, 2004.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2003–16590.

Petitioner: Balloon Federation of America.

Section of 14 CFR Affected: 14 CFR 91.119(b) and (c).

Description of Relief Sought/Disposition: To allow the Balloon Federation of America to conduct a 1-year, non-renewable safety study during which certain qualified and authorized Balloon Federation of America-member pilots will be allowed to operate balloons: (1) Below an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the balloon, over congested areas; and (2) below an altitude of 500 feet above the surface in other than congested areas, subject to certain conditions and limitations.

Grant, 12/23/2003, Exemption No. 8198.

Docket No.: FAA–2001–8722.

Petitioner: Sky West Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).

Description of Relief Sought/Disposition: To permit Sky West Airlines, Inc., to substitute a qualified and authorized check airman in place of an FAA training inspector to observe a qualifying pilot in command who is completing initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing subject to certain conditions and limitations.

Grant, 12/23/2003, Exemption No. 7689A.

Docket No.: FAA–2003–16620.

Petitioner: RDM Pilot/Guide, Ltd.

Section of 14 CFR Affected: 14 CFR 135.203(a)(1).

Description of Relief Sought/Disposition: To allow RDM Pilot/Guide, Ltd., to conduct operations under visual flight rules outside of controlled airspace, over water, at an altitude below 500 feet above the surface.

Grant, 12/23/2003, Exemption No. 8196.

Docket No.: FAA–2003–16740.

Petitioner: DK&L Company, LLC.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit DK&L Company, LLC to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft.

Grant, 12/24/2003, Exemption No. 8197.

Docket No.: FAA–2001–10932.

Petitioner: John L. Heverling.

Section of 14 CFR Affected: 14 CFR 91.109(a) and (b)(3).

Description of Relief Sought/Disposition: To allow John L. Heverling to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements in certain Beechcraft airplanes equipped with a functioning

throwover control wheel in place of functioning dual controls.

Grant, 12/10/2003, Exemption No. 6719C.

Docket No.: FAA–2003–16673.

Petitioner: Davis Aviation, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Davis Aviation, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft.

Grant, 12/16/2003, Exemption No. 8191.

Docket No.: FAA–2003–15272.

Petitioner: U.S. Airways, Inc.

Section of 14 CFR Affected: 14 CFR 121.309(b)(4).

Description of Relief Sought/ Disposition: To allow U.S. Airways, Inc., to operate aircraft equipped with evacuation slides marked with the date maintenance is due, rather than the date of last inspection.

Grant, 12/17/2003, Exemption No. 8192.

Docket No.: FAA–2003–16694.

Petitioner: Sound Flight.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Sound Flight to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft.

Grant, 12/18/2003, Exemption No. 8193.

Docket No.: FAA–2002–11571.

Petitioner: Alpha Aviation, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Alpha Aviation, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft.

Grant, 12/22/2003, Exemption No. 7164B.

Docket No.: FAA–2002–12174.

Petitioner: Hageland Aviation Services, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Hageland Aviation Services, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft.

Grant, 12/22/2003, Exemption No. 7183B.

Docket No.: FAA–2002–11570.

Petitioner: SKY Helicopters, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit SKY Helicopters, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft.

Grant, 12/22/2003, Exemption No.6430D.

Docket No.: FAA–2003–16661.

Petitioner: Beck Properties, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Beck Properties, Inc., to operate certain aircraft under part 135 without a TSO–112C (Mode S) transponder installed in those aircraft.

Grant, 12/22/2003, Exemption No. 8195.

Docket No.: FAA–2003–15646.

Petitioner: Down East Emergency Medical Institute.

Section of 14 CFR Affected: 14 CFR 133.45(e)(1).

Description of Relief Sought/ Disposition: To permit the Down East Emergency Medical Institute to conduct external-load operations in a restricted-category, single engine, military surplus Bell UH–1H/V (205) Helicopter, with live personnel in the areas surrounding Bangor, Maine and within the operational limits of the aircraft.

Denial, 12/11/2003, Exemption No. 8188.

Docket No.: FAA–2003–16443.

Petitioner: Richard Stuart.

Section of 14 CFR Affected: 14 CFR 91.319(a)(2).

Description of Relief Sought/ Disposition: To allow Richard Stuart to provide local, aerial scenic tours and perform aerial photography using a fixed-wing, visual flight rules-only, experimental-class aircraft.

Denial, 12/10/2003, Exemption No. 8189.

Docket No.: FAA–2003–16665.

Petitioner: Bald Mountain Air Service, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Bald Mountain Air Service, Inc., to operate certain aircraft under part 135 without a TSO-C112 (Mode S) transponder installed in those aircraft.

Grant, 12/10/2003, Exemption No. 8187.

Docket No.: FAA–2001–10789.

Petitioner: Tavaero Jet Charter, Inc.

Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Tavaero Jet Charter, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft.

Grant, 12/15/2003, Exemption No. 7146B.

[FR Doc. 04–1330 Filed 1–21–04; 8:45 am]

BILLING CODE 4910–13–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 February 10–11, 2004, starting at 8:30 a.m. on February 10. Arrange for oral presentations by February 6.

ADDRESS: Boeing Facility, 1200 Wilson Boulevard, Room 234, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Effie 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 February 10–11 in Arlington, Virginia.

The agenda will include:

- Opening remarks
- FAA Report
- European Aviation Safety Agency/ Joint Aviation Authorities Report
- Transport Canada Report
- Executive Committee Report
- Harmonization Management Team Report
- Legal Expectations for ARAC Recommendations
- Human Factors Harmonization Working Group (HWG) Report
- Ice Protection HWG Report
- Avionics HWG Report and Approval
- General Structures HWG Report
- Written reports, as required, from the following harmonization working groups: Engine, Electromagnetic Effects, Flight Test, Seat Test, Flight Control, Flight Guidance, System Design and Analysis, Electrical Systems, Loads and Dynamics, Design for Security, Powerplant Installation, and Mechanical Systems. The Airworthiness Assurance working group may also provide a report.

- Discussion of section 25.1309 phase 2 task
- Review of Action Items and 2004 Meeting Schedule

If all the agenda items are discussed on February 10, no meeting will be held on February 11.

Attendance is open to the public, but will be limited to the availability of meeting room space and telephone lines. Visitor badges are required to gain entrance to the Boeing building where the meeting is being held. For badging purposes, you will need to provide your name, company, and nationality by January 30 to Sharon Neuner, (703) 465–3680, *sharon.c.neuner@boeing.com,* or the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

For persons participating domestically by telephone, the call-in number is (866) 442–8714; for persons participating internationally, the number is (281) 540–4931. The Passcode for both numbers is: 14169163063. Details are also available on the ARAC calendar at *http://www.faa.gov/avr/arm/araccal/htm.* To insure that sufficient telephone lines are available, please notify the person listed in the **FOR FURTHER INFORMATION CONTACT** section of your intent by February 6. Anyone participating by telephone will be responsible for paying long-distance charges.

The public must make arrangements by February 6 to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the person listed in the **FOR FURTHER INFORMATION CONTACT** section 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 in the **FOR FURTHER INFORMATION CONTACT** section.

If you are in need of assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. 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 January 14 ,2004.

Tony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 04–1329 Filed 1–21–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 202: Portable Electronic Devices

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 202 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 202: Portable Electronic Devices.

DATES: The meeting will be held on January 20–23, 2004, from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036–5133.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act Pub. L. 92–463, 5 U.S.C. Appendix 2), notice is hereby given for a Special Committee 202 meeting. The agenda will include:

- *January 20:*
  - Working Groups 1 through 4 meet all day.
- *January 21:*
  - Opening plenary session (welcome and introductory remarks, review agenda, review/approve previous common plenary summary, review open action items).
  - Report from SC-202 Tiger Team Activities December 15–19, 2003.
  - Scoping and Plan for addressing comments.
  - Review Working Group (WG) Progress and Identify Issues for Resolution (will continue into second day as required).
  - Working Group 1 (PEDs characterization, test, and evaluation):
  - Comments and issues will be listed for tracking;
  - What else remains to be done to complete Phase 1 document.
  - Working Group 2 (Aircraft test and analysis):
  - Comments and issues will be listed for tracking;
  - What else remains to be done to complete Phase 1 document.
- *January 22:*
  - Continue plenary session.
  - Working Group 3 (Aircraft systems susceptibility):
  - Comments and issues will be listed for tracking;
  - What else remains to be done to complete Phase 1 document.
  - Working Group 4 (Risk assessment, practical application, and final documentation):
  - Comments and issues will be listed for tracking;
  - What else remains to be done to complete Phase 1 document.
  - Issues identified for resolution by several Working Groups:
  - 1 (TBD during work session and plenary);
  - 2 (TBD during work session and plenary);
  - 3 (TBD during work session and plenary).
  - Plan for next steps for document:
  - Forward to PMC with SC–202 recommendation to publish;
  - Allocation of action items of working groups for comments and issues resolution;
  - Contingency meeting for plenary session February 10–12, 2004.
  - Closing session (other business, date and place of next meeting, closing remarks, adjourn).
- *January 23:*
  - If required, continue and complete.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on December 18, 2003.

Robert Zoldos,

FAA System Engineer, RTCA Advisory Committee.

[FR Doc. 04–1270 Filed 1–21–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the

requirements of 49 CFR Part 236 as detailed below.

Docket No. FRA–2003–16634

Applicant: Norfolk Southern Corporation, Mr. Brian L. Sykes, Chief Engineer, C&S Engineering, 99 Spring Street, SW., Atlanta, Georgia 30303.

Norfolk Southern Corporation seeks approval of the proposed discontinuance and removal of the traffic control system, on all main, siding, and auxiliary tracks, between Clare, Ohio, milepost CT–9.0 and Winchester, Ohio, milepost CT–73.5, on the Lake Division, Cincinnati District, and convert the method of operation to track warrant control.

The reason given for the proposed changes is that the line is no longer needed as a through route, the Clare to Winchester portion will be used for local service only, and the Winchester to Vera portion of the line has been removed from service.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on January 14, 2004.

Grady C. Cothen, Jr.,

Deputy Associate Administrator, for Safety Standards and Program Development.

[FR Doc. 04–1332 Filed 1–21–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–9362; Notice 3]

Saleen, Inc.; Grant of Application for Renewal of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

This notice grants the application by Saleen, Inc., of Irvine, California (''Saleen''), for a renewal of a temporary exemption for its S7 passenger car from the requirements of Federal Motor Vehicle Safety Standard No. 208, *Occupant Crash Protection.* In accordance with 49 U.S.C. 30113(b)(3)(B)(i), the basis of the request was that compliance would cause substantial economic hardship to a manufacturer that has made a good faith effort to comply with the standard.

The National Highway Traffic Safety Administration (NHTSA) published a notice of receipt of the application on July 25, 2003, and afforded an opportunity for comment (68 FR 44139).

Background

The Saleen S7 is a high performance, limited production sports car built in Irvine, CA. The S7 costs approximately $400,000. In June 2001, NHTSA granted Saleen a two-year hardship exemption from the requirements of S4.1.5.3 of Standard No. 208, expiring July 1, 2003.[1] On April 16, 2003, Saleen petitioned to renew this exemption for an additional 3 years. In accordance with 49 CFR 555.8(e), the previous exemption has remained in effect until the publication of this notice, because the application for renewal was filed more than 60 days prior to expiration of the exemption.

Petitioner began developing the S7 in February of 2000. Originally, Saleen expected to deliver the S7 vehicles to customers in the summer of 2001. However, product development and regulatory issues delayed production until March 6, 2003, when Saleen received Certificates of Conformity for the 2003 model year from the Environmental Protection Agency and the California Air Resources Board. Between March 6, 2003, and the date of the petition, Saleen sold eight S7s. Petitioner hopes to sell a total of 36 S7s by the end of 2003. In contrast, Saleen originally projected selling 112 S7s by the end of 2003.[2]

Petitioner's other line of business consists of altering Ford Mustang vehicles. However, the company has ''sustained a major slowdown'' in the sales of these vehicles, which it attributes ''to the downturn in the U.S. economy.'' The company has produced only 79 ''Saleen Mustangs'' as of June 11, 2003, compared with 327 in the comparable period in 2002. The company currently maintains a payroll of 96 people. Previously, Saleen employed 122 individuals, but was forced to downsize in an effort to complete development of the S7.

Why Saleen Needs a Renewal of a Temporary Exemption

In the original petition, Saleen estimated that it needed 20 months and approximately $3,000,000 to bring the S7 into compliance with Standard No. 208.[3] In the absence of sales until March of 2003, Saleen did not generate the necessary funds to bring the S7 into compliance as scheduled. According to the petitioner: ''development delays almost completely exhausted all of our economic resources necessary to stay in business, let alone the development of air bags.'' In the meantime, NHTSA has implemented new regulations pertaining to advanced air bags (49 CFR 571.208; S14). Petitioner has now asked for a three-year extension of its original two-year exemption in order to generate funds that would allow it to fully comply with the new, advanced air bag requirements of Standard No. 208. Petitioner now estimates, based on projected sales, that it will be financially able to begin developing advanced air bags by July 2004. Saleen anticipates that the project will take 24 months and cost an estimated $3,800,000. Petitioner expects full compliance with the requirements of

[1] *See* original Notice for additional background information on the company (66 FR 33298).

[2] *See* 66 FR 33298.

[3] *See* original petition (Docket No. NHTSA–2001–9362–2).

Standard No. 208 by September 1, 2006.[4]

Why Compliance Would Cause Substantial Economic Hardship and How Saleen Has Tried in Good Faith To Comply With the Requirements of Standard No. 208

As previously stated, after commencing development of the Saleen S7 in 2000, petitioner has only recently received the necessary approval to begin deliveries to customers. Based on financial records accompanying the petition, Saleen lost $3,480,372 in the fiscal year 2000. In the fiscal year 2001, Saleen lost $4,738,588. In the fiscal year 2002, Saleen lost an additional $614,039. For a three-year period, petitioner experienced a cumulative net loss of $8,832,999.[5] In the spring of 2003, Saleen was finally able to begin recouping its losses by delivering the first eight S7 vehicles to customers. If this petition is denied, Saleen will have to immediately cease production and sales of the S7. Petitioner estimates that denial of the petition would decrease the earnings before taxes from $2,707,000 to $7,000. Further, denial of the petition would cast serious doubt over the long-term financial viability of the company, and would likely result in downsizing of the current workforce.

In order to comply with the requirements of Standard No. 208, petitioner would have to redesign the following equipment: (1) Steering wheel; (2) Steering column; (3) Dash panel (4) Gauge pod; (5) Seats and seat brackets; (6) Center console; (7) Interior trim panels; and (8) Wiring harness. Petitioner expects to rely on the continuous sales of S7 vehicles in order to fund a redesign of the above components. As previously stated, sales of the vehicle were delayed until March of 2003. As a result, petitioner did not have the resources necessary to bring the S7 in compliance with the non-advanced air bag requirements of Standard No. 208.[6] Petitioner notes that there are no available alternative means of compliance.

[4] Specifically, as a small volume manufacturer, Saleen is obligated to comply with 49 CFR 571.208; S14 by September 1, 2006.

[5] *See* Docket No. NHTSA–2001–9362–5.

[6] Saleen is currently under contract with Ford Motor Company to assist in production of another ''super-car,'' Ford GT. Ford GT is due to be completed in the spring of 2004. Petitioner anticipates that the technological experience derived from this project will enable Saleen to bring the S7 into compliance with the requirements of Standard No. 208.

Why a Renewal of an Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

Petitioner argues that a renewal of a temporary exemption is in the public interest because the S7 is a unique ''super-car,'' the only one of its kind to be designed and produced in the United States. An exemption would allow Saleen to continue producing these unique vehicles and to maintain its payroll of 96 full time employees. Petitioner notes that the S7 also utilizes many U.S.-sourced components. According to Saleen, production of the S7 indirectly provides employment for several hundred Americans who work for S7 domestic suppliers. Petitioner contends that an exemption would be consistent with vehicle safety objectives because the S7 will otherwise conform to all applicable Federal motor vehicle safety standards.

Comments Received on the Saleen Petition

The agency received a single comment in response to the notice requesting comment on the petition. The commenter, identified as Alan, H., was in favor of granting the petition. Specifically, Alan H. commented that Saleen S7 is the only U.S.-built ''super car,'' and that it compared favorably to such vehicles as Ferrari and Porsche. With respect to vehicle safety objectives, Alan H. noted that a $395,000 vehicle produced in very limited numbers would most likely be purchased as an ''investment,'' and would be subject to very infrequent and especially careful use.

The Agency's Findings

Saleen is typical of small volume manufacturers who have received temporary exemptions in the past on hardship grounds. With limited resources, petitioner developed a high-priced automobile for a specialty market. Unfortunately, Saleen was unable to take advantage of the original exemption, granted on June 21, 2001, due to regulatory and production delays. Petitioner had anticipated using the profits it derived from sales of S7 automobiles to bring the vehicle into compliance by July 30, 2003. Because the sales did not commence until March of 2003, petitioner was unable to do so. Accordingly, Saleen has asked for additional time to bring the S7 into compliance with Standard No. 208.

If the petition is denied, the sale of S7 automobiles will cease immediately and the petitioner will be unable to derive financial resources necessary to bring the S7 into compliance with Standard No. 208. Saleen's financial statements show a net loss for the previous three fiscal years. Thus, it appears the petitioner does not have immediate resources available to bring the vehicle into compliance with Standard No. 208. Additionally, Saleen will be required to meet the new, advanced air bag requirements of Standard No. 208 once the exemption expires. In evaluating Saleen's current situation, the agency finds that to require immediate compliance with Standard No. 208 would cause petitioner substantial economic hardship.

Traditionally, the agency has found that the public interest is served in affording continued employment to a small volume manufacturer's work force and to those of its U.S.-sourced component suppliers. The agency has also found that the public interest is served by affording the consumers a wider variety of motor vehicles. In this instance, denial of the petition would put Saleen's current payroll of 96 people in jeopardy. Denial of the petition may also affect the payrolls of U.S.-sourced component suppliers.

The vehicle in question will be manufactured in extremely limited quantities.[7] The current Manufacturer's Suggested Retail Price is $395,000. In light of these factors, the agency anticipates that the S7 vehicles will be operated on a very limited basis and will have a negligible impact on the overall safety of U.S. highways. The agency notes that the vehicle subject to this petition complies with all other applicable Federal motor vehicle safety standards.

In consideration of the foregoing, it is hereby found that compliance with the requirements of Standard No. 208 would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. It is further found that the granting of an exemption would be in the public interest and consistent with the objectives of traffic safety.

In accordance with 49 U.S.C. 30113(b)(3)(B)(i), NHTSA Temporary Exemption No. 2001–6, exempting Saleen S7 from the requirements of 49 CFR 571.208; Standard No. 208, *Occupant Crash Protection,* is hereby extended until September 1, 2006.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50 and 501.8)

FOR FURTHER INFORMATION CONTACT: George Feygin in the Office of Chief Counsel, NCC–112, (Phone: 202–366–

[7] Petitioner anticipates selling 37 vehicles this year and 50 vehicles annually thereafter. See Docket No. NHTSA–2001–9362–5.

2992; Fax 202–366–3820; E-mail: *George.Feygin@nhtsa.dot.gov).*

Issued on: January 15, 2004.

Jeffrey W. Runge,

Administrator.

[FR Doc. 04–1272 Filed 1–21–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

[Docket RSPA–98–4957; Notice 04–02]

Research and Special Programs Administration

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of information collection renewal and request for public comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) is publishing a notice indicating its intention to renew an existing information collection in support of RSPA/OPS's requirement that pipeline operators submit drug and alcohol test results for their employees. The purpose of this notice is to allow the public 60 days from the date of this notice to send in their comments.

RSPA/OPS believes that its drug and alcohol testing requirements are an important tool for operators to monitor drug and alcohol usage in the pipeline industry. RSPA/OPS has found, on a yearly basis, that less than 1% of employees in the pipeline industry tested positive for drug and alcohol usage.

DATES: Comments on this notice must be received no later than March 22, 2004, to be assured of consideration.

ADDRESSES: You must identify docket number RSPA–98–4957; Notice 04–02 at the beginning of your comments. Comments may be mailed to the U.S. Department of Transportation (DOT), Dockets Facility, Plaza 401, 400 Seventh St., SW., Washington, DC 20590 or sent by e-mail to *dms.dot.gov*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC. 20950, (202) 366–6205 or by e-mail at *Marvin.fell@rspa.dot.gov*.

SUPPLEMENTARY INFORMATION: Abstract: Drug and alcohol abuse is a major societal problem and it is reasonable to assume the problem exists in the pipeline industry as it does in society as a whole. The potential harmful effect of drug and alcohol abuse on safe pipeline operations warrants imposing comprehensive testing regulations on the pipeline industry. These rules are found in 49 CFR 199.

Title: Drug and Alcohol Testing of Pipeline Operators.

OMB Number: 2137–0579.

Type of Request: Extension of an existing information collection.

Estimate of Burden: 1.22 hours per operator.

Respondents: Pipeline operators.

Estimated Number of Respondents: 2,419.

Estimated Total Annual Burden on Respondents: 2,963 hours.

Copies of this information collection can be reviewed at the Dockets Unit, Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC. You may review the public docket containing comments in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday except Federal Holidays. You may also review public dockets on the Internet at *http://dms.dot.gov/search.* Once on the search page, type in the last four digits of the docket number shown at the beginning of this notice (4957) and click on ''search.''

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

Issued in Washington, DC, on January 14, 2004.

Richard D. Huriaux,

Manager, Regulations, Office of Pipeline Safety.

[FR Doc. 04–1333 Filed 1–21–04; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from the State of North Dakota (WB456—1/5/04), for permission to access data from the Board's Carload Waybill Samples beyond the scope of waybill information that the State may usually obtain. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The requested information from the waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration, within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

FOR FURTHER INFORMATION CONTACT: Mac Frampton, (202) 565–1541.

Vernon A. Williams,

Secretary.

[FR Doc. 04–1197 Filed 1–21–04; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34448]

Allegheny & Eastern Railroad, LLC—Acquisition Exemption—Buffalo & Pittsburgh Railroad, Inc.

Allegheny & Eastern Railroad, LLC (A&E), a newly formed noncarrier and wholly owned subsidiary of Buffalo & Pittsburgh Railroad, Inc. (BPRR), has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from BPRR the physical assets that comprise approximately 128.2 miles of rail line formerly operated by Allegheny & Eastern Railroad, Inc. (ALY), between milepost 2.8 in the City of Erie and milepost 131.0 in the City of St. Marys, in Erie, Warren, McKean and Elk Counties, PA. BPRR is acquiring the line in a related transaction concurrently

filed in STB Finance Docket No. 34447, *Buffalo & Pittsburgh Railroad, Inc., Allegheny & Eastern Railroad, Inc., Pittsburg & Shawmut Railroad, Inc. and Bradford Industrial Rail, Inc.—Corporate Family Transaction Exemption*, wherein ALY and other subsidiaries will be merged into BPRR. The instant transaction contemplates that BPRR will retain the operating authority over the line and A&E will have a residual common carrier obligation.

The transaction was expected to be consummated on January 1, 2004.

A&E certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier. It further certifies that its total annual revenues will not exceed $5 million.

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. 34448, 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 Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., Four Penn Center, Suite 200, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103–2808.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: January 15, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–1364 Filed 1–21–04; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34447]

Buffalo & Pittsburgh Railroad, Inc., Allegheny & Eastern Railroad, Inc., Pittsburg & Shawmut Railroad, Inc., and Bradford Industrial Rail, Inc.—Corporate Family Transaction Exemption

Buffalo & Pittsburgh Railroad, Inc. (BPRR), Allegheny & Eastern Railroad, Inc. (ALY), Pittsburg & Shawmut Railroad, Inc. (PSRR), and Bradford Industrial Rail, Inc. (BIR) (collectively, applicants),[1] have filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(3) to merge ALY, PSRR and BIR into BPRR, with BPRR as the surviving entity.

The transaction was expected to be consummated on January 1, 2004.

This transaction is related to STB Finance Docket No. 34448, *Allegheny & Eastern Railroad, LLC—Acquisition Exemption—Buffalo & Pittsburgh Railroad, Inc.*, and STB Finance Docket No. 34449, *Pittsburg & Shawmut Railroad, LLC—Acquisition Exemption—Buffalo & Pittsburgh Railroad, Inc.*, wherein certain physical assets comprising the rail lines formerly operated by ALY and PSRR will be transferred to two newly formed wholly owned subsidiaries of BPRR. The operating authority of ALY and PSRR (along with that of BIR) will remain with BPRR.

Applicants state that the transaction will not result in adverse changes in service levels, significant operational changes, or any change in the competitive balance with carriers outside the GWI corporate family. The merger will simplify GWI's corporate structure, streamline accounting, finance and management functions and facilitate improvements in operating efficiency for GWI's rail operations in western Pennsylvania and New York.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because the transaction involves one Class II rail carrier and one or more Class III rail carriers, the transaction will be made subject to the employee protective conditions described in 49 U.S.C. 11326(b).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34447, 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 Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., Four Penn Center, Suite 200, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103–2808.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 15, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–1363 Filed 1–21–04; 8:45 am]

BILLING CODE 4915–00–P

[1] BPRR is a Class II carrier operating in western New York and western Pennsylvania. ALY, PSRR and BIR are all Class III carriers that operate in the same region of Pennsylvania. All of the involved corporations are wholly owned subsidiaries of Genessee & Wyoming, Inc. (GWI).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34449]

Pittsburg & Shawmut Railroad, LLC—Acquisition Exemption—Buffalo & Pittsburgh Railroad, Inc.

Pittsburg & Shawmut Railroad, LLC (P&S), a newly formed noncarrier and wholly owned subsidiary of Buffalo & Pittsburgh Railroad, Inc. (BPRR), has filed a notice of exemption under 49 CFR 1150.31 to acquire from BPRR the physical assets that comprise approximately 189.47 miles of rail line formerly operated by Pittsburg & Shawmut Railroad, Inc. (PSRR), between: (a) Brockway Yard, Brockway (milepost 0.0) and Freeport (milepost 88.027) (except for an abandoned segment between milepost 2.0 and milepost 19.0); (b) milepost 0.98 on the main line at Snyder Township (a/k/a milepost 0.0) and milepost 0.37; (c) Brookville Yard (milepost 20.89) and the connection with Mountain Laurel (milepost 0.30); (d) milepost 69.86 on the main line in East Franklin (a/k/a milepost 0.0) and milepost 1.28; (e) Lawsonham (milepost 6.0) and Driftwood (milepost 110.0); (f) Lawsonham (milepost 0.0) and Sligo (milepost 10.5); and (g) the end of track (milepost 4.0) and Lawsonham (milepost 6.0) (the lines). The lines are located in Armstrong, Cameron, Clarion, Clearfield, Elk, and Jefferson Counties, PA. BPRR is acquiring the lines in a related transaction concurrently filed in STB Finance Docket No. 34447, *Buffalo & Pittsburgh Railroad, Inc., Allegheny & Eastern Railroad, Inc., Pittsburg & Shawmut Railroad, Inc., and Bradford Industrial Rail, Inc.—Corporate Family Transaction Exemption*, wherein PSRR and other subsidiaries will be merged into BPRR. The instant transaction contemplates that BPRR will retain the operating authority over the lines and P&S will have a residual common carrier obligation.

The transaction was expected to be consummated on January 1, 2004.

P&S certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier. It further certifies that its total annual revenues will not exceed $5 million.

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. 34449, 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 Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., Four Penn Center, Suite 200, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103–2808.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 15, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–1365 Filed 1–21–04; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Notice of Determination of Necessity for Renewal of the Art Advisory Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: It is in the public interest to continue the existence of the Art Advisory Panel. The current charter of the Art Advisory Panel will be renewed for a period of two years.

FOR FURTHER INFORMATION CONTACT: Karen E. Carolan, C:AP:ART, 1099 14th Street, NW., Room 4200 E, Washington, DC 20005, Telephone Number (202) 694–1861, (not a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. (2000), the Commissioner of Internal Revenue announces the renewal of the following advisory committee:

Title. The Art Advisory Panel of the Commissioner of Internal Revenue.

Purpose. The Panel assists the Internal Revenue Service by reviewing and evaluating the acceptability of property appraisals submitted by taxpayers in support of the fair market value claimed on works of art involved in Federal Income, Estate or Gift taxes in accordance with sections 170, 2031, and 2512 of the Internal Revenue Code of 1986.

In order for the Panel to perform this function, Panel records and discussions must include tax return information. Therefore, the Panel meetings will be closed to the public since all portions of the meetings will concern matters that are exempted from disclosure under the provisions of section 552b(c)(3), (4), (6) and (7) of Title 5 of the U.S. Code. This determination, which is in accordance with section 10(d) of the Federal Advisory Committee Act, is necessary to protect the confidentiality of tax returns and return information as required by section 6103 of the Internal Revenue code.

Statement of Public Interest. It is in the public interest to continue the existence of the Art Advisory Panel. The Secretary of Treasury, with the concurrence of the General Services Administration, has also approved renewal of the Panel. The membership of the Panel is balanced between museum directors and curators, art dealers and auction representatives to afford differing points of view in determining fair market value.

Authority for this Panel will expire two years from the date the Charter is approved by the Assistant Secretary for Management and Chief Financial Officer and filed with the appropriate congressional committees unless, prior to the expiration of its Charter, the Panel is renewed.

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Mark W. Everson,

Commissioner of Internal Revenue.

[FR Doc. 04–1367 Filed 1–21–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference.

DATES: The meeting will be held Tuesday, February 17, 2004, at 1:30 p.m., Eastern Standard Time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

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 Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Tuesday, February 17, 2004, from 1:30 to 3 p.m. Eastern standard time via a telephone conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS–1006–MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or Fax to 414–297–1623. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy. Ms. Toy can be reached at 1–888–912–1227 or 414–297–1611, or Fax 414–297–1623.

The agenda will include the following: monthly committee summary report, discussion of issues brought to the joint committee, office report and discussion of next meeting.

Dated: January 15, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–1368 Filed 1–21–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, February 20, 2004, from 11 a.m. EST to 12:30 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

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 3 Taxpayer Advocacy Panel will be held Friday, February 20, 2004, from 11 a.m. EST to 12:30 p.m. EST via a telephone conference call. 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 954–423–7979, or write Sallie Chavez, 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 Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979.

The agenda will include: Various IRS issues.

Dated: January 15, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–1369 Filed 1–21–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted (via teleconference) to discuss various issues. The public is invited to make oral comments.

DATES: The meeting will be held Wednesday, February 18, 2004.

FOR FURTHER INFORMATION CONTACT: Audrey Jenkins at 1–888–912–1227 (toll-free), or 718–488–2085 (non toll-free).

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 Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Wednesday, February 18, 2004 at 2 p.m. ET via a telephone conference call. 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 718–488–2085, or write Audrey Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Ms. Jenkins.

The agenda will include: Various IRS issues.

Dated: January 15, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–1370 Filed 1–21–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, West Virginia, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, February 18, 2004, at 8 a.m., Central Standard Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

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 4 Taxpayer Advocacy Panel will be held Wednesday, February 18, 2004, at 8 a.m., Central standard time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: January 15, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–1371 Filed 1–21–04; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 69, No. 14
Thursday, January 22, 2004

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 JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300, 1309, 1310

[Docket No. DEA–239T]

Clarification of the Exemption of Sales by Retail Distributors of Pseudoephedrine and Phenylpropanolamine Products

Correction

In rule document 04–722 beginning on page 2062 in the issue of Wednesday, January 14, 2004, make the following correction:

On page 2065, the table is corrected to read as follows:

Qualifications and Requirements for the Exemption of Sales of ''Ordinary Over-the-Counter Pseudoephedrine or Phenylpropanolamine Regulated Products'' (''Safe Harbor Products'') by Retail Distributors

Seller must first meet the definition of retail distributor relating to regulated pseudoephedrine, phenylpropanolamine, or ephedrine products listed below:

1. Means a grocery store, general merchandise store, drug store, or other entity or person whose activities as a distributor relating to drug products containing pseudoephedrine or phenylpropanolamine are—
2. Limited to sales almost exclusively for personal use, both in the number of sales and volume of sales [regardless of the packaging of the products].

Sale for personal use means the sale of below-threshold quantities in a single transaction to an individual for legitimate medical use.

AND

3. Sales are made either directly to walk-in customers or face-to-face by direct sales. (21 U.S.C. 802(46) & 21 CFR 1300.02(b)(29))

Requirements and conditions if retail distributor qualifies for the exemption	Requirements and conditions if retail distributor does not qualify for the exemption
DEA registration as a distributor of List I chemicals is waived. (21 CFR 1309.23(e)).	Seller must register with DEA as a distributor of List I chemicals. (21 CFR 1309)
As a regulated person whose registration has been waived, a retail distributor must meet security requirements for List I chemicals found in 1309.71–1309.73. (21 CFR 1309.24(k)).	Distributor must meet security requirements for List I chemicals in 21 CFR 1309.71–1309.73.
As a regulated person whose registration has been waived, a retail distributor is subject to the to the reporting requirements for regulated transactions requirements of listed chemicals in 21 CFR 1310.05. (21 CFR 1309.24(k)).	Distributor is subject to the reporting requirements for listed chemicals in 21 CFR 1310.
No records are required for sales of regulated pseudoephedrine or phenylpropanolamine products below threshold quantities in a single transaction regardless of packaging (not a regulated transaction).	No records are required for sales of regulated pseudoephedrine or phenylpropanolamine products below threshold quantities in a single transaction regardless of packaging (not a regulated transaction).
Records must be retained for all sales of threshold and above quantities of pseudoephedrine and phenylpropanolamine regulated products not in blister packs (such as bottles), which are regulated transactions, as set forth in 21 CFR 1310.	Records must be retained for all transactions of threshold or above quantities regardless of type of packaging (regulated transactions). (21 CFR 1310)
If sales of pseudoephedrine or phenylpropanolamine regulated products exceed ''almost exclusively below-threshold'' amounts either in number of sales or volume of sales—regardless of the kind of packaging, then seller must register with DEA as a distributor of List I chemicals. (See the other side of this table—Requirements and Conditions If Retail Distributor Does Not Qualify for the Exemption.).	For all transactions at or above threshold amounts (regulated transactions), distributor must meet proof of identity requirements for customers. (21 CFR 1310.07)

[FR Doc. C4–722 Filed 1–21–04; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Thursday,
January 22, 2004

Part II

Environmental Protection Agency

40 CFR Parts 70 and 71

Revisions To Clarify the Scope of Certain Monitoring Requirements for Federal and State Operating Permits Programs; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 70 and 71

[FRL–7612–5, E–Docket ID. No. OAR–2003–0179 (Legacy Docket ID No. A–90–50)]

RIN 2060–AK29

Revisions To Clarify the Scope of Certain Monitoring Requirements for Federal and State Operating Permits Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's action ratifies certain current language of the State and federal operating permits program rules under title V of the Clean Air Act (Act) concerning monitoring and declines to adopt the changes to the regulatory text of the monitoring rules that were proposed on September 17, 2002. Today EPA also announces a different interpretation of the ''umbrella monitoring'' rules (40 CFR 70.6(c)(1) and 71.6(c)(1)) from that set forth in the preamble to that proposal. Notwithstanding the recitation in the umbrella monitoring rules of monitoring as a permit element, EPA has determined that the correct interpretation of the umbrella monitoring rules is that they do not establish a separate regulatory standard or basis for requiring or authorizing review and enhancement of existing monitoring independent of any review and enhancement as may be required under separate provisions of the operating permits rules. As explained in this action, the umbrella monitoring rules do not provide a basis for adding monitoring to title V permits independent of monitoring required under existing federal air pollution control rules and State implementation plan (SIP) rules (*i.e.*, monitoring required under applicable requirements), including monitoring required under the compliance assurance monitoring (CAM) rule where it applies, and such monitoring as may be required under the periodic monitoring rules. Accordingly, EPA interprets the umbrella monitoring rules to require that title V permits contain monitoring required under applicable requirements, including monitoring required under the CAM rule where it applies, and such monitoring as may be required under the periodic monitoring rules. Together, such monitoring will constitute monitoring sufficient to assure compliance as required by the Act.

Today's action is the first step in a four-step strategy for considering programmatic improvements to existing monitoring where necessary through rulemaking while reducing resource-intensive, case-by-case monitoring reviews and so-called ''gap-filling'' in title V permits. In addition, EPA intends to encourage States to improve monitoring requirements in certain SIP rules through guidance to be developed in connection with a separate rulemaking concerning the implementation of the national ambient air quality standards (NAAQS) for fine particulate matter to be published in the near term. The EPA also intends to publish an advance notice of proposed rulemaking (ANPR) in the near term to ask for comments on inadequate monitoring in applicable requirements (in addition to any monitoring addressed in the fine particulate guidance and rulemaking) and on appropriate methods for upgrading such monitoring. Finally, EPA expects to conduct a separate notice and comment rulemaking to address what types of existing monitoring are ''periodic'' under the periodic monitoring rules, and when the periodic monitoring rules apply, what types of monitoring satisfy the monitoring criteria contained in the periodic monitoring rules.

Under the Act, EPA has discretion to implement the title V monitoring requirements through rulemakings or case-by-case permit reviews. Today, EPA is committing to exercise its discretion under the Act to require any necessary improvements to existing monitoring through rulemaking, except where the periodic monitoring rules authorize the case-by-case addition of monitoring to individual permits. The EPA's interpretation of the Act, its own regulations, recent Court decisions, and several policy considerations underlie this decision. EPA believes, as a matter of policy, that it will be less burdensome on State, local and tribal permitting authorities and on sources, and far more equitable and efficient, to require any necessary improvements in monitoring requirements through rulemakings to revise federal applicable requirements or SIP rules, rather than by requiring permitting authorities to conduct case-by-case sufficiency monitoring reviews of individual permits.

Furthermore, EPA has decided not to adopt the changes to the regulatory text of the umbrella monitoring rules that were proposed in September 2002. For various reasons, EPA also has determined that the correct interpretation of the umbrella monitoring rules is that they do not establish a separate regulatory standard or basis requiring or authorizing the review and enhancement of existing monitoring independent of such review and enhancement as may be required under different provisions of the operating permits program rules that specifically set forth permit content requirements for monitoring. Upon reflection, EPA now believes that the plain language of the umbrella monitoring rules indicates that they constitute ''umbrella provisions'' for monitoring that direct permitting authorities to include monitoring required under existing statutory and regulatory authorities in permits, and which include and gain meaning from the more specific requirements for monitoring set forth in different provisions of the rules. The policy considerations described in this preamble as relevant to EPA's exercise of its discretion under the Act also inform EPA's interpretation of the umbrella monitoring rules. Thus, the effect of today's action will be that the umbrella monitoring rules neither require nor authorize permitting authorities to create new monitoring in operating permits, apart from including in permits such monitoring as may be required under the periodic monitoring rules and under applicable requirements, including the CAM rule where it applies.

EFFECTIVE DATE: This final rule is effective on February 23, 2004.

ADDRESSES: *Docket.* Docket No. A–93–50 (Electronic Docket No. OAR–2003–0179), containing supporting information used to develop the proposed and final rules, is available for public inspection and copying between 8:00 a.m. and 4:30 p.m., Monday through Friday (except government holidays) at the Air and Radiation Docket (Air Docket) in the EPA Docket Center, (EPA/DC) EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Herring, U.S. EPA, Information Transfer and Program Implementation Division, C304–04, Research Triangle Park, North Carolina 27711, telephone number (919) 541–3195, facsimile number (919) 541–5509, or electronic mail at *herring.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What Are the Regulated Entities?

Categories and entities potentially affected by this action include facilities currently required to obtain title V permits under State, local, tribal, or

federal operating permits programs, and State, local, and tribal governments that issue such permits pursuant to approved part 70 programs.

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

1. *Docket.* The EPA has established an official public docket for this action under Electronic Docket ID No. OAR–2003–0179 (Legacy Docket ID No. A–90–50). 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 Air Docket in the EPA Docket Center, (EPA/DC) EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

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 a portion of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. Interested persons 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 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.

Legacy Docket ID No. A–90–50 is the paper-based docket that is physically located in the EPA West Building in Washington D.C., while Electronic Docket (e-docket) ID No. OAR–2003–0179 is an electronic docket more recently created for internet access purposes during the course of this rulemaking (between the proposal and the final rule). In cases where the new e-dockets system was created during the course of a rulemaking, the EPA docket office has not routinely transferred all documents from the relevant conventional, paper dockets to the e-dockets, potentially creating disparities between the paper and e-dockets. The e-docket and the legacy dockets for this rulemaking contain the complete supporting materials for this rulemaking, however, each docket is not necessarily complete on its own. Due to this, interested persons should check both dockets for complete access to all supporting materials.

C. Where Can I Obtain Additional Information?

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

D. How Is This Preamble Organized?

The information presented in this preamble is organized as follows:

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VII. What Other Related Actions Are Planned Under Today's Approach?
VIII. Statutory and Executive Order Reviews
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B. Paperwork Reduction Act
C. Regulatory Flexibility Act Compliance as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

II. Background

Two provisions of EPA's State and federal operating permits program regulations require that title V permits contain monitoring requirements. The ''periodic monitoring'' rules, 40 CFR 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B), require that

> [w]here the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), [each title V permit must contain] periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to [§ 70.6(a)(3)(iii) or § 71.6(a)(3)(iii)]. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of [§ 70.6(a)(3)(i)(B) and § 71.6(a)(3)(i)(B)].

The ''umbrella monitoring'' rules, §§ 70.6(c)(1) and 71.6(c)(1), require that each title V permit contain, ''[c]onsistent with paragraph (a)(3) of this section, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.''

On September 17, 2002, EPA published a proposed rule (67 FR 58561) (the ''proposed rule'') to clarify the scope of the monitoring required in title V permits issued by State, local and

tribal permitting authorities or by EPA. Specifically, EPA proposed to remove the italicized prefatory language to §§ 70.6(c)(1) and 71.6(c)(1) providing that all title V permits contain, ''*[c]onsistent with paragraph (a)(3) of this section,*'' monitoring ''sufficient to assure compliance with the terms and conditions of the permit.'' At that time, EPA proposed to clarify the interpretation that §§ 70.6(c)(1) and 71.6(c)(1) established a separate regulatory standard from that of the periodic monitoring rules. The EPA believed the proposed revisions were necessary to address claims of confusion on the part of some source owners and operators, permitting authorities and citizens as to the scope of the title V monitoring rules. However, as discussed below, EPA has decided not to adopt the proposed revisions based on EPA's reasonable interpretation of the Act, the plain language and structure of §§ 70.6(c)(1) and 71.6(c)(1), and the policy considerations discussed in this preamble.

III. What Does Today's Action Involve?

In today's final action, EPA declines to adopt the proposed revisions to the text of §§ 70.6(c)(1) and 71.6(c)(1) and instead ratifies the regulatory text as it is currently worded. The EPA also announces that the Agency has determined that notwithstanding the recitation in §§ 70.6(c)(1) and 71.6(c)(1) of monitoring as a permit element, the correct interpretation of §§ 70.6(c)(1) and 71.6(c)(1) is that they do not provide a basis for requiring or authorizing review and enhancement of existing monitoring in title V permits independent of any review and enhancement as may be required under the periodic monitoring rules, the CAM rule (40 CFR part 64)(62 FR 54900, October 22, 1997) where it applies, and other applicable requirements under the Act, including, but not limited to, new source performance standards (NSPS), 40 CFR part 60, national emissions standards for hazardous air pollutants (NESHAP), 40 CFR part 61, acid rain program rules, 40 CFR parts 72 through 78, and SIP, tribal implementation plan (TIP) and federal implementation plan (FIP) rules approved by EPA under title I of the Act. Finally, EPA announces plans to address monitoring for purposes of title V in three separate actions.

A. Will the Regulatory Text of the Rules Change Under Today's Action?

The EPA has decided not to adopt the revisions to the regulatory text of §§ 70.6(c)(1) and 71.6(c)(1) which we proposed in September 2002. Instead, we are ratifying the regulatory text of those rules as it is currently worded. Under today's final action, the text of §§ 70.6(c)(1) and 71.6(c)(1) will continue to require, in relevant part, that all title V permits contain, ''[c]onsistent with paragraph (a)(3) of this section, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.'' Today's final action does not change any other regulatory text, as no other changes have been proposed.

B. What Is the Correct Interpretation of §§ 70.6(c)(1) and 71.6(c)(1)?

Notwithstanding the recitation in §§ 70.6(c)(1) and 71.6(c)(1) of monitoring as a permit element, EPA has determined that the correct interpretation of §§ 70.6(c)(1) and 71.6(c)(1) is that these provisions do not establish a separate regulatory standard or basis for requiring or authorizing review and enhancement of existing monitoring independent of any review and enhancement as may be required under §§ 70.6(a)(3) and 71.6(a)(3). Thus, §§ 70.6(c)(1) and 71.6(c)(1) require that title V permits contain the following types of monitoring: (1) Monitoring required by ''applicable requirements'' under the Act as that term is defined in § 70.2, including, but not limited to, monitoring required under the CAM rule, where it applies, monitoring required under federal rules such as NSPS, NESHAP, maximum achievable control technology (MACT) standards, 40 CFR part 63, acid rain rules, and SIP, TIP and FIP rules; and (2) such monitoring as may be required under §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B). *See Appalachian Power Co.* v. *EPA,* 208 F.3d 1015 (D.C. Cir. 2000) (*Appalachian Power*). Thus, for monitoring, §§ 70.6(c)(1) and 71.6(c)(1) constitute ''umbrella provisions'' that direct permitting authorities to include monitoring required under existing statutory or regulatory authorities in title V permits. Based on EPA's interpretation of the Act, the plain language and structure of §§ 70.6(c)(1) and 71.6(c)(1) and the policy considerations described in section IV of this preamble, EPA has determined that where the periodic monitoring rules do not apply, §§ 70.6(c)(1) and 71.6(c)(1) do not require or authorize a new and independent type of monitoring in permits in order for the permits to contain monitoring to assure compliance as required by the Act.

C. What Related Rulemaking Actions Are Planned?

Today's action is the first in a four-step strategy for improving existing monitoring where necessary through rulemaking actions while reducing resource-intensive, case-by-case monitoring reviews and ''gap-filling'' in title V permits. The EPA plans to undertake three related actions in the near future.

First, EPA plans to encourage States to improve possibly inadequate monitoring in certain SIP rules. Specifically, EPA plans to address such monitoring in guidance to be developed in connection with an upcoming rulemaking concerning the implementation of the NAAQS for fine particulate matter (particulate matter with an aerodynamic diameter of less than 2.5 micrometers, or PM 2.5). The primary purpose of the proposed PM 2.5 implementation rule will be to describe the requirements that States and tribes have to meet in order to implement the PM 2.5 NAAQS. Because opacity and particulate monitoring are related to compliance with particulate matter standards, one part of this proposal will address EPA's plans to develop guidance on how States can reduce PM 2.5 emissions by improving source monitoring related to particulate matter emission limits. This may include increasing the frequency of existing opacity monitoring, adding monitoring for parameters of a control device, installing continuous particulate emissions monitoring, or a combination of the above.

Second, EPA plans to identify and consider improving possibly inadequate monitoring in certain federal rules or monitoring in SIP rules not addressed in connection with the PM 2.5 implementation guidance or rulemaking over a longer time frame. To initiate this process, we intend to publish an ANPR requesting comment on what inadequate monitoring may exist in federal applicable requirements and seeking suggestions as to the ways in which inadequate monitoring in such rules could be improved. We further intend to request comment on inadequate monitoring that may exist in other rules, such as SIP rules not addressed in the PM 2.5 implementation rule. Implementation of this second step should substantially strengthen our efforts to assure compliance with applicable standards. Comments received on the ANPR will inform EPA's decision as to what steps to take next. Next steps may include national rulemakings to revise federal rules such as NSPS or NESHAP, or issuance of

guidance or SIP calls directing States to correct deficient monitoring in certain SIP rules.

Third, EPA plans to publish a separate proposed rule to address what monitoring constitutes ''periodic'' monitoring under §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B). As part of this separate proposed rule, we also intend to address what types of monitoring should be created under §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B). Many commenters on the proposed rule raised concerns over a lack of definitive guidance on this question, primarily due to the fact that EPA has not issued any such guidance since the Appalachian Power court set aside the Agency's 1998 ''Periodic Monitoring Guidance.''[1]

IV. What Is the Policy Rationale for Today's Action?

Several considerations—many of which were raised in comments on the proposed rule—motivate our decision to pursue an approach to title V monitoring that will achieve necessary improvements in monitoring primarily through national rulemakings or guidance for States to revise their SIP rules. We believe this approach will achieve a better balance of responsibilities and resource burdens between the States and EPA, than by case-by-case monitoring reviews by the permitting authorities under §§ 70.6(c)(1) and 71.6(c)(1).

First, today's approach will better balance the responsibilities of States and other permitting authorities and EPA to improve monitoring where necessary to ensure that the Act's monitoring requirements are met. Under the interpretation in the proposed rule, permitting authorities would perform case-by-case monitoring reviews of individual title V permits under §§ 70.6(c)(1) and 71.6(c)(1), which in turn would place many significant burdens on State, local, and tribal permitting authorities charged with implementing §§ 70.6(c)(1) and 71.6(c)(1). EPA and permitting authorities have some experience with such an approach. For each draft title V permit, permitting authorities performed such monitoring reviews with respect to virtually every permit term or condition and determined, generally without any definitive, national EPA guidance, whether the existing monitoring was sufficient to assure compliance with such terms and conditions. The complex industrial sources and other sources subject to title V are subject to numerous applicable requirements and their draft permits contain numerous terms and conditions, which means that such reviews are time-consuming. In addition, the reviews demand permit writers with highly technical expertise. Where permit writers determined that §§ 70.6(c)(1) and 71.6(c)(1) applied because existing monitoring would not assure compliance, permit writers also determined what monitoring to include in permits to assure compliance with the permits' terms and conditions. Thus, these States and other permitting authorities found themselves in the awkward position of reviewing existing monitoring for sufficiency under §§ 70.6(c)(1) and 71.6(c)(1) before EPA clearly indicated what monitoring was insufficient and then creating new monitoring in permits under those provisions before EPA explained what types of monitoring would satisfy the statutory and regulatory requirements. Over the years, some permitting authorities have attributed delays in permit issuance to their efforts to develop monitoring for permits on a case-by-case basis.

These concerns are reflected in the comments received on the proposed rule from State and local permitting authorities. (See more detailed EPA responses to all significant comments raised on the proposal below, and in a separate document placed in the docket.) Two representatives of State and local permitting authorities commented on the proposal, they both disagreed with the proposed rule's overall approach for monitoring, and they both noted either significant concerns or burdens that they perceived in implementing it. One cited the burdens of conducting sufficiency reviews and adding new monitoring to permits in more cases than they thought were appropriate or were required by the Act. The commenter also indicated that such monitoring would likely result in more arbitrary and less consistent monitoring from permit to permit and make permit issuance more difficult. Another State commenter did not understand specifically what States would be required to do to implement the proposal, if it were to be adopted as a final rule. Neither of the State or local commenters filed comments that could be interpreted as adverse to the approach of today's final rule. In addition, other commenters indicated that the proposed rule's approach would lead to increased burdens on States.

Thus, we now are convinced that requiring States and other permitting authorities to assess the adequacy of all existing monitoring, and, as necessary, to upgrade monitoring through the title V permitting process would place a significant, unmanageable and unnecessary burden on those permitting authorities.

Similarly, we are convinced that requiring sufficiency reviews under §§ 70.6(c)(1) and 71.6(c)(1) places undue burdens on title V sources. Many commenters disagreed with the proposed rule's approach to monitoring and cited numerous examples of how it would lead to increased burdens not only on States but also on sources. For instance, commenters claimed that it would delay permit issuance and renewals, represent an inefficient use of State resources, and promote ''forum shopping'' by sources, resulting in inequities among similarly-situated sources in different jurisdictions or even within the same jurisdiction.

Furthermore, under the proposal, the State permit writers were given no guidance as to how to set these monitoring requirements, as commenters pointed out. Using rulemaking to revise monitoring requirements will assure that the new monitoring requirements are adopted in the same manner as the originally promulgated standards. That original promulgation included a determination that the standards were achievable assuming the specified control technologies. Commenters expressed concern that the proposed rule would illegally increase the stringency of underlying emission standards and limitations because it would require new averaging periods or change other compliance methods when added to the permit. Similar issues were raised in *Appalachian Power.* Ratifying the current regulatory language eliminates any possible problem in this regard under §§ 70.6(c)(1) and 71.6(c)(1).

In addition to reducing burdens on title V permitting authorities and sources, today's action offers several other advantages over the proposed rule's approach. We believe it is a far better and more efficient approach from a resource standpoint to focus primarily on reviewing the adequacy of existing monitoring requirements on a programmatic basis and to accomplish needed upgrades through federal, State, or local rulemaking. Programmatic ''fixes'' to monitoring in applicable requirements made through national or State rulemakings will address potential inadequacies in existing monitoring requirements in the first instance. Thus, there will be no need to resort to more resource-intensive, case-by-case sufficiency reviews to supplement existing monitoring under §§ 70.6(c)(1)

[1] ''Periodic Monitoring Guidance,'' signed by Eric V. Schaeffer, Director, Office of Regulatory Enforcement, and John S. Seitz, Director, Office of Air Quality Planning and Standards, September 15, 1998.

and 71.6(c)(1) during permit proceedings.

The final rule also is likely to result in greater consistency in monitoring requirements included in permits, both within States and nationally. When inadequate monitoring is improved through rulemaking at the national or State level, the improved monitoring can be incorporated into title V permits with little, if any, source-specific tailoring, thereby eliminating some of the variations in monitoring determinations inherent in case-by-case reviews. Under the proposed rule's approach, such variations may have resulted from permitting authorities' different policies on what monitoring to add to permits, from variations in engineering judgment among permit writers, and from complex source-specific factors. More consistent monitoring requirements in permits nationally should help to eliminate some of the concern over forum shopping pointed out by the commenters, as well as concerns about potential inequities in monitoring amongst similarly-situated sources in different jurisdictions.

In addition, we expect that today's approach is likely to result in broader public input into monitoring decisions than is possible during individual permit proceedings. This is so because formal rulemaking procedures involve an opportunity for public comment and a hearing that may attract a larger national or State audience of individuals more interested in consistent outcomes and perhaps more knowledgeable about technical issues specific to the source categories or applicable requirements that are the subject of the rulemaking. Moreover, the final rules are more likely than individual permit proceedings to result in better consideration of potential economic impacts. Statutory or regulatory provisions or Executive Orders requiring detailed consideration of economic impacts or other burdens imposed by various types of monitoring may apply to federal or State rulemakings; such consideration is not required in individual permit proceedings. Thus, compared to the proposed rule's approach, this approach has the added benefit of providing a greater degree of clarity and the opportunity for a wider interested public to influence decisions concerning the adequacy of monitoring and efforts to accomplish upgrades.

Finally, commenters expressed concern about the statutory underpinnings of sufficiency monitoring under §§ 70.6(c)(1) and 71.6(c)(1) along the lines of the D.C. Circuit's observation in *Appalachian Power* that the approach to sufficiency monitoring described in the Periodic Monitoring Guidance ''raises serious issues, not the least of which is whether EPA possesses the authority it now purports to delegate.'' 208 F.3d at 1026. Adopting this final rule will eliminate possible concern in this regard.

For all of these reasons, we believe today's approach will better balance the roles and responsibilities of States and other permitting authorities, on the one hand, and EPA, on the other, to improve the monitoring required of title V sources where necessary to ensure that the Act's title V monitoring requirements are met.

V. What Is the Legal Basis for Today's Action?

The Act provides EPA with broad discretion to decide how to implement the title V monitoring requirements. In the past, EPA has exercised that discretion in part by requiring permitting authorities to conduct case-by-case monitoring reviews under §§ 70.6(c)(1) and 71.6(c)(1) and, where necessary to assure compliance, to add monitoring pursuant to those provisions prior to issuing, renewing, reopening, or revising title V operating permits. The EPA also has established monitoring requirements under national rules, such as the CAM rule and the continuous emission monitoring rule under the acid rain program (40 CFR part 75). Based on comments received on the proposed rule and as a matter of policy (see section IV of this preamble), EPA now believes that it is not appropriate to exercise our discretion under the statute to require case-by-case monitoring reviews under §§ 70.6(c)(1) and 71.6(c)(1). The EPA believes that improving the monitoring required of title V sources by conducting rulemakings to revise federal standards that contain inadequate monitoring and/or by encouraging States to revise SIP rules that contain inadequate monitoring will better balance the responsibilities of EPA and States and other permitting authorities and will result in more equitable and more efficient monitoring decisions.

Accordingly, EPA has decided not to adopt the proposed rule, which would have removed the prefatory phrase, ''[c]onsistent with paragraph (a)(3) of this section,'' from the regulatory text of §§ 70.6(c)(1) and 71.6(c)(1). See 67 FR 58561. Rather, EPA has decided to leave the regulatory text as it stands and to issue what EPA now believes to be the correct interpretation of §§ 70.6(c)(1) and 71.6(c)(1). Specifically, EPA has determined that notwithstanding the recitation in §§ 70.6(c)(1) and 71.6(c)(1) of monitoring as a permit element, the correct interpretation of §§ 70.6(c)(1) and 71.6(c)(1) is that these provisions do not establish a separate regulatory standard or basis for requiring or authorizing review and enhancement of existing monitoring independent of any review and enhancement as may be required under §§ 70.6(a)(3) and 71.6(a)(3).

Various factors have prompted EPA's decision regarding §§ 70.6(c)(1) and 71.6(c)(1). Significantly, upon reflection, EPA believes that the plain language of §§ 70.6(c)(1) and 71.6(c)(1), which begins with the phrase ''[c]onsistent with'' §§ 70.6(a)(3) and 71.6(a)(3), indicates that §§ 70.6(c)(1) and 71.6(c)(1) serve as ''umbrella provisions'' for monitoring which include and gain meaning from the more specific monitoring requirements in §§ 70.6(a)(3) and 71.6(a)(3). Both §§ 70.6(c)(1) and 71.6(c)(1) provide only that permits contain ''monitoring * * * requirements sufficient to assure compliance with the terms and conditions of the permit.'' Read in isolation, this general language does not provide any indication of what type or frequency of monitoring is required. Yet, for monitoring, §§ 70.6(c)(1) and 71.6(c)(1) take on practical meaning when they are read together with the more detailed periodic monitoring rules, which specify that periodic monitoring must be ''sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit,'' or with other provisions of §§ 70.6(a)(3) and 71.6(a)(3).[2] Thus, the plain language and structure of §§ 70.6(c)(1) and 71.6(c)(1) and the periodic monitoring rules show that §§ 70.6(c)(1) and 71.6(c)(1) are correctly interpreted on their face as umbrella provisions.

In addition, the policy considerations discussed in section IV of this preamble support EPA's determination that today's interpretation of §§ 70.6(c)(1) and 71.6(c)(1) is the correct one. In sum, today's approach will better balance the responsibilities of States and other permitting authorities and EPA to improve monitoring where necessary to ensure that the Act's monitoring

[2] For instance, each permit must contain, with respect to monitoring: (1) ''[a]ll monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including [the CAM rule] and any other procedures and methods that may be promulgated pursuant to sections 114(a)(3) and 504(b) of the Act,'' *see* §§ 70.6(a)(3)(i)(A) and 71.6(a)(3)(i)(A); and (2) ''[a]s necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.'' §§ 70.6(a)(3)(i)(C) and 71.6(a)(3)(i)(C).

requirements are met. Compared to the proposed rule's approach, today's approach also will reduce burdens on title V sources, be more efficient from a resource standpoint, result in more equitable monitoring decisions, and allow for wider, more expert public input into monitoring decisions.

Today's interpretation of §§ 70.6(c)(1) and 71.6(c)(1) is consistent with EPA's authority under the Act. In title V, Congress granted EPA broad discretion to decide how to implement the title V monitoring requirements, as well as the ''enhanced monitoring'' requirement of section 114(a)(3) of the Act.[3] Two provisions of title V specifically address rulemaking concerning monitoring. First, section 502(b)(2) of the Act requires EPA to promulgate regulations establishing minimum requirements for operating permit programs, including ''[m]onitoring and reporting requirements.'' 42 U.S.C. 7661a(b)(2). Second, section 504(b) authorizes EPA to prescribe ''procedures and methods'' for monitoring ''by rule.'' 42 U.S.C. 7661c(b). Section 504(b) provides: ''The Administrator may by rule prescribe procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated under this Act, but continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance. * * *'' (Emphasis added.) Id.

Other provisions of title V refer to the monitoring required in individual operating permits. Section 504(c) of the Act, which contains the most detailed statutory language concerning monitoring, requires that ''[e]ach [title V permit] shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions.'' 42 U.S.C. 7661c(c). Section 504(c) further specifies that ''[s]uch monitoring and reporting requirements shall conform to any applicable regulation under [section 504(b)]. * * *'' Id. Section 504(a) more generally requires that ''[e]ach [title V permit] shall include enforceable emission limitations and standards, * * * and such other conditions as are necessary to assure compliance with applicable requirements of this Act, including the requirements of the applicable implementation plan.'' 42 U.S.C. 7661c(a).

Thus, title V clearly authorizes the Agency to require improvements to the existing monitoring required by applicable requirements in at least two ways. Under the statute, the Agency may require case-by-case monitoring reviews as described in the proposed rule. Alternatively, the Agency may achieve any improvements to monitoring through Federal or State rulemakings to amend the monitoring provisions of applicable requirements themselves; then permitting authorities can simply incorporate the amended monitoring requirements into title V permits without engaging in case-by-case monitoring reviews under §§ 70.6(c)(1) and 71.6(c)(1) on a permit-specific basis. The EPA believes that the latter approach correctly reflects the plain language of §§ 70.6(c)(1) and 71.6(c)(1), is responsive to the majority of public comments received on the proposed rule, and gives effect to the policy considerations discussed in this preamble. Thus, we are exercising our discretion under the Act to no longer require case-by-case monitoring reviews under §§ 70.6(c)(1) and 71.6(c)(1) and instead to proceed with related rulemaking actions to address monitoring in applicable requirements.

The four-step approach outlined today will ensure that the Act's monitoring requirements will be met. First, our new emphasis on establishing monitoring requirements through rulemaking gives full effect to section 504(b) of the Act, which provides that ''[t]he Administrator may *by rule* prescribe procedures and methods for determining compliance and for monitoring and analysis of pollutants * * *'' 42 U.S.C. 7661c(b) (emphasis added). Today's approach also ensures that section 504(c)'s command that each title V permit ''set forth * * * monitoring * * * to assure compliance with the permit terms and conditions'' will be satisfied through the combination of EPA and, as necessary, State rulemakings to address monitoring, and the addition to permits of such monitoring as may be required under §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B). See 42 U.S.C. 7661c(c). Satisfying the specific monitoring requirements of section 504(c) will assure that the more general requirements of section 504(a) are satisfied as to monitoring.

The EPA anticipates that some existing monitoring required under applicable requirements could be improved and will be addressed in connection with both the upcoming PM 2.5 implementation rulemaking and the ANPR process described above. The EPA also plans to address the periodic monitoring rules in a separate rulemaking. Nevertheless, EPA believes the four-step strategy outlined today is well designed to assure that for purposes of title V, permits will contain monitoring to assure compliance.

VI. What Comments Were Received on the Proposed Rule and What Are EPA's Responses?

This section of the preamble provides EPA's responses to significant issues raised by commenters on the proposed rule. A more comprehensive document addressing these and other issues raised by commenters will be placed in the docket prior to promulgation of today's final rule.

A. Does the Rulemaking Record Support Separate Authority for Monitoring Review and Enhancement Under §§ 70.6(c)(1) and 71.6(c)(1)?

Many commenters were concerned that there was nothing in the part 70, part 71, or CAM rulemaking records to indicate that § 70.6(c)(1) was originally intended to provide a separate and independent regulatory standard, in addition to the periodic monitoring requirements under § 70.6(a)(3)(i)(B), to enhance existing monitoring in applicable requirements, or enhance periodic monitoring already created in part 70 permits. Instead, the commenters stated, the preamble to the original part 70 final rule (57 FR 32250, July 21, 1992) said monitoring enhancement was being implemented solely through § 70.6(a)(3), and that permitting authorities may enhance existing monitoring only where an applicable requirement failed to require monitoring that was periodic.

For the reasons set forth in sections IV and V of this preamble, today's action makes clear that §§ 70.6(c)(1) and 71.6(c)(1) do not establish a separate regulatory standard or basis for requiring or authorizing review and enhancement of existing monitoring, independent of any review and enhancement as may be required under §§ 70.6(a)(3) and 71.6(a)(3). Rather, for monitoring, §§ 70.6(c)(1) and 71.6(c)(1) act as ''umbrella provisions'' that direct permitting authorities to include in title V permits monitoring required under existing statutory and regulatory authorities. Thus, we are not adopting the proposed revision to the text of §§ 70.6(c)(1) and 71.6(c)(1). In light of today's action, we do not believe it is necessary to address the referenced rulemaking records as they may relate to the proposed rule.

[3] Section 114(a)(3) of the Act provides that ''[t]he Administrator shall in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, require enhanced monitoring and submission of compliance certifications.'' 42 U.S.C. 7414(a)(3).

B. May New Monitoring Be Established in Permits Without Further Rulemaking?

Many commenters opined that EPA must conduct notice-and-comment rulemaking, consistent with section 504(b) of the Act, to upgrade monitoring in applicable requirements, using the same procedures and criteria that were used to set the original standards. They reasoned that upgrading monitoring on a permit-by-permit basis is illegal because it is arbitrary and capricious and an unlawful delegation of regulatory authority not explicitly allowed by section 504(b) of the Act, which requires new monitoring to be imposed only by rule. In addition, they believe adding new monitoring under § 70.6(c)(1) would revise the emission standards in violation of section 307(d)(1)(C) of the Act, which requires separate rulemaking to revise emission standards.

In response to these comments, it appears that this issue need not be addressed in this action because EPA has committed to exercise its discretion under the Act to pursue rulemaking to improve existing monitoring requirements, as opposed to case-by-case monitoring reviews under §§ 70.6(c)(1) and 71.6(c)(1). Nonetheless, as explained elsewhere in this preamble, EPA believes that the Act authorizes it to meet the title V monitoring requirements by requiring permitting authorities to add monitoring to permits on a case-by-case basis or by pursuing rulemaking to improve monitoring requirements in Federal or State applicable requirements.

As for the comments that the proposal to upgrade monitoring on a permit-by-permit basis was arbitrary and capricious, was an unlawful delegation of regulatory authority not explicitly allowed by section 504(b) of the Act, and would revise emission standards in violation of section 307(d)(1)(C) of the Act, EPA believes it is not necessary to respond to these comments because we have decided not to adopt the proposed changes to the regulatory text of §§ 70.6(c)(1) and 71.6(c)(1) and we have determined that the correct interpretation of those provisions is that they do not establish a separate regulatory standard or basis for requiring or authorizing review and enhancement of existing monitoring independent of any review and enhancement as may be required under §§ 70.6(a)(3) and 71.6(a)(3). To the extent the comments could be read to raise the concerns listed above with respect to the upgrading of monitoring under §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B), EPA notes that these issues were beyond the scope of this rulemaking and were not opened for comment.

C. Was the Proposal Inconsistent With the Appalachian Power and NRDC Decisions?

Many commenters believed that the proposed rule was inconsistent with the *Appalachian Power* decision because they believed the court found that part 70 does not authorize sufficiency reviews or upgrading of existing periodic monitoring and that rulemaking is required to amend inadequate monitoring in applicable requirements. Likewise, many commenters maintained that the proposal was inconsistent with the D.C. Circuit's decision in *Natural Resources Defense Council* v. *EPA,* 194 F.3d 130 (D.C. Cir. 1999) (*NRDC*), because they said that the court did not opine as to the meaning of ''sufficient monitoring,'' refer to two separate regulatory standards for monitoring (periodic monitoring and monitoring under §§ 70.6(c)(1) and 71.6(c)(1)), or suggest that part 70 requires monitoring beyond CAM.

We believe it is not necessary to respond to these comments because EPA is not adopting the proposed revisions to the text of §§ 70.6(c)(1) and 71.6(c)(1), and because EPA has determined that the correct interpretation of §§ 70.6(c)(1) and 71.6(c)(1) is that these provisions do not establish a separate regulatory standard or basis for requiring or authorizing review and enhancement of existing monitoring independent of any review and enhancement as may be required under §§ 70.6(a)(3) and 71.6(a)(3).

D. Does § 70.1(b) Prohibit Monitoring Enhancement in Permits?

Several commenters stated that they believed that § 70.1(b) and the Act do not allow substantive new requirements, such as monitoring, to be added to permits. Section 70.1(b) provides: ''All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements. While title V does not impose substantive new requirements, it does require * * * that certain procedural measures be adopted especially with respect to compliance.''

The Act expressly requires that permits contain ''conditions as are necessary to assure compliance with applicable requirements'' and in particular ''monitoring * * * to assure compliance with the permit terms and conditions.'' 42 U.S.C. 7661c(a), 7661c(c); *see* 42 U.S.C. 7661a(b)(5)(A) (requiring that title V permitting authorities have adequate authority to ''issue permits and assure compliance by all [title V sources] with each applicable standard, regulation or requirement under this chapter''). The court in *Appalachian Power* recognized that certain monitoring requirements may be added to title V permits in some circumstances, *see* 208 F.3d at 1028, and the plain language of § 70.1(b) is not a bar to the addition of monitoring to permits under §§ 70.6(a)(3) and 71.6(a)(3). At the same time, EPA has determined that the correct interpretation of §§ 70.6(c)(1) and 71.6(c)(1) is that these provisions do not establish a separate regulatory standard or basis for requiring or authorizing review and enhancement of existing monitoring independent of any review and enhancement as may be required under §§ 70.6(a)(3) and 71.6(a)(3). To the extent the comments could be read to refer to the addition of monitoring to permits under §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B), we believe it is not necessary to respond, because that issue is beyond the scope of this rulemaking and was not opened for comment.

E. How Stringent Was Monitoring Under §§ 70.6(c)(1) and 71.6(c)(1) in the Proposal?

Several commenters were concerned that the proposed revisions to the text of §§ 70.6(c)(1) and 71.6(c)(1) would result in the elimination of the Act's requirement for ''reasonable monitoring.'' The commenters asserted that the current standard for monitoring and certifying compliance in title V permits is ''a reasonable assurance of compliance, quantified by the exercise of good and accepted science, which is the same standard used by CAM.'' The commenters further asserted that the proposed rule would change the monitoring standard to an ''absolute assurance of compliance,'' which could only be achieved by stringent and expensive direct monitoring techniques, such as continuous emissions monitoring systems (CEMS).

EPA responds by noting that the proposed rule made no statements regarding either an ''absolute assurance of compliance'' or a ''reasonable assurance of compliance'' as the standard for monitoring and/or for certifying compliance in title V permits. Nor does today's final rule. The proposed rule made clear that its scope was narrow. The EPA stated in the preamble: ''This proposed rule is limited to the removal of the prefatory phrase '[c]onsistent with paragraph (a)(3) of this section' from §§ 70.6(c)(1) and 71.6(c)(1) in order to clarify the scope of these provisions. This

proposed rule does not address any other issues related to title V monitoring, such as the type of monitoring required under the periodic monitoring provisions, §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B), or under * * * §§ 70.6(c)(1) and 71.6(c)(1).'' (67 FR 58561, 58565, September 17, 2002). Consistent with this statement, EPA does not address the issues raised by the commenters here. As noted in sections III.C. and VII. of this preamble, however, EPA plans to address criteria for use in determining how to fill a ''gap'' in a separate proposed rule.

F. Does New Monitoring in Permits Increase the Stringency of Existing Standards?

Many commenters opined that the proposed rule would illegally increase the stringency of underlying emission standards and limitations because it would require new averaging periods or change other compliance methods when added to the permit.

Today's action will not require or authorize the addition of monitoring to permits under §§ 70.6(c)(1) and 71.6(c)(1). To the extent the comments concern the addition of monitoring to permits under §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B), we believe it is not necessary to respond because that issue is beyond the scope of this rulemaking and was not reopened for comment. The proposed rule was limited to the removal of the prefatory phrase ''[c]onsistent with paragraph (a)(3) of this section'' from §§ 70.6(c)(1) and 71.6(c)(1). (67 FR 58561, 58565, September 17, 2002).

G. Did the Proposed Rule Require Direct Proof of Violations?

Several commenters stated that the proposal required monitoring data derived from monitoring conducted pursuant to §§ 70.6(c)(1) and 71.6(c)(1) to be used as direct proof of violations in enforcement actions, without consideration of other credible evidence or the totality of circumstances.

The proposed rule was limited to the removal of the prefatory phrase ''[c]onsistent with paragraph (a)(3) of this section'' from §§ 70.6(c)(1) and 71.6(c)(1) and did not address any other issues related to title V monitoring (67 FR 58561, 58565, September 17, 2002). The EPA did not explicitly or implicitly seek comment on the use of monitoring data in enforcement actions or the consideration of other credible evidence. Those issues were resolved in the credible evidence rule (62 FR 8313, February 24, 1997), and they were not reopened in this rulemaking. The credible evidence rule ''[did] not designate any particular data as probative of a violation of an emission standard'' but rather eliminated language in 40 CFR parts 51, 52, 60 and 61 that ''some [had] construed to be a regulatory bar to the admission of non-reference test data [such as other monitoring data] to prove a violation of an emission standard* * *.'' 62 FR at 8314. Thus, the credible evidence rule clarified that non-reference test data can be used in enforcement actions and that in addition to reference test data, ''other material information that indicates that an emission unit has experienced deviations * * * or may otherwise be out of compliance with an applicable requirement even though the unit's permit-identified data indicates compliance'' must be considered in compliance certifications under title V of the Act. 62 FR at 8320. The credible evidence rule thereby ''eliminate[d] any potential ambiguity regarding the use of non-reference test data as a basis for [t]itle V compliance certifications.'' 62 FR at 8314; *see* 42 U.S.C. 7413(c)(2). The September 17, 2002 proposed rule made no statements inconsistent with the credible evidence rule, such as to require title V monitoring data to be considered direct proof of a violation. Similarly, today's final rule makes no statements inconsistent with the credible evidence rule, nor does it revise part 70 or part 71 to that effect. Thus, the proposed rule did not reopen these issues for comment, and today's action does not change the credible evidence rule. Finally, to the extent that an applicable requirement provides that certain monitoring methods constitute direct evidence of violations, title V rules would not affect that requirement.

H. Did the Proposed Rule Meet All Administrative Rulemaking Requirements?

Many commenters alleged that the proposed rule was not a proper rulemaking under the Act or the Administrative Procedure Act (APA) because it would have made substantive changes to §§ 70.6(c)(1) and 71.6(c)(1) without adequate notice, explanation, or justification. In addition, many of these same commenters thought the requirements of the Unfunded Mandates Reform Act (UMRA), the Regulatory Flexibility Act (RFA), and the Paperwork Reduction Act (PRA) were not met, and that the Regulatory Impact Analysis (RIA) and the Information Collection Request (ICR) did not adequately reflect the true costs of the proposal.

The EPA disagrees that the proposed rule was not a proper rulemaking. The proposed rule, which was published in the **Federal Register** for a 30-day public comment period, satisfied the rulemaking requirements of the APA and the Act. In accordance with those requirements, the reasons for the proposed revision to the text of §§ 70.6(c)(1) and 71.6(c)(1) were set forth in the preamble. However, in that EPA has decided not to adopt the proposed revision and has determined that the correct interpretation of §§ 70.6(c)(1) and 71.6(c)(1) is different from that set forth in the proposed rule, EPA believes it is not necessary to respond to the commenters' specific assertions. Section VIII of this preamble, ''Statutory and Executive Order Reviews,'' describes how today's final rule meets the administrative requirements that the commenters identified.

VII. What Other Related Actions Are Planned Under Today's Approach?

As stated above, today's action is the first step in a four-step strategy we expect will result in a better approach for meeting the Act's monitoring requirements than that reflected in the proposed rule. In the near future, EPA intends to address additional issues related to title V monitoring in two separate proposed rules and in an ANPR. First, EPA plans to encourage States to improve inadequate monitoring in certain SIP rules in guidance to be developed in connection with an upcoming rule, the PM 2.5 implementation rule, which primarily will address the implementation of the NAAQS for PM 2.5. We intend to use the PM 2.5 implementation rulemaking as a vehicle for addressing monitoring in certain SIP rules, because particulate and opacity monitoring are related to compliance with particulate matter emission limits. Second, over a longer time frame, EPA plans to identify and consider improving possibly inadequate monitoring in certain federal rules or in SIP rules not addressed in the proposed PM 2.5 implementation rule. In the near term, EPA expects to initiate this process by publishing an ANPR requesting comments to identify inadequate monitoring requirements in federal applicable requirements and State SIP rules (in addition to those requirements addressed in the proposed PM 2.5 implementation rule) and seeking suggestions as to the ways in which inadequate monitoring in such rules could be improved. Third, in a separate proposed rule, EPA plans to address two issues related to title V monitoring. First, EPA plans to address what monitoring constitutes ''periodic'' monitoring under §§ 70.6(a)(3)(i)(B) and

71.6(a)(3)(i)(B). The EPA also plans to address what types of monitoring should be created under §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B).

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines a ''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, adversely affecting in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in 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 of 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.

Under Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because it raises important legal and policy issues. As such, this rule was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record. In section V.A. of the proposal (*see* 67 FR 58565) we stated that we would perform a regulatory impact analysis prior to promulgation of the final rule. While the proposal arguably may have led to increased economic burdens, the final rule clearly does not because it does not adopt the proposed revisions to the regulatory text and it announces a different interpretation of §§ 70.6(c)(1) and 71.6(c)(1). In the event EPA proposes to revise monitoring requirements in other federal rules in future rulemaking actions, those actions will consider economic impacts as necessary. Thus, the final rule does not impose any burdens and therefore a detailed economic analysis is unnecessary.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. It does not adopt the proposed revision to the text of §§ 70.6(c)(1) and 71.6(c)(1). It merely states that notwithstanding the recitation in §§ 70.6(c)(1) and 71.6(c)(1) of monitoring as a permit element, these provisions do not establish a separate regulatory standard or basis for requiring or authorizing review and enhancement of existing monitoring independent of any review and enhancement as may be required under §§ 70.6(a)(3) and 71.6(a)(3). However, the information collection requirements in the existing regulations (parts 70 and 71) were previously approved by OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The existing ICR for part 70 is assigned EPA ICR number 1587.05 and OMB control number 2060–0243; for part 71, the EPA ICR number is 1713.04 and the OMB control number is 2060–0336. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20004 or by calling (202) 566–1672. 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 in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an Agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment 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. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses found in 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, country, 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. We determined and hereby certify this final rule will not have a significant economic impact on a substantial number of small entities. The originally promulgated part 70 and part 71 rules included the text of §§ 70.6(c)(1) and 71.6(c)(1), and this final rule does not revise that text. Moreover, any burdens associated with the interpretation of §§ 70.6(c)(1) and 71.6(c)(1) announced today are less than those associated with the interpretation under the proposed rule and previously enunciated by the Agency. Thus, today's final rule adds no burdens for any small entities.

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 a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply where 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, EPA 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 our regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no federal mandates under the regulatory provisions of title II of the UMRA for State, local, or tribal governments or the private sector. Today's final rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Rather, EPA merely states that §§ 70.6(c)(1) and 71.6(c)(1) do not establish a separate regulatory standard or basis for requiring or authorizing review and enhancement of existing monitoring independent of any review and enhancement as may be required under the periodic monitoring rules, §§ 70.6(a)(3) and 71.6(a)(3). Therefore, today's action is not subject to the requirements of sections 202 and 205 of the UMRA.

In addition, EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments. Today EPA sets out the correct interpretation of §§ 70.6(c)(1) and 71.6(c)(1), which is that they do not require or authorize title V permitting authorities—including any small governments that may be such permitting authorities—to conduct reviews and provide enhancement of existing monitoring through case-by-case monitoring reviews of individual permits under §§ 70.6(c)(1) and 71.6(c)(1). Therefore, today's final rule is not subject to the requirements of section 203 of the UMRA.

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, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule will not impose any new requirements. Accordingly, it will not alter the overall relationship or distribution of powers between governments for the part 70 and part 71 operating permits programs. Thus, Executive Order 13132 does not apply to this final rule.

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

Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the federal government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.''

This final rule 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 in Executive Order 13175. Today's action does not significantly or uniquely affect the communities of Indian tribal governments. As discussed above, today's action imposes no new requirements that would impose compliance burdens beyond those that would already apply. Accordingly, the requirements of Executive Order 13175 do not apply to this rule.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This final 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 merely declines to adopt the proposed revisions to the text of §§ 70.6(c)(1) and 71.6(c)(1) and states that these provisions do not establish a separate regulatory standard or basis for requiring or authorizing review and enhancement of existing monitoring independent of any review and enhancement of monitoring as may be required under §§ 70.6(a)(3) and 71.6(a)(3). 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 its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The NTTAA does not apply to this final rule because it does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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. We 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 February 23, 2004.

Dated: January 15, 2004.

Michael O. Leavitt,

Administrator.

[FR Doc. 04–1362 Filed 1–21–04; 8:45 am]

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